

CHAPTER 23: JUDICIARY AND FUNDAMENTAL RIGHTS

I. JUDICIARY

Independence

1. How does legislation provide for the independence of the judiciary and the autonomy of prosecutors? Is independence of judges and autonomy of prosecutors guaranteed by the Constitution? How are the rights of the judiciary protected? Have there been any complaints about the independence of the judiciary and the autonomy of prosecutors? If so, how were they resolved?

The Law on Public Prosecution (*Official Gazette of the Republic of Serbia*, No. 116/08, 104/09 and 101/2010) provides for the independence of public prosecutors and deputy public prosecutors in the performance of their duties, under the provisions of Articles 5 and 45.

Public prosecutors and deputy public prosecutors are independent from the executive and legislative power in the performance of their duties, which means that no one outside the public prosecution office shall have the right to assign tasks to public prosecutors or deputy public prosecutors, or to influence their decisions in cases.

The independence of bearers of prosecutorial office is stipulated under the provisions of the Constitution of the Republic of Serbia (*Official Gazette of the Republic of Serbia*, No. 98/06) (Article 156).

The Public Prosecution Service is an independent state body which prosecutes the perpetrators of criminal offences and other punishable actions, and undertakes measures for the protection of constitutionality and legality.

The Public Prosecution Service performs its functions pursuant to the Constitution, Law, ratified international treaties and regulations adopted in accordance with the Law.

- The State Prosecutorial Council considered individual complaints regarding the independence and autonomy of prosecutors, and passed timely decisions in each individual case. Citizens submitted complaints to the State Prosecutorial Council, pertaining to complaints on the work of bearers of prosecutorial office, each complaint was considered individually, a certain number was dismissed as unfounded, whereas some were forwarded to the competent prosecution offices of the Republic of Serbia for further action.

Pursuant to the Constitution of the Republic of Serbia (*Official Gazette of RS*, 98/2006), judicial power shall be unique on the territory of the Republic of Serbia, courts is independent and autonomous in their work and they adjudicate in accordance with the Constitution, laws and other general acts, when stipulated by Law, generally accepted rules of international law and ratified international treaties. Judicial decisions are passed on behalf of the people; they are based on the Constitution, law, ratified international treaties and regulations passed pursuant to the law. Judicial decisions are obligatory for

all and may not be subject to extrajudicial examination. A judicial decision may be reconsidered only by the competent court, in legal proceedings prescribed by Law. The basic principles of judicial independence, independence and autonomy of judges proclaimed by the Constitution are confirmed also under the provisions of the Law on Organisation of Courts (*Official Gazette of RS*, No. 116/2008, 104/2009 and 101/2010) and the Law on Judges (*Official Gazette of RS*, No. 116/2008, 58/2009 – decision CC, 104/2009 and 101/2010).

One of the basic principles of the exercise of judicial power, stipulated under the Law on Organisation of Courts, is that the judicial power is vested in courts and is independent of the legislative and executive powers, that judicial decisions are binding to all and may not be subject to extrajudicial examination (Article 3 (1) and (3)). Pursuant to the Law on Organisation of Courts, Article 6, use of public office, instruments of public information or any public appearance that may unduly influence the course and outcome of legal proceedings is prohibited, as well as any other form of influence on courts and pressure on parties in the proceedings.

The Law on Judges represents the elaboration of the basic principles stipulated under the Constitution of the Republic of Serbia and international legal acts, and provides that judges are independent and autonomous in their work, that they adjudicate and render judgements in accordance with the Constitution, Law and other general acts, ratified international treaties, generally accepted rules of international law (Article 1), and the independence of judges is guaranteed also by their financial independence (Article 4(2)).

Regarding the protection of judges in the exercise of the office of a judge, the Constitution provides that a judge may not be held accountable for his/her expressed opinion or voting in the process of passing a judicial decision, except in cases of criminal offence of violation of law by a judge, as well as that a judge may not be deprived of freedom in proceedings initiated due to a criminal offence committed while exercising the office of judge, without the approval of the High Judicial Council (Article 151), whereas rights regarding immunity are provided for under the Law on Judges (Article 5).

In certain cases, parties express doubts regarding the independence of judges. Parties and other participants in legal proceedings have the right to file a complaint on the performance of judges if they think that there is any kind of unauthorised influence on the course and outcome of the proceedings. Until 2010, complaints were submitted to the Supervisory Board of the Supreme Court of Serbia and the Division of Complaints of the Supreme Court of Serbia. According to the reports of the Supreme Court of Serbia, the Division of Complaints received 1247 cases in 2006. Including cases transferred from 2005, the number of which was 368, the total number of cases in process was 1615. 1552 cases were resolved. The Supervisory Board of the Supreme Court of Serbia had 3196 cases in process in 2006, 1376 cases were resolved - 116 cases from 2004, 823 cases from 2005 and 437 cases from 2006. Acting in these cases, the Supervisory Board passed 9 decisions on the initiation of proceedings for dismissal from the office of judge. The High Personnel Council had 117 cases in process, out of which 114 were resolved. Out of the total number of cases, requests for dismissal of judges and dismissal of presidents of

courts due to unconscientious and unprofessional performance were considered in 22 cases. Grounds for the dismissal of 4 judges of general jurisdiction and one president of court were determined, and the measure of reprimand was pronounced for 5 judges in dismissal proceedings. In proceedings upon objection of one judge for whom grounds for dismissal had been determined, the General Session of the Supreme Court of Serbia upheld the objection and established that there were no grounds for dismissal. Regarding 7 judges, the High Personnel Council decided that there were no grounds for dismissal, whereas proceedings against one judge were dismissed due to the withdrawal of the request for dismissal by the president of court.

In 2007, the Division of Complaints of the Supreme Court of Serbia received 94 cases. Including cases transferred from 2006, the number of which was 82, the total number of cases in process was 1045. The President of Court considered and answered 584 complaints personally. 963 cases in total were resolved. The Supervisory Board of the Supreme Court of Serbia had 3459 cases in process, and 1703 cases were resolved. The High Personnel Council had 133 cases in process, out of which 128 were resolved. 25 decisions were passed in proceedings for dismissal of judges due to unprofessional and unconscientious performance; grounds for dismissal of two judges were determined, regarding one president of court, grounds for dismissal from the office of president of court were determined, as well as grounds for dismissal from the office of judge. Regarding 7 judges, the measure of reprimand was pronounced in the dismissal proceedings. The General Session of the Supreme Court of Serbia upheld one objection to the decision on the imposition of the measure, and passed a decision that there were no grounds for the imposition. Regarding 14 judges and one president of court, it was decided that there were no grounds for dismissal.

In 2008, the Division of Complaints of the Supreme Court of Serbia received 1065 cases. 1052 cases in total were resolved. The Supervisory Board of the Supreme Court of Serbia had 3604 cases in process. 2471 cases were resolved and 1133 cases remained open. In 2008, in 42 cases, proceedings for dismissal from the office of judge were initiated before the High Personnel Council upon complaint against 11 judges,, whereby dismissal proceedings were initiated twice against two judges of the District Court in Leskovac. The High Personnel Council had 103 cases in process, out of which 107 were resolved. The High Personnel Council passed 22 decisions in proceedings for dismissal of judges on the grounds of unprofessional and unconscientious performance, or unconscientious and unsuccessful exercise of duty by a president of court, whereas regarding 1 judge, grounds for dismissal were determined, regarding 5 judges, the measure of reprimand was pronounced and regarding 16 judges, it was determined that there were no reasons for dismissal. The General Session of the Supreme Court of Serbia upheld only the objection of a judge to the decision on the imposition of the measure, and passed a decision that there were no grounds for the imposition, whereas it dismissed the objections of two judges.

In 2009, the Division of Complaints of the Supreme Court of Serbia resolved 1155 cases, whereas 85 cases were transferred to the Supreme Court of Cassation. The Supervisory Board resolved 2075 cases, and it transferred 636 cases to the High Judicial Council at

the end of 2009. The High Personnel Council acted in 15 cases of proceedings for dismissal of judges, grounds for dismissal were determined in one case, one case was dismissed, whereas in 13 cases it was established that there were no grounds for dismissal or imposition of the measures of reprimand.

2. Please describe the normal selection (not the re-election), promotion, disciplinary and dismissal procedures for judges and prosecutors and indicate how they relate to the accountability and independence of the judiciary (autonomy in the case of prosecutors). Have there been any complaints about the procedures? If so, how were they resolved?

In the election of public prosecutors and deputy public prosecutors, apart from the general requirements which imply that a holder of prosecutorial office shall be a citizen of the Republic of Serbia meeting the general requirements for employment in state authorities, being a Bachelor of Law, having passed the bar exam and being worthy of the office of prosecutorial office, there are also special requirements, such as experience in the legal profession upon passing the bar exam depending on the type and level of public prosecution service for which he/she is applying.

The State Prosecutorial Council announces the election of public prosecutors and deputy public prosecutors, and applications are submitted to the State Prosecutorial Council within fifteen days of publishing of the notice, which later obtains data and opinions on the qualifications, competence and worthiness of the candidates, as well as data and opinions from bodies and organisations in which the candidate worked in the legal profession. Upon nomination and election of a candidate for a prosecutorial office, the State Prosecutorial Council shall consider the qualifications, competence and worthiness of the candidate, in accordance with the provisions of the Rulebook on Criteria and Standards for Evaluation of Qualification, Competence and Worthiness of Candidates for Holder of Prosecutorial Office (*Official Gazette of the Republic of Serbia*, No. 55/09).

Within its competences stipulated by Law, the State Prosecutorial Council establishes the list of candidates for the election of the Republic Public Prosecutor and public prosecutors which it submits to the Government which nominates one or more candidates for election to prosecutorial office. In addition, it proposes to the National Assembly candidates who are being elected for the first time for deputy public prosecutors and elects deputy public prosecutors to the permanent tenure of deputy public prosecutor.

The basic criterion for promotion of bearers of prosecutorial office is the evaluation of the performance of the public prosecutor or deputy public prosecutor, which is expressed in a grade entered into the personal record of the public prosecutor or deputy public prosecutor. The public prosecutor evaluates the work of the deputy public prosecutor, considering the opinion obtained from the Public Prosecution Collegium, whereas the work of the public prosecutor is evaluated by the directly higher ranking public prosecutor, upon considering the opinion obtained from the directly higher ranking Public Prosecution College.

The Constitution of the Republic of Serbia (*Official Gazette of RS*, 98/2006) and the Law on Judges (*Official Gazette of RS*, No. 116/2008, 58/2009 – decision CC, 104/2009 and

101/2010) regulate the election and promotion of judges. Article 147 of the Constitution provides that the National Assembly of the Republic of Serbia shall, upon the proposal of the High Judicial Council, elect as a judge a person who is being elected to the office of judge for the first time, for a mandate of three years. In accordance with the law, the High Judicial Council elects judges to the permanent tenure of office, in the same or another court. The High Judicial Council decides on the election of judges, holding the office of permanent judge, in another or higher court.

The provisions of the Law on Judges regulate the procedure for election of judges and the requirements necessary for election (Articles 43-52). After the completion of the procedure in respect of the published notice for election of judges, the High Judicial Council proposes to the National Assembly of the Republic of Serbia candidates for the first - time office of judge, for a three year mandate. . The Law on Judges regulates the requirements for the election of judges, which include appropriate qualifications, competence and worthiness. The High Judicial Council established the criteria and standards for the evaluation of the fulfilment of the aforementioned requirements under the Decision on the Establishment of Criteria and Standards for Evaluation of Qualification, Competence and Worthiness for Election of Judges and Presidents of Courts (*Official Gazette of RS*, No. 49/09).

In accordance with the Law on Judicial Academy (*Official Gazette of the RS*, No. 104/2009), initial training is a precondition for election to the office of judge and prosecutor. This Law provides also the possibility that only if there are no candidates who have completed the initial training, candidates who fulfil the general requirements for election to the office of judge or public prosecutor, laid down under the Law on Judges, may be nominated for election to the office of judge of misdemeanour or basic court or deputy basic public prosecutor.

Namely, the Programme Council appointed a Commission for Preparation of the Entrance Examination Programme. The Commission prepared the proposal of the Entrance Examination Programme, which was adopted by the Programme Council. The Programme Council adopted also the Entrance Examination Rulebook. The Rulebook regulates the manner of taking the entrance examination, the time limit for the individual segments of the entrance examination, as well as the rights and obligations of the candidates. In accordance with the Law, the Management Board approved the Entrance Examination Programme and the Entrance Examination Rulebook. In order to ensure transparency, the Programme and the Rulebook were published on the website of the Academy and forwarded to every court, prosecution office and the Bar Association of Serbia, in order to enable interested candidates to learn about the programme and begin preparation for the entrance examination.

The announcement of the admission of the first generation was published on 23 August 2010 in the Official Gazette and in the Politika and Vecernje novosti dailies. In addition, the High Judicial Council and the State Prosecutorial Council define the number of students to be admitted to the first generation, in accordance with the law

The entrance examination is divided into three parts: written part, personality test and oral part. The personality test was prepared by an expert in this field.

The Judicial Academy has developed a test making software. The software is installed on a computer, which has been disconnected from the Internet network and Internet connection due to security reasons. All the potential questions which were prepared by the Commission for Preparation of the Entrance Examination Programme have been entered in the software. The questions are categorised according to difficulty, into easy, medium and difficult. The software's task was to generate five test combinations of equal difficulty, according to the proportion: 50% - medium, 25% - difficult and 25% - easy questions. The tests were generated and printed 24 hours before the entrance examination. Subsequently, each combination was printed separately, packed and sealed. These five test combinations were sent to every location where the entrance examination was held, according to the number of candidates who were taking the test at these locations, accompanied by employees of the Academy. Before the entrance examination began, each candidate had received an application form with his/her information on it. The application was made on a special form with a dark part, in order for the name of the candidate to remain hidden until the application is opened. Ten minutes before the beginning of the entrance examination, the President of the Management Board drew the number of test to be done, about which the representatives of the Academy were informed immediately at every location to which the test was sent.

82 candidates applied for taking the entrance examination, out of which 52 candidates attended the entrance examination. All candidates passed the personality test. The personality test has been designed to evaluate the ability of working under pressure, communication with other people, working in tight deadlines and personal characteristics of the candidate.

The oral part of the entrance examination was held in the period between 27 and 30 September. 51 candidates attended the oral part. Candidates took the examination according to a schedule, in groups of six. After checking the identity of the candidates, candidates drew questions from the field they chose, and then they drew to establish the order in which they would answer on the task set before the Examination Commission. Each candidate had at least 30 minutes for the preparation of the answer. They had some resources at the disposal, in accordance with the Rulebook, and two computers with the base of legal regulations were also set up for candidates in the preparation room.. Computers were disconnected from the local and Internet network. After the preparation time expired, candidates answered before the Examination Commission, one by one, according to the established order.

Each member of the Examination Commission graded each candidate individually, which was recorded and entered into the common minutes.

After the completion of the oral part of the entrance examination, the list of candidates containing their grades for each part of the entrance examination, as well as their final grade, were published.

In accordance with the results, the list of candidates was published, along with the announcement that 22 students had been admitted to the first generation. The High Judicial Council decided on the enrolment of 13 students and the State Prosecutorial Council decided on the enrolment of 9 students.

Such procedure will continue to be applied, considering that it is prescribed by the Entrance Examination Rulebook.

Public prosecutors and deputy public prosecutors are independent of the executive and legislative powers in the performance of their duties, they are independent in the exercise of their competences, and any influence, by the executive and legislative power, by use of public office, instruments of public information or in any other manner that may threaten the independence of the work of public prosecution services, on the work of public prosecution services and their acting in cases is prohibited.

The independence of bearers of prosecutorial office is guaranteed by the Constitution and law, under provisions which protect their immunity and strictly define the reasons for which public prosecutors and deputy public prosecutors may be held accountable and dismissed. Namely, public prosecutors and deputy public prosecutors may not be held accountable for opinions expressed in the exercise of prosecutorial office, except in case of committing a criminal offence of violation of law by public prosecutor and/or deputy public prosecutor.

Public prosecutors and deputy public prosecutors may not be deprived of freedom in proceedings initiated for a criminal offence committed in the performance of prosecutorial duties or service, without the approval of the competent committee of the National Assembly. Bearer of prosecutorial office is dismissed when, by a final judgement, is sentenced to imprisonment for not less than six months for a criminal offence or for a punishable offence making them unworthy of the prosecutorial office, or when performing their duty unprofessionally, or for committing a serious disciplinary infringement.

Disciplinary proceedings are regulated under the Law on Public Prosecution (*Official Gazette of the Republic of Serbia*, No. 116/08, 104/09, 101/2010), which stipulates that disciplinary proceedings are conducted by the Disciplinary Commission, upon the proposal of the Disciplinary Prosecutor who files the motion on the basis of a disciplinary report. Disciplinary proceedings are urgent and closed to the public, unless the deputy public prosecutor, charged in the proceedings, requests that the proceedings be open to the public. Disciplinary proceedings are subject to the statute of limitation after one year from the day the disciplinary offence was committed. A bearer of prosecutorial office, against whom proceedings have been initiated, has the right to be immediately notified on the reasons, and to orally present his/her statements before the Disciplinary Commission. Having conducted the proceedings, the Disciplinary Commission passes a decision - it may deny the motion of the Disciplinary Prosecutor, or uphold the motion and pronounce disciplinary sanctions, i.e. public reprimand, salary reduction of up to 50% for a period

not exceeding one year and prohibition of advancement for a period of up to three years. An appeal may be filed against the decision of the Disciplinary Commission to the State Prosecutorial Council, within 8 days of the service of the decision. The State Prosecutorial Council shall decide on the appeal within 30 days of the service of the appeal, and may either uphold or reverse the first-instance decision of the Disciplinary Commission. The decision of the State Prosecutorial Council is final and the disciplinary sanction is entered in the personal record of the public prosecutor or deputy public prosecutor. The election of the members of the disciplinary bodies is pending. The Disciplinary Prosecutor will consider the grounds for disciplinary reports which were submitted to the High Judicial Council in 2010.

The Law on Judges introduces, as an innovation, the disciplinary accountability of judges, regulates disciplinary infringements, disciplinary sanctions, conduct of disciplinary proceedings, as well as bodies for conducting disciplinary proceedings. In accordance with Article 93 (3) of the Law on Judges the High Judicial Council has passed a Rulebook on Disciplinary Proceedings and Disciplinary Accountability of Judges. Disciplinary bodies are comprised of the Disciplinary Prosecutor, his/her deputies and the Disciplinary Commission, as standing working bodies of the High Judicial Council (Article 93 of the Law on Judges). The aforementioned bodies are established by the High Judicial Council, and members of each disciplinary body are appointed from among judges. The motion to initiate disciplinary proceedings is filed by the Disciplinary Prosecutor on the basis of a disciplinary report.

The prescribed disciplinary sanctions which may be imposed by the Disciplinary Commission on a judge are the following: public reprimand, salary reduction of up to 50% for a period not exceeding one year and prohibition of advancement for a period of up to three years. If a serious disciplinary infringement is determined, the Disciplinary Commission shall initiate proceedings for the dismissal of the judge. Having conducted the proceedings, the Disciplinary Commission may deny the motion of the Disciplinary Prosecutor or uphold the motion and pronounce disciplinary sanctions. The Disciplinary Prosecutor or the judge, against whom proceedings are conducted, may file an appeal against the decision of the Disciplinary Commission to the High Judicial Council, within 8 days of the service of the decision. The decision of the High Judicial Council is final.

Everyone is entitled to file an initiative for the dismissal of a bearer of prosecutorial office. Considering that the independence of public prosecutors and deputy public prosecutors is guaranteed by legal provisions, in the meaning of independence from the executive and legislative powers, that they are obliged to preserve the trust in their independence in discharge of duty, more precisely that no one has the right to assign tasks to public prosecutors and deputy public prosecutors, or to influence their decisions in cases, dismissal procedure needs to be conducted on the basis of the precise legal provisions.

Dismissal proceedings are initiated upon the proposal of the public prosecutor, directly higher ranking public prosecutor, Republic Public Prosecutor, Minister in charge of the judiciary, authorities competent for performance evaluation or the Disciplinary

Commission, whereas grounds for dismissal are determined by the State Prosecutorial Council. Grounds for dismissal stipulated by law are if the public prosecutor or deputy public prosecutor is by a final judgement sentenced to imprisonment of not less than six months for a criminal offence, or for a punishable offence making him/her unworthy of the prosecutorial office, or when discharging his/her duty unprofessionally, or for committing a serious disciplinary infringement.

In the proceedings before the State Prosecutorial Council, which is closed to the public, facts and grounds for dismissal are determined and a reasoned decision is passed within 45 days as of the day of being served with the document that initiated the proceedings, whereas the decision determining the grounds for dismissal of the public prosecutor is delivered to the Government. Bearer of prosecutorial office has the right to be immediately notified on the reasons for initiating proceedings, to be informed on the case and supporting documentation and with the course of proceedings, and, directly or through an authorised representative, to present explanations and evidence for his/her statements which is entitled to orally present before the State Prosecutorial Council.

The National Assembly decides on the termination of office of public prosecutor, whereby it passes a decision on dismissal upon the proposal of the Government, whereas the State Prosecutorial Council decides on the termination of office of deputy public prosecutor. A public prosecutor or deputy public prosecutor is entitled to file an appeal to the Constitutional Court against the decision on termination of office passed by the National Assembly or the State Prosecutorial Council, within 30 days of the service of the decision.

Pursuant to the provision of Article 148 of the Constitution of the Republic of Serbia, a judge's tenure of office shall be terminate at his/her request, upon fulfilling legally prescribed conditions, or upon dismissal from office for reasons stipulated by law, as well as if he/she is not elected on the permanent office. The decision on termination of a judge's office is passed by the High Judicial Council. The judge has the right to file an appeal against this decision before the Constitutional Court. The lodged appeal excludes the right to lodge a Constitutional appeal. The proceedings, grounds and reasons for termination of a judge's office, as well as reasons for dismissal of presidents of courts are stipulated by law.

Judges are dismissed when sentenced to imprisonment of not less than six months for a criminal offence or for a punishable offence making them unworthy of the office of judge, or when discharging their duties unprofessionally, or for committing a serious disciplinary infringement (Article 62 of the Law on Judges). Unprofessionally means insufficiently successful performance of the judge's office, if a judge's performance is evaluated as "dissatisfactory", according to the criteria and standards for the evaluation of the performance of judges. Pursuant to the provisions of the Rulebook on Disciplinary Procedure and Disciplinary Accountability of Judges (*Official Gazette of RS*, No. 71/2010), the Disciplinary Commission submits a motion to dismiss a judge to the Council when it establishes the accountability of the judge for a serious disciplinary infringement.

Everyone is entitled to file an initiative for the dismissal of a judge. Dismissal procedure is initiated upon the proposal of the president of court, president of the directly higher ranking court, President of the Supreme Court of Cassation, authorities competent for the evaluation of the performance of judges and the Disciplinary Commission. The grounds for dismissal are established by the High Judicial Council. The High Judicial Council establishes the facts and decides in proceedings closed to the public. The judge has the right to be immediately notified on the reasons for initiating proceedings, to be informed on the case and supporting documentation and with the course of proceedings, and, directly or through an authorised representative, to present explanations and evidence for his/her statements. The judge has the right to orally present his/her statements before the High Judicial Council. The High Judicial Council is obliged to conduct the proceedings and pass a decision within 45 days as of the day of being served the document that initiated the proceedings. The decision of the High Judicial Council needs to be reasoned.

The judge is entitled to file an appeal to the Constitutional Court against the decision on termination of office passed by the High Judicial Council, within 30 days as of the service of the decision. The Constitutional Court shall pass a decision which either rejects the appeal or upholds it and annul the decision on termination of office. The decision of the Constitutional Court is final.

Promotion of a judge implies the election of the judge to a court of a higher rank, regardless of the type of court. Apart from the prescribed general requirements and necessary experience in the legal profession upon passing the bar exam for the court he/she is applying to, the basic criteria for election to the office of a higher ranking judge is the performance evaluation, which is regulated under the Decision on Establishment of Criteria and Standards for Evaluation of Qualification, Competence and Worthiness for Election of Judges and Presidents of Courts. During the evaluation of candidates, additional standards are also considered: membership in a selected or arbitration court, as well as in other forms of alternative dispute resolution; published professional papers, as well as presentations at national or international expert meetings; participation in the drafting of the training programme and training of judges, judges' assistant and judge interns; participation in vocational trainings organised by the institution competent for judicial training; academic degree (Mag. or PhD of Law), as well as computer literacy and knowledge of foreign languages. The worthiness of a judge applying for the office of a higher ranking judge is assumed.

3. Please describe in detail the differences in status, tenure etc. between prosecutors and deputy prosecutors and between judges and assistant judges.

The function of prosecutorial office is performed by the public prosecutor; he/she is in charge of managing the public prosecution service and responsible for proper and timely work of the public prosecution service. He/she is elected by the National Assembly, upon the proposal of the Government, for a term of six years and may be re-elected.

The State Prosecutorial Council elects the deputy public prosecutors on permanent office, whereas the National Assembly, upon the proposal of the State Prosecutorial Council,

elects, on the office of deputy public prosecutor, a person who is elected to this office for the first time, for a term of three years.

A lower ranking public prosecutor is subordinated to the directly higher ranking public prosecutor, and every public prosecutor is subordinated to the Republic Public Prosecutor.

A deputy public prosecutor is required to perform all actions entrusted to him/her by the public prosecutor, and a deputy public prosecutor may, without special authorisation, undertake any action to which a prosecutor is authorised. A public prosecutor may issue to his/her deputy mandatory instructions for work and action, and these instructions shall be issued in writing.

Pursuant to the provision of the Law on Judges (*Official Gazette of RS*, No. 116/2008, 58/09 - decision CC, 104/2009 and 101/2010), an judge's assistant shall assist the judge, draft judicial decisions, study legal issues, case-law and legal resources, draft legal opinions, prepare adopted legal opinions for publishing and perform tasks prescribed by Law and by the Court Rules of Procedure, independently or under the supervision and instructions of the judge (*Official Gazette of RS*, No. 110/2009).

Judge's assistants are conferred with the following titles: Judge's Associate, Senior Judge's Associate and Court Advisor. The title of Judge's Associate may be conferred on a person who has passed the bar exam, whereas the title of Senior Judge's Assistant may be conferred on a person with minimum two years of experience in the legal profession upon passing the bar exam.

The title of Court Advisor may be conferred on a person meeting the requirements for a higher court judge. The title of Court Advisor exists in Republican-level courts. The title of the Supreme Court of Cassation Advisor exists in the Supreme Court of Cassation, and it is acquired in compliance with the Rules of Procedure on Organisation and Operation of the Supreme Court of Cassation ("Official Gazette of RS" no. 37/2010).

The performance of an assistant judge is evaluated once a year by the president of court, upon an opinion obtained from the session of the department where the assistant judge is assigned to. In the evaluation the scope and quality of performance, diligence, initiative and published professional and research papers are graded. The grades are the following: "dissatisfactory", "satisfactory", "good", "distinctive" and "outstandingly distinctive". The judge's assistant may file an objection to the evaluation grade decision before the High Judicial Council working body, within 15 days as of the day of receiving the evaluation grade decision.

An assistant judge studies the cases assigned to him/her by the judge and prepares them for trial, performs conferred tasks in the Preparation Division, keeps the record at meetings and sessions of councils and divisions, prepares expert reports, analyses and notifications upon the order of the judge, enters the statements of the parties in the record, processes the complaints of citizens and performs other tasks defined by the annual

schedule and by the act on internal organisation and systematization of positions in the court. An judge's assistant may also be assigned the performance of other tasks under the supervision of the judge, such as: drafting of decisions regarding the examination of procedural preconditions for conducting proceedings, drafting judicial decisions, drafting decision on permissibility of legal remedy, preparation of reports for the judge rapporteur, determination of the amount of court fees, etc. For instance, the Law on Non-Contentious Proceedings (*Official Gazette of SRS*, No. 25/82, 48/88, *Official Gazette of RS*, No. 46/95 and 18/2005) provides that a professional associate in the court may undertake certain actions in the proceedings if stipulated under this or some other Law. The record on these activities shall be signed by the professional associate and the court reporter that made the record. In probate proceedings, all statements and proposals of the participants, except for the renunciation of inheritance, may be taken into record by a professional associate (Article 90 of the Law on Non-Contentious Proceedings). The Civil Procedure Law (*Official Gazette of RS*, No. 125/2004 and 111/2009) provides that an assistant judge may independently perform the tasks of preliminary examination of the complaint, for the purpose of preparation for undertaking the necessary measures and decisions prescribed by this Law (Article 278 and Article 279(1)), and for the purpose of organising the preliminary or first trial hearing. Before scheduling the hearing, he/she may summon the parties or their legal representatives in order to take the necessary statements, to obtain the necessary documentation for the purpose of clarifying certain issues, as well as perform other tasks referring to the management of proceedings. Assistant judges may perform the aforementioned tasks also in proceedings in respect of legal remedy.

4. How is the principle of the natural judge covered in Serbia's legislation and how is it implemented in practice?

This principle is one of the guarantees of independent judiciary and protection against suspicions in the possibility of "directed and controlled trial" on one hand, and an instrument contributing to a balanced workload for judges, and thus equal status of citizens before the court, on the other hand.

The principle of the natural judge is regulated under the Law on Organisation of Courts (*Official Gazette of RS*, No. 116/2008, 104/2009 and 101/2010) , as well as under Article 49 of the Court Rules of Procedure (*Official Gazette of RS*, No. 110/2009). It has been applied in the Serbian legislation since 2001, on the basis of former Law on Organisation of Courts and Law on Judges, which have been replaced with the laws from 2008.

The Law on Organisation of Courts defines this principle in a manner that only the judicial power may allocate cases to judges, in accordance with pre-determined rules, and that the judicial power is also obliged to ensure that the sitting judge is designated irrespective of the parties involved and the circumstances of the legal matter.

Pursuant to the Law on Judges, the right to natural judge is the right of both the judge and the citizen. If they believe that this right has been violated and that the case has not been assigned to the judge on the basis of the schedule of cases in the court (in accordance with the Court Rules of Procedure) and according to an order determined in advance for

each calendar year, exclusively on the basis of the designation and number of the case file, the judge and the citizen, who is a party in the court proceedings, are entitled to file an objection to the president of the directly higher ranking court (or to the General Session of the Supreme Court of Cassation, if a judge or case of the Supreme Court of Cassation is involved), within 3 days of finding out about the irregular assignment, upon which the competent authority shall decide within 15 days. In exceptional cases, a case may be allocated to another judge, in derogation of the established order, due to justified preclusion of the judge or may be taken away from a judge due to his/her prolonged absence or a pronounced disciplinary sanction for unjustified procrastination.

The Court Rules of Procedure only technically regulates the application of the aforementioned legal principle, providing that for the purpose of ensuring equal workload for all judges of the court, new cases are firstly classified according to urgency, type of proceedings, i.e. legal field, after which they are distributed according to the order of receipt, by method of random allocation to a judge, in accordance with the established annual schedule. By means of the annual schedule, the president of court allocates a type of judicial work for each judge of the court, court unit and division outside the seat of court. By rule, in the course of one year, judges are assigned with cases from the same legal field in the court, court unit or division outside the seat of court. The president may pass a special decision on derogation of the order of case allocation due to justified preclusion of a judge (temporary inability to work, absence in accordance with the regulations, etc.) In renewed proceedings instituted in respect of legal remedy, the case is allocated to the judge or panel which acted in the case previously. Tasks of classification and distribution of cases are performed by the court registry, pursuant to the established annual schedule or special decision of the president of court. The president of court, court secretary and court registry manager supervises the distribution of cases. A judge is entitled to object the annual schedule, change in the type of work, derogation of the order of receipt of cases or removal from a case to the president of the directly higher ranking court, within three days as of finding out about it. The General Session shall decide on the objection filed by a judge of the Supreme Court of Cassation. The party is also entitled to objection the removal of a judge from the case, within three days of finding out about it. The decision on the objection shall be passed within 15 days of the day of service.

The president of court shall inform in writing the president of the directly higher ranking court on any derogation of order of receipt of cases.

The president of court considers the complaints of the parties and other participants in the legal proceedings. Article 10 of the Court Rules of Procedure provides that if the subject of the complaint is the allocation of venues of trials or undertaking of certain court activities, the president of court may designate another venue for the trial or undertaking of court activities, not later than the preliminary hearing or the first hearing for the trial, if this provides for the realization of the right of the party to free access to court and respect of territorial jurisdiction prescribed by law. The president passes a decision within three days as of the date of filing the complaint to the court. If the president fails to decide on the filed complaint, the decision shall be passed by the president of the directly higher

ranking court. The aforementioned procedure shall also be applied if the judge acting in the case proposes a change in the allocation of venues of trials or undertakings of certain court activities.

Regarding the technique, it is determined that cases may be allocated by entering manually in the register, according to the order of receipt and their number, or by application of a case processing software. A party submitting the initial document is entitled to be informed about the case file number and the name of the acting judge within 3 days.

Until recently, this principle was applied so that cases were classified manually, taking into account that judges shall have equal workload regarding the number of cases and that cases shall be allocated according to previously established..

The Court Rules of Procedure, which entered into force in the end of last year, as well as the expansion of information technologies in the judicial system, contributed to the fact that the principle of the natural judge may be applied according to other criteria, such as: according to the seriousness of the case, criminal offences of murder, detention cases, provisional measures, civil cases of trespassing and cases with several participants in the proceedings etc. are kept separately. The High Judicial Council is expected to pass the Rulebook on Grading Cases According to Specific Seriousness (weighting) and thus make the allocation of cases to judges even more just.

The principle of the natural judge is applied in practice, in accordance with valid regulations, by method of random selection (by mathematical algorithm) of the new automated case processing software (AVP) in the work of all 16 commercial courts and the Commercial Appellate Court, as well as in the work of all 34 basic and 26 higher courts in the Republic of Serbia. In practice, courts, i.e. court admission offices may allocate cases to judges, "not according to alphabetical order" but according to random selection made by business application. Upon allocation of a certain case to a judge, the AVP programme enables employees in the admission department to allocate the case to a judge using this option, on the basis of the annual schedule defined in advance (according to subjects and inflow percentage), instead of so far "manual" allocation by alphabetical order. Namely, upon entering the initial document, admission office employees have access to information on the number of case file, the name of the judge who the case is allocated to, as well as the amount of the court fee that has to be paid for the initial document, only after they enter all the information contained in the initial document and click the "save" button. If a party submits the initial document "by hand" to the court admission office, in a few minutes, he/she receives a confirmation from the admission office employee, which contains information on the number of case file, the name of the judge to who the case is allocated, as well as on the amount of the court fee that has to be paid for the initial document. If someone tries to submit the same initial document several times, all these attempts are saved, or recorded in the court's database, i.e. if there is any suspicion that a party is trying to get a certain judge in a manner that he/she keeps submitting the initial document until the business application selects the desired judge, such cases can be revealed efficiently and simply by analysing the court database. The algorithm works according to the principle that every judge shall get one case before the first case allocation cycle ends, i.e. before the next case allocation cycle begins. If a party

submits the initial document by mail, the same principle applies at the admission office regarding the allocation of the case to a judge, and in accordance with the provisions of the Court Rules of Procedure, the confirmation containing the information on the number of the case file, the name of the judge who the case is allocated to, as well as the amount of the court fee that has to be paid for the initial document is sent by mail within three days of the receipt of the initial document by the court. The same principle applies for now upon submission of initial document at court units (by hand or by mail), i.e. in accordance with the provisions of the Court Rules of Procedure, the confirmation containing the information on the number of the case file, the name of the judge who the case is allocated to, as well as the amount of the court fee that has to be paid for the initial document is sent to the party by mail within three days of the receipt of the initial document by the court unit. The reason for this is that the initial document is received in the court unit, but the case is formed in the database of the seat of court, and that not all court units have been connected to the network of the seats of courts yet. After a four-year project of implementation of the AVP business application, in association with USAID, in 17 commercial courts, and a nine-month project of implementation of the AVP business application in seats of 34 basic courts and 26 higher courts, the project of implementation of the AVP software in 102 court units of basic courts is underway, which is going to be completed by the end of 2011. Once the court units are connected to the seats of basic courts, the principle of the natural judge will be realized more quickly in court units, since there will be a possibility not only to form a case on the same day at the seat of court, but also in the court unit. The method described above provides for the full right of a party to independent proceedings. The AVP business application provides also a possibility for manual assignment of cases to judges, if a case is reassigned, or upon the order of the court administration, pursuant to valid regulations. Every reassignment is also recorded in the court's database; if the case is reassigned, the parties are informed by the court in the regular way, and they can also find this information on the Internet, at the Court Portal website. The public can find at the Court Portal website that a judge has been assigned by the application of the principle, i.e. right to natural judge, as well as whether the case has been reassigned later. The same method of work is going to be applied in the Supreme Court of Cassation, Administrative Court with its divisions in Nis, Novi Sad and Kragujevac, as well as in Appellate Courts in Nis, Novi Sad, Kragujevac and Belgrade by March 2012, within the framework of the ongoing project of the Ministry of Justice and the Delegation of the European Union. Regarding misdemeanour courts, the same method of work is going to be enabled by the new multi-annual project coordinated by the Ministry of Justice and USAID, which should start in early 2011. At the moment, over 4000 employees at seats of 34 basic courts, 15 court units, 26 higher courts and 17 commercial courts are using the AVP business application (which provides for the right to natural judge by making a random selection of judges), and the objective is to enable all employees in all types of courts to work with the standardised application, which will apply the right to natural judge by making a random selection of judges, by 2016. Until then, courts which do not have the application which provides for the possibility of random selection of judges by using the application algorithm, the selection of judges will be made by their existing applications (in courts which use business applications, the court registry assigns the sitting judge by electronic selection, according to the order of judges; courts which keep registers only manually, the

court registry assigns the sitting judge by manual selection, following the order of judges, pursuant to the provisions of the Court Rules of Procedure - in the part referring to the non-existence of information, communication and technological conditions in entirety in the judiciary). In connection with the above, it is important to note that, according to the parameters of other countries, i.e. judiciaries, the implementation of the business application in only one segment of the judiciary is a multi-annual project, and that the Ministry of Justice - Department of Operations and Technology has already implemented the business application (with full application of the principle of the natural judge by applying an algorithm in the AVP programme) in three segments of the judiciary (basic courts, higher courts and commercial courts) by its hitherto activities in the same or nearly the same period of time, i.e. since the implementation of the standardised business application in the judiciary of the Republic of Serbia started, as well as that the objective is to implement the same application in 102 court units in the following 18 months, i.e. by the end of 2011 (it has been implemented in 15 court units in September and October in 2010).

5. How many and what types of specialised judges and prosecutors are there?

Public prosecution offices with special jurisdiction are the Public Prosecution Office for Organised Crime and the Public Prosecution Office for War Crimes; they are seated in Belgrade and they are established for the territory of the Republic of Serbia.

The Public Prosecution Office for Organised Crime may have divisions outside its seat.

There are a total of eight bearers of prosecutorial office in the Public Prosecution for War Crimes, the public prosecutor and seven deputy public prosecutors.

There are a total of 15 bearers of prosecutorial office in the Public Prosecution for Organised Crime, the public prosecutor and 14 deputy public prosecutors.

Pursuant to the Law on Organisation and Jurisdiction of Government Authorities in Suppression of High Technological Crime (*Official Gazette of RS*, No. 61/2005 and 104/2009), Special Divisions for combating high technological crime have been established within the Higher Public Prosecution Office and the Higher Court in Belgrade, with jurisdiction over the entire territory of the Republic of Serbia. The Special Prosecution Division is led by the Division Manager, which is appointed by the Republic Public Prosecutor to the aforementioned office from among the deputies of the Higher Public Prosecutor, as well as two deputies of higher public prosecutors specialising in this field. Judges allocated to the Criminal Division of the relevant court participate in the work of the court division.

The Anti-Corruption Division has been established within the Republic Public Prosecution Office, with jurisdiction to coordinate the work of all subordinate public prosecution services during prosecution of this type of criminal offences. Three deputies of the Republic Public Prosecution Office participate in the work of the Division, whereas there is one deputy public prosecutor in each of the four appellate public prosecution offices in the Republic of Serbia dealing specially with this type of criminal

offences (four altogether). All the other deputy public prosecutors of any rank process criminal offences pertaining to this field within the framework of their regular activities.

In order to act in proceedings pertaining to the field of family relations and in criminal proceedings against juveniles, judges need to pass the mandatory training, which is stipulated by special laws regulating these proceedings. The Family Law (*Official Gazette of RS*, No. 18/05) provides that judges in proceedings relating to family relations shall be persons who have acquired special qualification in the field of children's rights (Article 203). Pursuant to the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (*Official Gazette of RS*, No. 85/2005), juvenile judges and juvenile panel judges need to be persons who have acquired special qualification in the field of children's rights and juvenile delinquency.

Article 39 of the Law on Organisation of Courts (*Official Gazette of RS*, No. 116/2008, 104/2009 and 101/2010) defines which special court divisions exist in higher, appellate, misdemeanour courts and the Higher Misdemeanour Court.

Juvenile justice and labour disputes divisions have been established in higher and appellate courts.

Divisions for criminal offences against the Serbian Armed Forces, organised crime, war crimes and cyber crime may be established in certain higher and appellate courts, in accordance with the law. Proceedings of first instance involving criminal offences of organised crime and war crimes fall within the jurisdiction of the Higher Court in Belgrade, whereas the Appellate Court in Belgrade decides in second instance. The judge of the Special Division ought to have at least 8 years of professional experience in the field of criminal law. Upon allocation of judges to the Organised Crime Special Division and War Crimes Special Division, priority is given to judges with professional qualifications and experience in the field of combating organised crime and corruption that is in the fields of international humanitarian law and human rights. In the Special Division of the Higher Court in Belgrade, there are 22 judges, there are 15 judges acting in the Organised Crime Special Division and there are 7 judges acting in the War Crimes Special Division.

Divisions for conducting misdemeanour proceedings involving infringements in the field of public revenues, customs, foreign trade and foreign currency operations may be established in misdemeanour courts and the Higher Misdemeanour Court, in accordance with the Court Rules of Procedure (Article 15(2)).

Pursuant to Article 26(1) of the Rules of Procedure on Organisation and Operation of the Supreme Court of Cassation (*Official Gazette of RS*, No. 37/2010), a Civil Division with a specialised panel for administrative matters is established in the Supreme Court of Cassation. There are 14 judges acting in the Civil Division, while there are 2 judges in the special division acting in administrative matters, whereas the third member of the panel is elected from among judges acting in general civil matters.

6. a) Describe the methods and criteria for the selection, appointment and promotion of candidates for judicial office. How are judges and prosecutors recruited (are there competitive and public exams; systematic interviewing of all candidates; comparison of CVs; etc.)?

Criteria for election, appointment and promotion of candidates for bearers of prosecutorial office are regulated by the Rulebook on Criteria and Standards for Evaluation of Qualification, Competence and Worthiness of Candidates for Holder of Prosecutorial Office (*Official Gazette of the Republic of Serbia*, No. 55/09). Above all, it implies qualifications, competence and worthiness which represent the ground for nomination and election of bearers of prosecutorial office, who are evaluated by the State Prosecutorial Council.

The level of meeting the prescribed criteria is expressed by a grade, which is an indicator of qualifications and competence of a public prosecutor or deputy public prosecutor in execution of prosecutorial duties.

The established criteria for grading the qualifications and competence of a deputy public prosecutor are the following: efficiency in acting, exhibited expertise, demonstrated capability to undertake procedural activities, quality of written and oral expression and ability to reason legal opinions, acquisition of new qualifications, application of new competences, vocational and other training, relationship and cooperation with employees, the court and other state authorities, organisations and participants in the proceedings.

The worthiness of a deputy public prosecutor is evaluated on the basis of a set of moral characteristics, which a deputy public prosecutor should possess, as well as behaviour in accordance with these characteristics, which protect the reputation of the prosecutorial office.

Special criteria for the evaluation of qualifications and competence in the performance of public prosecutors are the following: general ability to manage a public prosecution service, ability to exercise supervision, ability to improve the work of a public prosecution service and ability of crisis management.

The State Prosecutorial Council publishes a notice of an election of public prosecutors and deputy public prosecutors in the *Official Gazette of the Republic of Serbia* and other instruments of public information covering the entire territory of the Republic of Serbia.

Upon nomination of a candidate from other bodies and organisations, the State Prosecutorial Council evaluates his/her qualifications and competence on the basis of results achieved on the test for evaluation of qualification and competence of candidates for bearers of prosecutorial office.

An interview with the candidate may be conducted before passing the decision on the election.

The number of judges in the Supreme Court of Cassation, appellate courts, higher courts, basic courts, Commercial Appellate Court, commercial courts, Administrative Court and its divisions, Higher Misdemeanour Court and misdemeanour courts with divisions is established pursuant to the Decision on the Number of Judges in Courts (*Official Gazette of RS*, No. 43/2009, 91/2009 and 35/2010). According to the established number of judges in courts, the High Judicial Council announces the election to fill the vacancies in the office of judge.

The Law on Judges (*Official Gazette of RS*, No. 116/2008, 58/09 – decision CC, 104/2009 and 101/2010) and the Decision on Establishing the Criteria and Standards for Evaluation of Qualification, Competence and Worthiness for Election of Judges and Presidents of Courts (*Official Gazette of RS*, No. 49/09) regulates the method of election of a judge for a mandate of three years, for the permanent tenure of office, promotion of a judge and the requirements for participating in the election.

The procedure for election of judges commences with the publishing of a notice, and all candidates who meet the criteria prescribed by Law may submit their applications. The procedure of election is different for candidates who are being elected on the office of judge for the first time and candidates who are holding the office of judge in the period when the notice is published. Apart from the general requirements prescribed under Article 42 of the Law on Judges and the necessary experience in the legal profession upon passing the bar exam, which depends on the type of court the candidate is applying to, other requirements for election are also prescribed and that is: qualifications, competence and worthiness. The personal and professional biographies of all candidates are considered.

Candidates who are being elected to the office of judge for the first time are ranked in respect of their qualifications, according to the prescribed standards that is basic standards (average university grade, duration of studies and performance evaluation) and additional standards for evaluation of qualifications. Competence is established on the basis of opinions obtained from the bodies and organisations in which the candidates work. Competence of a judge's assistant for the performance of the office of judge is established on the basis of the evaluation of the performance of the assistant judge and opinions provided by the judge, panel or session of the court unit to which the assistant judge is assigned. Competence of an attorney or attorney intern for holding the office of judge is established on the basis of the evaluation of his/her performance and the opinion of the bar association to which the candidate belongs to, or the opinion of the principal attorney if the candidate is an attorney intern. Competence of a candidate for holding the office of judge may be evaluated on the basis of the results of an interview and other methods. Worthiness of candidates is evaluated on the basis of the opinions provided by the managers of bodies and organisations in which the candidates work. Upon nomination of candidates who are being elected to the office of judge for the first time, apart from qualifications, competence and worthiness, the High Judicial Council will evaluate also the types of work the candidates performed upon passing the bar exam. Upon nomination of a candidate for election to the office of judge of misdemeanour or basic court, the High Judicial Council is obliged to propose a candidate who completed

the initial training at the Judicial Academy (hereinafter: Academy), according to the results achieved in the initial training. In case there are no candidates with completed initial training among the candidates applying to the office, the High Judicial Council may nominate a candidate who meets the general election requirements. The initial training is regulated under the Law on Judicial Academy (*Official Gazette of RS*, No. 104/2009).

The establishment of the initial training at the Judicial Academy is exceptionally important for the transparency and more objective election of judicial office bearers. Due to the adoption of the Law on Judicial Academy, a clear normative framework has been established, which regulates the training and additional improvement of the establishment of clear, objective and measurable criteria for election and promotion.

The initial training is explicitly and in great detail regulated under the Law on Judicial Academy. The number of participants in the initial training for judges of misdemeanour and basic courts that is for deputy public prosecutors, is defined by the High Judicial Council and by the State Prosecutorial Council, according to the objective needs of the judiciary. The Academy announces an open competition for admission to the initial training programme. General requirements for applying to the competition are that the candidate has passed the bar exam and meets the general requirements for working in state authorities.

Candidates pass an entrance examination, which includes a practical and a written test (including questions from civil, criminal, misdemeanour law and general legal culture), as well as a personality test. The Entrance Examination Commission establishes the ranking list, according to the results of all three parts of the entrance examination. Candidates from the ranking list are accepted to the training programme in the established order, until the number of participants in the training, established for the relevant year, is filled. Participants in the initial training programme attend the training, under the supervision of a mentor, in courts, prosecution services and institutions outside the judiciary. Mentors evaluate the participants in each phase of the initial training, except for the period spent outside the judiciary. Participants take a final examination at the end of the initial training programme. The final grade is the sum of the grades for each part of the training and the final examination grade. The High Judicial Council and the State Prosecutorial Council are obliged to propose to the National Assembly of the Republic of Serbia, for the office of judge of basic court, misdemeanour court or deputy basic public prosecutor, a candidate who has completed the initial training.

This Law provides that only if there are no candidates who have completed the initial training at the Judicial Academy, candidates who meet the general requirements for the election to the office of judge of misdemeanour or basic court or deputy basic public prosecutor may be nominated.

The Law provides that the participant in the initial training establishes employment relationship in the Academy during the training. Considering that the Academy is an institution established by the Republic of Serbia, that it is a legal entity and that it is

responsible for the organisation of the initial training, legal relation is thus established between the participant in the initial training and the Academy. In addition, this kind of solution provides a possibility for the Academy to set certain requirements for the participants in the initial training (regular attendance, participation in programme activities), as well as to undertake measures in case the established requirements are not fulfilled. A participant in the initial training is entitled to a salary in the amount of 70% of the basic salary of a basic court judge. The scope of rights and obligations of participants in the initial training is in accordance with solutions in the majority of the European countries.

Regarding candidates from among judges, the opinion of the session of all judges, from which the candidate comes from, as well as the opinion of the session of all judges of the directly higher ranking court, which the candidate has the right to be informed about, as well as the evaluation of his/her performance are being considered. Criteria, standards and procedure for the evaluation of performance of judges are established by the High Judicial Council in a separate act. Pursuant to the Rules of Procedure of the High Judicial Council (*Official Gazette of RS*, No. 43/2009), the Council may establish electoral commissions which conduct the interviews with the candidates.

Promotion of a judge is understood to mean the election of the judge to a court of a higher rank, regardless of the type of court, while the general standard for election to the office of a judge of higher rank is the evaluation of performance. The Decision on the Establishment of Criteria and Standards for Evaluation of Qualification, Competence and Worthiness for Election of Judges and Presidents of Courts provides for additional standards for the evaluation of the candidate. Worthiness of a judge applying for election to the office of a higher ranking judge is assumed. Competence of a candidate for holding the office of judge may be evaluated on the basis of the results of an interview (Article 6 of the Decision), and conducting an interview with the candidate is also provided for under Article 44(1) of the Rules of Procedures of the High Judicial Council. The decision on election of a judge to a court of higher rank is passed by the High Judicial Council.

Discrimination on any grounds is prohibited upon election and nomination to the office of judge. Upon election and nomination to the office of judge, the national composition of the population, appropriate representation of members of national minorities and knowledge of professional legal terminology in the language of the national minority which is in official use in the court, are being taken into consideration.

The National Assembly of the Republic of Serbia elects as a judge a person who is elected to the office of judge for the first time, for a mandate of three years, upon the proposal of the High Judicial Council. The High Judicial Council decides on the election of a judge on the permanent office upon expiry of three-year mandate. A judge who was elected for the first time has to be elected to the permanent office of judge if he/she was graded with "exceptionally successful discharge of the duties of judge" each year during his/her mandate. After the expiry of a three-year, the judge who was elected for the first time may be elected to the permanent office of judge if he/she was graded with "exceptionally successful discharge of the duties of judge" or "successful discharge of the

duties of judge” during his/her mandate. Criteria, standards and procedure for the evaluation of performance of judges, which represent the grounds for the aforementioned evaluation, are established by the High Judicial Council in a separate act.

A candidate is elected to the office of judge of the court he/she applied to by the decision of the High Judicial Council on the election of judges to the permanent office of judge and by the decision of the National Assembly on election for a mandate of three years. A judge who is being elected to the office of judge for the first time takes an oath before the President of the National Assembly prior to taking office (Article 53 of the Law on Judges). A judge who has been elected takes up the office at the ceremonial session of all judges at the court to which he/she is elected (Article 55 of the Law on Judges).

b) Is the performance of holders of judicial office assessed? If yes, describe the body in charge as well as the relevant methods and criteria. What type of career system is established in Serbia (based on merit, seniority, mixed)?

The performance of bearers of the prosecutorial office is determined on the basis of the annual work report.

Performance evaluation of a public prosecutor is conducted by a directly higher ranking public prosecutor, after obtaining the opinion of the Collegium of directly superior public prosecution office, while the performance evaluation of a deputy public prosecutor is conducted by a public prosecutor, after obtaining the opinion of the Collegium of the public prosecution office.

In evaluating the performance, periodical reports on the preview of work of the public prosecution service are taken into account.

For the career promotion of the bearers of the prosecutorial office all the criteria which include necessary work experience in the legal profession after passing the Bar Exam, report on work, opinion of a public prosecutor and Collegium of the public prosecution service are evaluated.

Provision of Article 32 of the Law on Judges (*Official Gazette of RS* No. 116/08, 58/09 – decision CC, 104/09 and 101/2010) stipulates that the work of all judges and court presidents is subject to regular evaluation; evaluation comprises all aspects of a judge’s work and/or work of a court president and represents the basis for election, mandatory training of judges and dismissal, and the criteria, standards and procedure for performance evaluation of judges and/or court presidents are established by the High Judicial Council. Performance evaluation of judges of lower instance courts is conducted by boards established in directly higher instance courts. A board comprises of three judges elected to a period of four years by secret ballot at the session of all judges.. One board is established for every 100 judges whose performance is evaluated.

Performance of judges with tenure of office and court presidents is evaluated regularly once in three years, and performance of judges, elected for the first time, once a year.

Exceptionally, on the basis of a decision of the High Judicial Council, performance of a judge may also be subjected to an unscheduled evaluation.

Performance is rated and the rates, relating to evaluation of judges, are: “performs judge’s office with extreme success”, “successfully performs a judicial function”, and “fails to meet requirements”. Evaluation encompasses all aspects of a judge’s work - quantity, quality and commitment to judge’s work. The quality of performance of a judge is expressed through the percentage of repealed decisions under legal remedy and through the quality of judicial decisions making and the skill of conducting the proceedings. The quantity is evaluated on the basis of the number of cases that a judge resolves during a year comparing with the minimum number of cases that should be resolved - a minimum annual standard. Minimum annual standard is prescribed in a particular Rulebook. Until adoption of the Rulebook on Criteria and Standards for Performance Evaluation of Judges, professional competence and qualification for performance of judge’s office was determined on the basis of the Criteria for Measuring Minimum Success in Exercise of Judge’s Duty which were temporarily applied until the day of the application of the provisions of Articles 21 to 28 of the Law on Organization of Courts.

The election of judges to permanent office, after the expiry of three year term of office, as well as promotion of judges, are carried out on the bases of achieved results, and/or evaluation of performance of judges. A judge elected for the first time and rated during the three year term of office with the rate “performs judge’s office with extreme success” must be elected to permanent office. A judge elected for the first time and rated during the three year term of office with the rate “fails to meet requirements” may not be elected to permanent office.

In the Republic of Serbia, for bearers of judiciary office, career system is based on professional experience and years of work experience after passing the Bar Exam. The Law on Judges (Article 44) lays down how much work experience in legal practice after passing the Bar Exam is required for each type of court – two years for a judge at Misdemeanor Court, three years for a judge at Basic Court, six years for a judge at High Court, Commercial Court and the High Misdemeanor Court, ten years for a judge at Appellate Court, the Commercial Appellate Court and the Administrative Court and twelve years for a judge at the Supreme Court of Cassation.

c) Is the guaranteed tenure of office set out in legislation? Is there a mandatory legal retirement age?

Tenure of prosecutorial office is guaranteed by the Constitution of the Republic of Serbia (*Official Gazette of RS*, 98/06) and by the Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010) laying down that the State Prosecutorial Council elects deputy public prosecutors to permanent office.

The Law on Public Prosecution in Article 89 stipulates that office of a public prosecutor or deputy public prosecutor shall be terminated at the age of 65, or at completing 40 years of insurance period, *ex lege*. In particular cases, at the request of the Republic

Public Prosecutor, the State Prosecutorial Council may extend years of service to a public prosecutor and deputy public prosecutor for another two years, with his/her consent.

Tenure of judge's office is guaranteed by the Constitution of the Republic of Serbia (*Official Gazette of RS*, 98/06) and the Law on Judges (*Official Gazette of RS* No. 116/08, 58/09 – decision CC, 104/09 and 101/2010). A judge shall have permanent tenure, except when elected at judge's office for the first time (Article 146 of the Constitution of the Republic of Serbia), i.e. judge's office lasts continuously from first election as judge until retirement (Article 12 paragraph 1 of the Law on Judges). After election, judge's office may be terminated under the conditions provided for by law. A person who is elected a judge for the first time shall be elected for the period of three years. A Judge is retired at the age of 65, or at completing 40 years of insurance period, by operation of law. Exceptionally by a decision of the High Judicial Council, at the request of president of the court, years of service of a judge may be extended for another two years.

d) Please describe the exact procedures for the dismissal of judges and prosecutors (legal basis, competent authorities to launch the procedure, reasons for dismissal etc.).

The legal basis for dismissal of bearers of the prosecutorial office is the Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010) and the Law on State Prosecutorial Council (*Official Gazette of the Republic of Serbia* No. 116/08 and 101/2010).

A public prosecutor and deputy public prosecutor shall be revealed of an office when sentenced, by a final judgment for a criminal offence, to a prison sentence of not less than six months, or for a punishable offence making them unworthy of prosecutorial office, when incompetently discharge their functions, or for committed serious disciplinary infringement. Dismissal procedure is initiated by the proposal of public prosecutor, directly higher ranking public prosecutor, the Republic Public Prosecutor, authorities competent for performance evaluation, the Disciplinary Commission, while the grounds for dismissal are established by the State Prosecutorial Council.

Having conducted the proceedings, the State Prosecutorial Council reaches a reasoned decision laying down the grounds for the dismissal of a public prosecutor, which is forwarded to the Government. A decision on termination of a public prosecutor's office is adopted by the National Assembly at the proposal of the Government, while a decision on termination of deputy public prosecutor's office is adopted by the State Prosecutorial Council.

Bearers of the prosecutorial office are entitled to file an appeal to the Constitutional Court against the decision of the National Assembly and/or the State Prosecutorial Council, within 30 days from being served the decision.

Under the provision of Article 148 of the Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/06) a judge's office shall be terminated at his/her own request, if legally prescribed conditions are fulfilled or upon relief of duty for reasons stipulated by

law, as well as if he/she is not elected to the position of a permanent judge. The Law on Judges (*Official Gazette of RS* No. 116/08, 58/09 – decision CC, 104/09 and 101/2010) lays down the conditions for termination of judge's office, i.e. the grounds for dismissal. A decision on termination of a judge's office is passed by the High Judicial Council (hereinafter referred to as: the Council). A judge has the right to appeal this decision before the Constitutional Court. The lodged appeal excludes the right to lodge a Constitutional appeal. The proceedings, grounds and reasons for termination of a judge's office, as well as the reasons for the relief of duty of the president of the court are stipulated by law.

A judge is dismissed from office when he/she is convicted for a criminal offence to unconditional prison sentence of minimum six months, or for a punishable offence making him/her unworthy of office, when he/she performs the judge's duty incompetently, or due to the committed serious disciplinary infringement (Article 62 of the Law on Judges). Incompetence is considered insufficiently successful performance of the judicial function, if a judge's performance is evaluated as "dissatisfactory" according to the criteria for the evaluation of the work of judges.

The Law on Judges governs the disciplinary accountability of a judge, establishes disciplinary infringements, disciplinary sanctions, disciplinary proceedings as well as authorities in charge of disciplinary proceedings. Disciplinary authorities consist of the Disciplinary Prosecutor, his/her deputies and the Disciplinary Commission, established as standing working bodies of the High Judicial Council (Article 15 of the Law on Judges). The Disciplinary Commission consists of the Commission President and two members. The above authorities are established by the High Judicial Council, and the members of all disciplinary authorities are elected from the ranks of judges. The procedure of appointment of the members of disciplinary authorities is governed by the Rulebook on Disciplinary Proceedings and Disciplinary Responsibility of Judges. A judge performing judge's office for at least ten years who has not been disciplinary sanctioned may be appointed as a Disciplinary Prosecutor, President and Member of the Disciplinary Commission. The Disciplinary Prosecutor proceeds on disciplinary report, decides on submitting a proposal for disciplinary proceedings and carries out other duties in accordance with the Law on Judges and this Rulebook. The term of office of the Disciplinary Prosecutor lasts three years. The Disciplinary Commission conducts disciplinary proceeding and decides on the Disciplinary Prosecutor's proposal for the disciplinary proceedings. The Disciplinary Commission conducts disciplinary proceedings and decides on the Disciplinary Prosecutor's proposal for disciplinary proceedings.

The Disciplinary Commission submits to the Council a proposal for dismissal of a judge after determining the judge's accountability for serious disciplinary infringement. In addition to a reasoned proposal, complete case files are also forwarded to the Council. The Council without the delay forwards the proposal of the Disciplinary Commission to the judge in order to respond to it, within eight days. Upon receipt of the proposal, the President of the Council designates, from the rank of judges - Elected Members of the Council, a Rapporteur to prepare the case, present it before the Council and propose a

decision. The Council shall return the case files to the Disciplinary Commission for further processing, if it rejects its proposal for the dismissal of the judge.

Any party may file a motion for dismissal of a judge. Dismissal procedure is initiated by the president of the court, the president of the directly higher instance court, the president of the Supreme Court of Cassation, authorities competent for performance evaluation of a judge and the Disciplinary Commission. The grounds for dismissal are established by the High Judicial Council. The High Judicial Council establishes facts and decides in proceedings closed to the public. The judge has the right to be immediately informed about the reasons for initiating the proceedings, to get familiar with the case, the accompanying documentation and the course of the proceedings and provide the explanations and evidence for his/her allegations directly or through a representative. The judge has the right to orally present his/her allegations before the High Judicial Council. The High Judicial Council is obliged to conduct the proceedings and make decision within 45 days as of the day of the delivery of the act initiating the proceedings.. The decision of the High Judicial Council must be reasoned.

The judge is entitled to file an appeal to the Constitutional Court against the High Judicial Court's decision on termination of office, within 30 days as of the day of the delivery of the decision. By the decision of the Constitutional Court, the appeal may be denied or may be upheld and the decision on termination of the office revoked. The decision of the Constitutional Court is final.

e) Probationary period for judges / prosecutors:

- How long is it?

The State Prosecutorial Council proposes to the National Assembly of the Republic of Serbia a deputy public prosecutor who is elected for the first time, to a term of three years. The National Assembly of the Republic of Serbia elects a deputy public prosecutor who is being elected for the first time from one or more candidates proposed by the State Prosecutorial Council.

There is no difference in the performance of professional duties between bearers of the prosecutorial office elected to permanent office and those elected for the first time.

The Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010) and the Rulebook on Administration in the Public Prosecution Services (*Official Gazette of the Republic of Serbia* No. 110/09) regulate the right and obligation of vocational training of public prosecutors and deputy public prosecutors. Funds necessary for financing, acquiring scientific titles are secured by the Ministry competent for the judiciary, while the obligation and right of the bearers of the prosecutorial office is to participate in the programme of vocational training.

The performance evaluation of a deputy public prosecutor elected for the first time is conducted once a year by a public prosecutor after obtaining the opinion of the Collegium of the public prosecution service, and exceptionally, based on a decision of the State

Prosecutorial Council, performance of a deputy public prosecutor may be subjected to an unscheduled evaluation.

The State Prosecutorial Council elects deputy public prosecutors to permanent office of public prosecutors, in accordance with the criteria prescribed by the Rulebook on Criteria and Standards for Evaluation of Qualification, Competence and Worthiness of the Candidates for Holders of Prosecutorial Office (*Official Gazette of the Republic of Serbia* No. 55/09).

These decisions are subject to prosecutorial and administrative supervision by conducting the annual rating and these rates are the basis for the decision of the State Prosecutorial Council whether deputy public prosecutors will be elected to permanent office. Administrative supervision is performed by the Administrative Office of the State Prosecutorial Council through records on all deputy public prosecutors appointed for a probationary term and tracking all the data relating to the performance results, disciplinary proceedings, etc.

On a proposal of the High Judicial Council, the National Assembly elects, for a judge, the person who is elected to the office of judge for the first time. Tenure of office of a judge who was elected to the office of judge for the first time lasts three years (Article 147 of the Constitution of the Republic of Serbia, Article 52 of the Law on Judges).

- Is there a difference in the tasks of probationary period and life-appointed judges / prosecutors?

There is no difference in the performance of professional duties between bearers of the prosecutorial office elected to permanent office and those elected for the first time.

Between the judges of the court of the same type no difference is made in terms of type of performance between those elected to a three year term of office and the judges on a permanent office. A sitting judge is elected independently of the parties involved and the circumstances of the legal matters (Article 5 of the Law on Organisation of Courts). The Law on Judges provides for the difference only in terms of ways of assessment since the performance of judges with tenure of office is regularly evaluated once in three years and the performance of judges elected for the first time once a year.

- Do judges/prosecutors on a probationary period get specific training?

The Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010) and the Rulebook on Administration in the Public Prosecution Services (*Official Gazette of the Republic of Serbia* No. 110/09) provide for the right and obligation of vocational training of public prosecutors and deputy public prosecutors. Funds necessary for financing, acquiring scientific titles, are secured by the Ministry competent for the judiciary, while the obligation and right of the bearers of the prosecutorial office is to participate in the programme of vocational training.

The content of the training programme is determined depending on professional experience of the judge. The right and obligation of continuous vocational training of judges is realized through general programmes of continuous training and the judges elected for the first time to that office without completing the initial training have the obligation to attend special programme of continuous training (Article 9 of the Law on Judges, Article 43 of the Law on Judicial Academy (*Official Gazette of the Republic of Serbia* No. 104/2009)).

The Judicial Academy (hereinafter referred to as: the Academy) carries out a special programme of continuous training for judges and prosecutors elected for the first time who have not completed the initial training. The content and duration of the special programme of continuous training are established by the act of the Programme Council, depending on the professional experience of the user of training. Volume of work and working time of the user of the special programme of continuous training are reduced up to 30% for the duration of this programme on the basis of the decision of the High Judicial Council and/or the State Prosecutorial Council. The point of this training is to facilitate and enable faster inclusion in the work for judges and deputy public prosecutors, elected for the first time to a office.

The Academy keeps records of participants of the programme of continuous training and submits the data to the High Judicial Council and/or the State Prosecutorial Council. These data, as well as the data on teachers and mentors, will affect the promotion of judges and deputy public prosecutors, as an expression of their readiness to be additionally engaged.

- Are there objective and pre-determined procedures to evaluate the work during the probationary period? Who is responsible for this evaluation?

Performance evaluation of a deputy public prosecutor elected for the first time is conducted once a year by a public prosecutor after obtaining the opinion of the Collegium of the public prosecution service, and exceptionally, based on a decision of the State Prosecutorial Council, performance of a deputy public prosecutor may be subjected to an unscheduled evaluation.

Pursuant to provision of the Law on Judges (*Official Gazette of RS* No. 116/08, 58/09 – decision CC, 104/09 and 101/2010) the evaluation is conducted on the basis of publicly announced, objective and uniform criteria and standards, in the uniform proceedings in which the participation of the judge whose performance is evaluated is secured. The evaluation comprises all aspects of judge's work and represents the basis for election of judges to permanent office, mandatory training of judges and dismissal. Performance evaluation of judges in lower instance courts is conducted by committees established in courts of directly higher instance courts. Committees comprise of three judges elected by secret ballot at the session of all judges to a period of four years. One committee is established for every 100 judges whose performance is evaluated. The judge is entitled to object to the rating to the Commission of the High Judicial Council.

The High Judicial Council sets out the criteria, standards and procedure for performance evaluation of judges and/or court presidents. Performance is rated, and the rates relating to evaluation of judges are following: “performs judge’s office with extreme success”, “successfully performs judicial function”, and “fails to meet requirements”. The performance of judges elected for the first time is rated once a year. A judge who is elected for the first time and was rated during the three year term of office with the rate “performs judge’s office with extreme success” must be elected to permanent office. Pursuant to the Decision on Establishing the Criteria and Standards for Evaluation of Qualification, Competence and Worthiness for Election of Judges and Court Presidents (*Official Gazette of RS* No.49/09) after expiry of three year term of office, a judge elected for the first time may be elected to permanent office if rated during the term of office with the rate “performs judge’s office with extreme success” or “successfully performs judicial function”.

- Who decides on granting permanent tenure and on the basis of which criteria?

The State Prosecutorial Council elects deputy public prosecutors to permanent office of public prosecutors, and in accordance with the criteria prescribed by the Rulebook on Criteria and Standards for Evaluation of Qualification, Competence and Worthiness of the Candidates for Holders of Prosecutorial Office (*Official Gazette of the Republic of Serbia* No. 55/09).

Judges are elected to permanent office by the High Judicial Council in accordance with the powers provided for in the Constitution of the Republic of Serbia, the Law on Judges and the Law on the High Judicial Council. Election of judges to permanent office, after expiry of three year term of office is carried out on the bases of evaluation of performance during the three year period. Unlike judges with tenure of office whose performance is evaluated regularly once in three years, the performance of judges elected for the first time is evaluated once a year. Exceptionally, on the basis of a decision of the High Judicial Council, performance of a judge may also be subjected to an unscheduled evaluation. After expiry of three year term of office, a judge elected for the first time must be elected to permanent office if rated each year during the term of office with the rate “performs judge’s office with extreme success”. After expiry of three year term of office, a judge elected for the first time may be elected to permanent office if rated during the term of office with the rate “performs judge’s office exceptionally” or “satisfactory performance of judge’s office”. A judge elected for the first time and rated during the three year term of office with the rate “fails to meet requirements” may not be elected to permanent office (Article 52 of the Law on Judges). Performance evaluation of judges comprises all aspects of a judge’s work (number of solved cases, fulfillment of the prescribed standard, quality – number of repealed decisions on appeal, commitment to judge’s work etc.)

- Are the decisions on probation subject to judicial or administrative scrutiny?

These decisions are subject to prosecutorial and administrative supervision by conducting annual rating and these rates are the basis for the decision of the State Prosecutorial Council whether deputy public prosecutors will be elected to permanent office.

Administrative supervision is performed by the Administrative Office of the State Prosecutorial Council through records on all deputy public prosecutors on a probationary period and tracking all the data relating to the performance results, disciplinary proceedings, etc.

A judge elected for the first time and rated during the three year term of office with the rate “performs judge’s office with extreme success” must be elected to permanent office. If a judge after expiry of three year term of office by a decision of the High Judicial Council is not elected to the position of a permanent judge, his/her tenure of office shall be terminate. The judge is entitled to file an appeal to the Constitutional Court against the High Judicial Court’s decision on termination of office, within 30 days from the day of delivery of decision.. By the decision of the Constitutional Court, the appeal may be denied or may be upheld and the decision on termination of the office revoked. The decision of the Constitutional Court is final (Article 57 and 67 of the Law on Judges).

f) High Judicial Council and State Prosecutorial Council: Do members have specific privileges? Can the mandate be renewed and who can renew it? What are their qualifications? Are the judicial council and prosecutorial council deciding on their respective procedural rules? How is accountability ensured? How is potential conflict of interest scrutinised and taken into account? Do ex-officio members of these councils have the right to vote and what are their exact roles and functions? Does the Minister of Justice have the right to vote and if yes, in what cases?

While performing the office in the State Prosecutorial Council, Elected Members of the Council are entitled to the rights deriving from their employment with the Council, and the Members of the Council ex-officio, Members from the ranks of advocates and law school professors are entitled to a separate remuneration for the work in Council, which are determined by the competent Committee of the National Assembly.

The term of office of the Members of the Council is five years, except for the Members ex-officio.

Elected Members of the Council may be re-elected, but not consecutively.

Members of the Council are: The Republic Public Prosecutor, the Minister competent for the judiciary and the Chairperson of the competent Committee of the National Assembly, as the Members ex-officio and eight Elected Members appointed by the National Assembly. Elected Members comprise of six public prosecutors or deputy public prosecutors with permanent tenure of office, minimum one of whom comes from the territory of autonomous provinces, and two credible and prominent jurists with minimum 15 years of professional experience, one of whom is an advocate and the other a law school professor.

The State Prosecutorial Council adopted the Rules of Procedure of the State Prosecutorial Council (*Official Gazette of the Republic of Serbia* No. 55/09) regulating in detail the manner of operation and decision-making of the State Prosecutorial Council.

Each Member of the State Prosecutorial Council that in his/her work violates the law may be dismissed from the office of the Member of the Council prior to the term expiry. After determining the responsibility, the proposal for dismissal is submitted to the National Assembly which makes final decision.

Elected Member of the Council from the rank of advocates, and/or law school professor after taking up office, may not perform duty in authorities that adopt regulations, executive authorities, public services and bodies of the autonomous provinces and local self-government units. Based on the decision of the Council, Elected Member of the Council from the rank of deputy public prosecutors may be exempt from the performance of deputy public prosecutor's duty during the time of performing his/her duty within the Council.

Ex officio Members of the State Prosecutorial Council have the right to vote, the role of the President of the State Prosecutorial Council is to represent the Council, manage its operations and perform other duties in accordance with law.

The Minister of Justice as an ex officio Member of the Council has the equal right to vote in decision-making as other Members of the State Prosecutorial Council.

The Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/06) and the Law on the High Judicial Council (*Official Gazette of RS* No. 116/08) stipulates that the High Judicial Council (hereinafter referred to as: the Council) consists of 11 members, whose term of office is five years, except for the President of the Supreme Court of Cassation, the Minister competent for the judiciary and the Chairperson of the competent Committee of the National Assembly which are Members ex-officio. The term of office of the Elected Members is five years and they may be re-elected but not consecutively. The Elected Members comprise six judges with permanent tenure of office and two credible and prominent jurists, one of whom is an advocate and the other a law school professor.

The Members of the Council have no special privileges, except the powers and rights prescribed for them in the Law on the High Judicial Council. Elective Council Members from the ranks of judges are exempt from the performance of judge's duties during the time of performing their duty within the Council. During the term in the Council a judge who is a Member of the Council may not be elected for a judge of any other court. Elected Members of the Council from the ranks of advocates, and/or law school professors after taking up office, may not perform duties in authorities that adopt regulations, executive authorities, public services and bodies of the autonomous provinces and local self-government units. In accordance with the provisions Law on the Anti-Corruption Agency (*Official Gazette of RS* No. 97/08 and 53/10) (hereinafter referred to as: the Agency) an official may hold only one public office unless obligated by law or other regulation to discharge several public functions. Exceptionally an official may hold other public office with approval of the Anti-Corruption Agency. A Council Member enjoys immunity as a judge, and may not be held accountable for voting or any opinion expressed in taking decisions of the Council. A Council Member may not be arrested in the proceedings instituted for a criminal offence committed in performance of duties of a Council Member without prior approval of the Council. Elected Council

Members from the ranks of judges during the time of performing their duty within the Council are entitled to the rights deriving from their employment with the Council and are entitled to a salary in the amount determined by multiplying the coefficient 6,00 with the basis for calculation and payment, in accordance with the Law on Judges (*Official Gazette of RS* No. 116/2008, 58/2009 – CC decision, 104/2009 and 101/2010).

Ex-officio Members of the Council and Members from the ranks of advocates and law school professors are entitled to a separate remuneration for the work in the Council, which is determined by the competent Committee of the National Assembly. Remuneration of the ex-officio Members of the High Judicial Council and Members of the Council from the ranks of advocates and law school professors is determined in accordance with the Decision on the Amount of Remuneration in the High Judicial Council of the Administrative Committee of the National Assembly of the Republic of Serbia No.28: 120-2424/09 of 16 July 2009.

An Elected Member from the ranks of judges shall, on termination of the term of office within the first composition of the Council, continue to perform judge's office in a directly higher instance court to the court where she/he performed judge's office, provided that she/he meets the requirements to be elected judge in such court. A judge continues to exercise judge's office in the court that has assumed jurisdiction of the court where the judge performed his/her office if she/he fails to meet the requirements to be elected judge in a directly higher instance court. The decisions on resumption of judge's office of the Elected Members of the first composition of the Council are passed by the Council in permanent composition.

For acting within its jurisdiction, unless there is a procedure provided for by law, procedural rules are prescribed by the Rulebook of the High Judicial Council and by other acts adopted by the Council (e.g. The Rulebook on Disciplinary Proceedings and Disciplinary Responsibility of Judges, the Rulebook on Performance of the Electoral Commission).

An Elected Member of the Council shall be released from office before the expiration of term he/she has been elected to if he/she fails to perform the duty of the Council Member in compliance with the Constitution and law, and if convicted to unconditional imprisonment for a criminal offence, that is, the criminal offence which would make him/her unworthy of the position of the Member of the Council. An initiative for the release from office of an Elected Member of the Council may come from any Member of the Council. An initiative for the release from office of an Elected Member of the Council from the ranks of judges may also come from the president of any court, based on the decision of the session of all judges, and the initiative for the release from office of an Elected Member of the Council from the ranks of advocates, and/or law school professors may come from their authorized nominators. The Council shall pass a decision on instituting the dismissal proceedings within 15 days upon receiving the initiative. The Council passes a proposal for the release from office within 30 days of initiating the proceedings, and the decision on the release from office, based on the submitted proposal, is passed by the National Assembly.

All Members of the Council have the right and duty to decide, and/or vote on each proposal to be decided upon at the session of the Council, including the Minister of Justice and the Chairperson of the Committee for Judiciary and Administration of the National Assembly, who are the members of the Council ex-officio. A decision is made if the majority of all Members of the Council vote in its favor. The High Judicial Council of the Republic of Serbia operates in its full composition.

g) Is there an Inspection Service for the judiciary? (Are there internal control mechanisms established?) If so, describe its composition, role, way of functioning, budget and number of cases it is dealing with. What are the possibilities of appeal against any disciplinary measures and who decides on them?

The Department for Judiciary and Minor Offences, the Division for Supervision in Judiciary and Misdemeanor Authorities within the Ministry of Justice perform tasks of inspection of the judiciary.

Legal basis:

In accordance with Article 70 of the Law on Organization of Courts (*Official Gazette of RS* No. 116/2008, 104/2009 and 101/2010), the Ministry of Justice performs tasks of judicial administration including the supervision of the work of courts related to proceeding in cases within statutory time limits and proceeding on complaints and petitions. Article 71 of the Law prescribes the nullity of any single act of judicial administration, interfering with autonomy and independence of courts and judges. This nullity shall be determined by the Administrative Court.

The application of the Court Rules of Procedure (*Official Gazette of RS* No. 110/2009) is supervised by the Ministry of Justice based on Article 75 of the Law on Organization of Courts, Article 3 of the Court Rules of Procedure and Article 10 of the Rulebook on Internal Organization and Systematization of Job Positions in the Ministry of Justice. The Division for Supervision in Judiciary Authorities with 6 civil service staff members performs duties of supervising the application of the Court Rules of Procedure, in courts of general jurisdiction: Basic (34), Higher (26), Appellate (4) and the Supreme Court of Cassation and in courts of special jurisdiction: Commercial (16), Commercial Appellate (1), Misdemeanour (45) Higher Misdemeanour Court in Belgrade with Divisions in Kragujevac, Nis and Novi Sad and the Administrative Court in Belgrade with Divisions in Kragujevac, Nis and Novi Sad.

Article 4 of the Court Rules of Procedure regulates in details supervision tasks: Through a person authorised for supervision, the Ministry controls the performance of court administration, proceeding in cases within statutory time limits, proceeding on complaints and petitions, office management in court and other tasks related to internal organisation and operation of court.

The supervision is performed by obtaining report from the President or by direct insight. Implementation of the Rules of Procedure, proceeding within time limits and proceeding on complaint are particularly controlled in court. After the supervision a record is made and forwarded to the president of the supervised court, the president of directly higher instance court, the President of the Supreme Court of Cassation and the Minister competent for the judiciary.

The president of directly higher instance court is obliged to inform the President of the Supreme Court of Cassation and the Minister competent for the judiciary on the measures taken to eliminate the shortcomings, the deadlines for elimination of the shortcomings, as well as on the reasons for occurrence of the shortcomings and failures. The deadline for notification pursuant to Article 5 of the Court Rules of Procedure is 30 days.

Supervisions conducted in 2010:

In cooperation with the High Judicial Council, in the first quarter of 2010, the supervision was conducted in the Division for Civil Proceedings, Family Division, Labour Division, Enforcement Division, Division for Non-contentious Matters and Criminal Division of the First Basic Court in Belgrade and the High Court in Belgrade, for the purpose of determining the total number of pending cases (cases taken on and not yet resolved in terms of Article 420 and 421 of the Court Rules of Procedure) and proceeding on solved cases (special records in terms of Article 422 of the Court Rules of Procedure). In cooperation with the Department for Operations and Technologies there were 34 unscheduled supervisions conducted in Basic Courts relating to the application of the Rulebook on Keeping Special Records on Real Estate Purchase Agreements as well as authentication of signatures, manuscripts, transcripts and international authentication.

In relation to implementation of the Programme for Automatic Case Management-ACM, there were six supervisions conducted in courts of general jurisdiction and its implementation in all courts is continuously monitored.

In 2010 there were 17 regular supervisions conducted in courts of general jurisdiction and in 3 Misdemeanour Courts, as courts of special jurisdiction.

It was proceeded in 3,445 cases in period from 1 January to 1 December 2010 on complaints, petitions, and other submissions of the citizens. The largest number of complaints relates to the duration of the proceedings. In addition to complaints submitted in writing, it was proceeded on all oral complaints, submitted by telephone or direct reception of parties.

Wit regards to the question: "Are there internal control mechanisms established", that question may refer to the tasks of the Court administration. Pursuant to the provisions of Articles 51 to 56 of the Law on Organisation of Courts and 6-14 of the Court Rules of Procedure, the president of the court manages Court administration, and he/she may delegate certain court administration tasks to the deputy court president or to presidents of divisions. Tasks of the court administration also cover proceedings on complaint, when

submitted by parties directly to the court, as well as on complaints submitted through the Ministry of Justice, High Court or the High Judicial Council when the president of the court notifies the complainant, the Minister, the president of directly higher instance court and the High Judicial Council on merits of the complaint and any measures undertaken.

Provision of Article 54 of the Law on Organisation of Courts and Article 11 of the Court Rules of Procedure govern the powers of the president of directly higher instance court. Regarding the tasks of the court administration, the president of the court of directly higher instance is entitled to supervise the court administration of a lower instance court, and, in case of failure of the president of a lower court to act, to issue acts from his/her scope of work. During the supervision, the higher instance court may request information from the lower instance court regarding the application of regulations, the course of proceedings as well as all operation-related data. President of the court of directly higher instance may order direct inspection of the work of the lower instance court, and shall prepare a written report thereon.

The question relating to the appeal against disciplinary measures and the officials deciding on them may refer to the operation of the president of the court as an authorised proponent in the procedure for the dismissal of judges. Authorised proponents to launch the procedure for the dismissal of judges, within the meaning of Article 64 paragraph 2 of the Law on Organisation of Courts, are president of the court, the president of directly higher instance court, the President of the Supreme Court of Cassation, authority competent for performance evaluation of a judge and the Disciplinary Commission.

Pursuant to the Law on the High Judicial Council (*Official Gazette of RS* No. 116/2008 and 101/2010) Article 13 regulates the competence of the Council to determine the composition, duration and the termination of the mandate of the members of disciplinary bodies, appoint the members of disciplinary bodies and regulate the manner of operation and decision-making in disciplinary bodies as well as to decide on legal remedies in disciplinary proceedings. The High Judicial Council adopted the Rulebook on Disciplinary Proceedings and Disciplinary Responsibility of Judges, which was published on 4 October 2010 (*Official Gazette of RS* No. 94/2010).

In respect of the disciplinary responsibility of employees in the judiciary, the supervision of operation of the president of the court in application of provisions of the Labour Law (*Official Gazette of RS* No 24/05, 61/05 and 54/09) and the Law on Civil Servants (*Official Gazette of RS* No. 79/05, 81/05 – corrigendum, 83/05 – corrigendum, 64/07, 67/07 – corrigendum, 116/08 and 104/09) is performed by the Administrative Inspection within the scope of the competence of the Ministry of Public Administration and Local Self-government.

The Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010) lays down the disciplinary responsibility and the disciplinary proceedings through provisions defining disciplinary infringement as unprincipled performance of prosecutorial office, or such actions of a public prosecutor and/or deputy

public prosecutor that renders him/her unworthy of office and lists disciplinary infringements in Article 104 of the Law on Public Prosecution.

Disciplinary sanctions are: a public reprimand, a salary reduction of up to 50% for a period not exceeding one year, and prohibition of promotion for a period of three years. A pronounced disciplinary sanction shall be commensurate to the gravity of the committed disciplinary infringement. Disciplinary bodies are: The Disciplinary Prosecutor and his/her deputies, and the Disciplinary Commission, established by the State Prosecutorial Council.

Disciplinary proceedings are conducted by the Disciplinary Commission at the proposal of the Disciplinary Prosecutor. Disciplinary proceedings are urgent and closed to the public, unless the public prosecutor and/or deputy public prosecutor subjected to disciplinary proceedings requests that the proceedings be open to the public.

The Disciplinary Prosecutor may reject disciplinary report as ungrounded, or uphold the report and file the proposal for disciplinary proceedings. A holder of the prosecutorial office has the right to be promptly notified on the proposal of the Disciplinary Prosecutor, to examine the case file and accompanying documentation, and to present explanations and evidence for his/her allegations, directly or through a representative.

Having conducted the disciplinary proceedings, the Disciplinary Commission may deny the proposal of the Disciplinary Prosecutor, or uphold the proposal and pronounce a disciplinary sanction. The Disciplinary Prosecutor and/or the holder of the prosecutorial office subjected to disciplinary proceedings may file an appeal to the State Prosecutorial Council against the decision of the Disciplinary Commission, within eight days of the service of the decision. Deciding on the appeal, the State Prosecutorial Council may either uphold or reverse the first instance decision of the Disciplinary Commission. The State Prosecutorial Council shall decide on the appeal, within 30 days from the service of the appeal. The decision of the State Prosecutorial Council is final.

The Law on Judges governs the disciplinary accountability of a judge, establishes disciplinary infringements, disciplinary sanctions, disciplinary proceedings as well as authorities in charge of disciplinary proceedings. Disciplinary authorities consist of the Disciplinary Prosecutor, his/her deputies and the Disciplinary Commission, established as standing working bodies of the High Judicial Council (Article 15 of the Law on Judges). Disciplinary Commission consists of Commission President and two members. The above authorities are established by the High Judicial Council and the members of all disciplinary authorities are elected from the ranks of judges. The procedure of appointment of the members of disciplinary authorities is governed by the Rulebook on Disciplinary Proceedings and Disciplinary Responsibility of Judges. A judge performing judge's office for at least ten years that has not been disciplinary sanctioned may be appointed as a Disciplinary Prosecutor, President and member of the Disciplinary Commission. The Disciplinary Prosecutor proceeds on disciplinary report, decides on submitting a proposal for disciplinary proceedings and carries out other duties in accordance with the Law on Judges and this Rulebook. The term of office of the

Disciplinary Prosecutor lasts three years. The Disciplinary Commission conducts disciplinary proceedings and decides on the Disciplinary Prosecutor's proposal for disciplinary proceedings.

The Disciplinary Prosecutor files the proposal for disciplinary proceedings on the basis of disciplinary report. Disciplinary sanctions which the Disciplinary Commission may pronounce to a judge, are: a public reprimand, a salary reduction of up to 50% for a period not exceeding one year, and prohibition of promotion for a period up to three years (Article 91 paragraph 1 of the Law on Judges). The Disciplinary Commission, after discussing and voting, shall pass the general decision in form of specific decision. The Disciplinary Commission may deny the proposal of the Disciplinary Prosecutor, or uphold the proposal, determine the responsibility of the judge and pronounce a disciplinary sanction. Having determined a serious disciplinary violation, the Disciplinary Commission shall initiate the procedure for the dismissal of the judge (Article 92 of the Law on Judges).

The Disciplinary Prosecutor and/or the judge subjected to disciplinary proceedings may file an appeal to the High Judicial Council against the decision of the Disciplinary Commission, within 8 days of the service of the decision. The High Judicial Council shall pass the general decision on the appeal, in form of specific decision, within 30 days from the service of the appeal. The decision of the High Judicial Council is final. Extraordinary legal remedies or reopening of the proceedings are not allowed in disciplinary proceedings.

Funding for the operation of the of disciplinary bodies is secured from the annual budget provided for the High Judicial Council, bearing in mind that the Disciplinary Prosecutor and the Disciplinary Commission are standing working bodies of the High Judicial Council.

h) Is the selection of trainees objective and transparent? Please explain.

The selection of trainees implies that the Ministry competent for the judiciary approves funding for scientific titles at the cost of the Republic of Serbia, and the bearers of the prosecutorial office have the right and obligation to get vocational training within the envisaged programmes, and thus the selection of such persons is subject to necessary control and must be objective and transparent.

Since the Law on Judicial Academy (*Official Gazette of RS* No. 104/2009) equally governs initial and continuous training of public prosecutors and deputy public prosecutors, as well as judges, the provisions of the Law are equally applied to all said judicial office bearers.

Selection of judges for vocational training is objective and transparent.

A judge has the right and obligation to get vocational training at the cost of the Republic of Serbia, in accordance with a special law. The training of judges is an organised acquiring and improvement of theoretic and practical knowledge and skills necessary for

independent, professional and efficient performance of judge's office. The training is mandatory by law or by a decision of the High Judicial Council in cases of change of specialisation, important changes in regulations, introduction of new working techniques and for the purpose of correction of deficiencies in performance of the judge determined in evaluation of his/her performances. The content of the training programme is determined depending on professional experience of the judge.

The Law on Judicial Academy (*Official Gazette of RS* No. 104/2009) governs the procedure of organisation of continuous training for judges. The continuous training may be voluntary or mandatory. Continuous training is voluntary, except in case when it is provided for as mandatory, by law or by a decision of the High Judicial Council in cases of change of specialisation, important changes in regulations, introduction of new working techniques and for the purpose of correction of deficiencies in performance of a judge determined in evaluation of his/her performances, as well as for judges who are elected to judge's office for the first time and who have not attended the initial training programme.

The programme of continuous training is adopted by the Managing Board of the Judicial Academy (hereinafter referred to as: the Academy), at the proposal of the Programme Council and with the consent of the High Judicial Council. By a decision of the High Judicial Council for certain categories of judges may be prescribed mandatory continuous training, in case of election for the court, and/or higher instance public prosecution service, change of specialisation, important changes in regulations and introduction of new working techniques. The Academy shall draw up special programme of continuous training, in accordance with the decisions of the High Judicial Council.

Once a year, by 1 December at the latest, the Academy is obliged to forward to courts the annual framework programme of voluntary training for the next calendar year. The applications for the programmes are sent to the Academy until 31 December of the current year, for the next calendar year. The Academy designates the users of each of the offered programmes and informs courts and public prosecution services about it.

The selection of the programme participants is objective and transparent. The Judicial Academy, in accordance with the Law and priorities established by the Managing Board and Programme Council, organised an entrance exam for the first generation of the participants of initial training. The entrance exam was organised in the period from 20 to 30 September 2010.

7. Mobility of judges:

a) What procedure governs the allocation of judges to particular courts and regions?

In Article 150 of the Constitution of the Republic of Serbia (*Official Gazette RS*, 98/06) it is prescribed that a judge shall have the right to perform his/her judge's office in the court to which he/she was elected, and may be relocated or transferred to another court only on his/her own consent. In case of revocation of the court or the substantial part of the

jurisdiction of the court to which he/she was elected, a judge may exceptionally, without his/her consent, be permanently relocated or transferred to another court, in accordance with law.

A judge performs his/her office in the court to which he/she was elected. A judge may be relocated or transferred to another court, another state authority, institution or international organisation in the field of judiciary, only with his/her own consent. A judge may exceptionally, without his/her consent, be relocated to another court in case of revocation of the court or the substantial part of the jurisdiction of the court to which he/she was elected, which leads to a decrease in inflow of cases, on the basis of a decision of the High Judicial Council (Article 18 of the Law on Judges (*Official Gazette of RS* No.116/2008, 58/2009 – CC decision, 104/2009 and 101/2010).

The Court Rules of Procedure (*Official Gazette of RS* No. 110/2009) lay down that the president, based on an annual schedule of work in the court, determines the type of judge's duty of every judge in the court, the court unit and the division outside the seat of the court. Based on the annual schedule of work, the president may set out that it shall be adjudication in the court, court units and divisions outside the seat of the court, and that the judicial court activities shall be undertaken in one or more areas of law. When deciding which judge will operate in which court unit, and/or division outside the seat of the court, the president shall give special consideration to the circumstances affecting the efficiency and costs of the proceeding, necessary number of judges for particular area of law, as well as the number and type of cases which will be proceeded in.

The president reviews complaints of parties and other participants in legal proceedings. Article 10 of the Court Rules of Procedure lays down that if the subject of the complaint is the selection of the venue of undertaking court activities, the president may change the venue of undertaking court activities, no later than the preliminary hearing or the first hearing for the main discussion, if it allows the realisation of the right of a party to access the court freely and the respect of the territorial jurisdiction established by law. The president shall make a decision within 3 days of the day the complaint was submitted to the court. If the President does not decide on submitted complaint, the decision shall be made by the President of the directly higher instance court. The aforementioned procedure is also applied in case when the judge proceeding in the case suggests the change of the venue of undertaking court activities.

b) Can judges be required to move between courts and regions? Who and how is the decision to move a judge made?

Transfer and relocation of a judge is governed by the provisions of Articles 18-21 of the Law on Judges (*Official Gazette of RS* No. 116/08, 58/09 – decision CC, 104/09 and 101/2010).

A judge may be transferred to another court of same type and instance, with his/her consent, if there is a need for an urgent filling of vacant judge's position which cannot be solved by electing or assignment of a judge, after obtaining the approval of the

presidents of both courts. Permanency of judge's office shall be continued in the court to which he/she is transferred. A judge may exceptionally, without his/her consent, be transferred to another court in case of revocation of the court or the substantial part of the jurisdiction of the court to which he/she was elected, which leads to a decrease in inflow of cases, on the basis of a decision of the High Judicial Council.

A judge may be transferred only to another court of same type, of the same or directly inferior instance, for one year at the longest. Exceptionally, a judge may be transferred to a court of directly higher instance, if he/she meets the prescribed conditions to be elected judge in the court to which is transferred. A judge shall be transferred to a court where insufficient number, hindrance, exclusion of judges or other reasons complicate or decelerate the work. The decision on transfer of a judge shall be made by the High Judicial Council.

In 2010 the High Judicial Council made decisions on transfer of six judges, two of the judges being transferred from Basic Court to High Court in accordance with the provision of Article 20 paragraph 2 of the Law on Judges. The judges have been transferred for the period one year at longest from the day of decision-making. Based on analyses of reports on work of the courts, number of pending cases and the workload, the High Judicial Council has determined that the conditions for transfer of judges are met, especially bearing in mind that the presidents of the courts in which judges perform their offices and the presidents of the courts to which transfer is made, provided consent to make the transfer.

Pursuant to the provisions of the Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime, Corruption and Other Severe Criminal Offences (*Official Gazette of RS* No. 42/02, 27/03, 39/03, 67/03, 29/04, 45/05 and 72/09) and the Law on Organization and Competence of Government Authorities in the War Crimes Proceedings (*Official Gazette of RS* No. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009) a judge may be transferred to the Special Division of the High Court in Belgrade and the Special Division of the Appellate Court in Belgrade for a period of maximum six years with written consent of the judge. In accordance with these provisions, the High Judicial Council in 2010 transferred 11 judges to the Special Divisions of the High Court in Belgrade, for the period of one year, with the prior written consent of the judge for the transfer.

8. What are the measures in place ensuring internal independence of the judiciary? Are the ordinary courts independent from the Supreme Court or other higher courts? Is the Supreme Court or another high court prohibited from giving instructions, guidance, recommendations, explanations or supervision to ordinary courts? Do judicial leadership posts hold any evaluation, appraisal or disciplinary powers? If so what safeguards exist to prevent the undue influence of the internal judicial hierarchy?

Judicial decision may be reviewed only by a competent court in a procedure prescribed by law. A judge shall not be required to justify his understanding of fact and law to anyone, including other judges and the president of the court, except in the reasoning of the judgment or when so particularly stipulated by law.

In terms of jurisdiction of courts and possibility of reviewing judicial decisions on legal remedies, the Supreme Court of Cassation is directly higher instance court to the Commercial Appellate Court, the Higher Misdemeanour Court, the Administrative Court, and the Appellate Court; the Appellate Court is the directly higher instance court to Higher Court and Basic Court, the Commercial Appellate Court is the directly higher instance court to Commercial Court, and the Higher Misdemeanour Court is the directly higher instance court to Misdemeanour Court. Higher Court is directly higher instance court to Basic Court where so specified by this Law, as well as for issues of internal court organisation and the application of the Law on Judges (*Off. Gazette of RS* No. 116/2008, 58/2009 – CC decision, 104/2009 and 101/2010). The Commercial Appellate Court determines legal opinions for the purpose of a uniform application of law under the competence of Commercial Courts, and performs other tasks laid down by law.

The Supreme Court of Cassation decides on extraordinary legal remedies filed against decisions of courts of the Republic of Serbia and in other matters laid down by law. The Supreme Court of Cassation determines general legal views in order to ensure a uniform application of law by courts; reviews the application of law and other regulations, and the work of courts; appoints judges of the Constitutional Court, gives an opinion on a candidate for the President of the Supreme Court of Cassation and exercises other competencies laid down by law. The General Session of the Supreme Court of Cassation adopts general legal views; reviews the application of laws and other regulations and the work of courts; appoints judges of the Constitutional Court; gives an opinion on a candidate for the President of the Supreme Court of Cassation; issues the Rules of Procedure on Organisation and Operation of the Supreme Court of Cassation and performs other tasks laid down by law and the Rules of Procedure on Organisation and Operation of the Supreme Court of Cassation. The General Session is also convened due to incoherence between panels from different divisions or between different divisions arising in respect of the application of regulations, where one division departs from a general legal view or where a legal view cannot be adopted by a session of the division. A general legal view adopted at the General Session is binding to all panels and divisions of the Supreme Court of Cassation and may be amended only at the General Session.

Pursuant to the Law on Civil Procedure (*Official Gazette of RS* No. 125/2004 and 111/2009) in the first instance proceedings, where interpretation of a controversial point of law arising in a great number of cases is needed, and such interpretation is of decisive importance for adjudicating cases before first instance courts, the first instance court shall, *ex officio* or upon the proposal of a party, initiate proceedings before the Supreme Court for resolving the controversial legal issue. The court which initiated the procedure for resolving the controversial legal issue shall suspend the proceedings until such time as the procedure before the Supreme Court of Cassation is finished. The Supreme Court of Cassation is obliged to resolve the controversial legal issue within 90 days of the receipt of the request. The Supreme Court decides on the request for resolving the controversial legal issue under the rules of procedure for adoption of legal views. Legal view is submitted to the court which has initiated the procedure and is published in the Bulletin of the Supreme Court of Cassation. The parties to the proceedings which gave rise to the

legal interpretation of the Supreme Court of Cassation may not request again that such issue is solved in the ongoing proceedings.

As regards the court administration, the court president represents the court, manages court administration and is responsible for a proper and timely court operation. President of the court of directly higher instance is entitled to supervise the court administration of a lower instance court, and, in case of failure of the president of a lower court to act, to issue acts from his/her scope of work. President of a court of directly higher instance may also request information from the lower instance court regarding the application of regulations, the course of proceedings as well as all operation-related data, and may order direct inspection of work of the lower instance court, and shall prepare a written report thereon. When a party or other participant in proceedings files a complaint, the court president is required to take it under consideration and notify the complainant and the president of a directly higher instance court on admissibility and any measures undertaken, within 15 days from the receipt of the complaint.

President of a court is required to notify the president of a directly higher instance court on any derogation from the order of case allocation, and is also required to notify the president of a directly higher instance court in first instance proceedings on any proceedings not concluded within two years and on the reasons for that.

Pursuant to Article 13 of the Court Rules of Procedure (*Official Gazette of RS* No. 110/2009) president of a higher instance court may organise visits to the lower instance courts in his/her territory. During the visit of a lower court, he/she may request information on application of regulations and problems in trials, and pursuant to Article 17, divisions of the Commercial Appellate Court, Higher Misdemeanour Court and Appellate Court, also consider important issues for the operation in their territory.

Judicial administration ensures enforcement of laws and other regulations in relation to court organisation and operation. Judicial administration tasks are carried out by the High Judicial Council and the Ministry competent for the judiciary. Some of judicial administration-related duties performed by the High Judicial Council are: determination of general guidelines on the internal court organisation, supervision of authorised spending of budgetary funds and supervision of financial and material operations of courts, and the judicial administration tasks carried out by the Ministry competent for the judiciary are: monitoring of the work of courts; collecting statistics and other data; approval of the Rulebook on Internal Organisation and Systematisation of Job Positions in Court; supervision of proceeding in cases within statutory time limits and proceeding on complaints and petitions. Any individual act of judicial administration interfering with autonomy and independence of courts and judges is null and void.

Judicial leadership offices hold no evaluation, appraisal or disciplinary powers pronounced to judges. The manner of performance evaluation of judges is prescribed by the Law on Judges, and the performance evaluation is conducted by the Councils consisting of three judges elected by secret ballot at the session of all judges to a period of four years. As regards to the disciplinary measures, they may be pronounced only upon

the proceedings conducted in accordance with the Law on Judges and the Rulebook on Disciplinary Proceedings and Disciplinary Responsibility of Judges, by the Disciplinary Commission.

Any individual act of judicial administration interfering with autonomy and independence of courts and judges is null and void. The nullity of the act is determined by the Administrative Court pursuant to Article 71 of the Law on Organisation of Courts (*Official Gazette of RS* No. 116/08, 104/09 and 101/2010). Pursuant to Article 26 of the Law on Judges a judge is entitled to file an objection to the annual schedule of work, change of the type of work, deviation from the order of case allocation or taking away of case, to the president of the directly higher instance court, within three days from the day of becoming aware thereof. Any objection raised by the Judge of the Supreme Court of Cassation shall be decided upon by the General Session. A party in the proceedings is also entitled to object to taking away of cases, within three days from the day of receiving the notification. A judge may file an objection to the High Judicial Council in case of violation of his/her right for which the Law on Judges does not provide for the special protection procedure. If the complaint is reasonable, the Council shall take measures to protect the rights of the judge.

9. Are the decisions of high courts easily accessible and in what way?

The decisions of the Supreme Court of Cassation important for the practice of courts and all general legal views are published in special collection, and the decisions are made publicly available on the website of the Supreme Court of Cassation (www.vk.sud.rs). The Supreme Court of Cassation publishes Bulletin in which are published general legal views of the General Session, legal views and conclusions of the court divisions, decisions of the European Court of Human Rights and other international institutions of importance for the protection of human rights and fundamental freedoms, sentences from the decisions of courts established on the sessions of divisions, expert papers and other documents of importance for organisation, regulation and operation of courts.

Impartiality

10. How does legislation provide for the impartiality of the judiciary?

The principle of impartiality of judicial institutions and bearers of judicial offices is guaranteed by the Constitution of the Republic of Serbia (*Official Gazette of RS*, 98/06) as the highest legal act, where is stated that everyone has the right to a public hearing before an independent and impartial tribunal established by the law within reasonable time which shall pronounce judgment on their rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against them. (Article 32).

The Law on Public Prosecution (*Official Gazette of RS* No 116/2008, 104/2009 and 101/2010), lays down that the office of a public prosecutor must be performed impartially and that public prosecution service personnel shall perform their duties conscientiously and impartially, and shall maintain the dignity of the public prosecution service (Articles 46 and 126).

A public prosecutor or deputy public prosecutor is committing a disciplinary infringement if he/she, *inter alia*, violates the principle of impartiality and jeopardizes the trust of the citizens in the public prosecution service (Article 104, (1), indent 9), while in respect of the accountability of the public prosecution service personnel regulations governing employment relations of civil servants and general service employees are applied, unless otherwise provided under the Law.

Pursuant to the Law on Judges (*Official Gazette of RS* No. 116/08, 58/09 – decision CC, 104/09 and 101/2010) a judge shall, at all times, preserve trust in his/her independence. A judge is also obliged to conduct the proceedings impartially according to his conscience, and personal evaluation of facts and interpretation of law, ensuring fair trial and respect of procedural rights of the parties guaranteed by the Constitution, law and international acts. Services, engagements and actions incompatible with the duty of a judge are laid down by law. A judge is obliged to refrain from adjudicating in cases in which exist reasons raising doubts about his impartiality. Doubts about the impartiality of a judge are particularly encouraged by family, friendly, business, social and similar relationships with the parties and their representatives. Pursuant to the Civil Procedure Law (*Official Gazette of RS* No. 125/2004 and 111/2009 (in Article 66 (2)) a judge may be disqualified if there are circumstances which raise doubt on his/her impartiality (disqualification). Pursuant to the Criminal Procedure Code (*Official Journal of FRY* No. 70/2001, 68/2002, *Official Gazette of RS* No. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2008, 20/2009, 72/2009, 76/2010) a judge or lay-judge may not perform his/her judicial duty if there are circumstances which throw doubt on his/her impartiality (in Article 49 point b.). Failure to comply with the above provisions is a severe violation of procedure, which may be raised in appeals procedure.

Judges are obliged to comply, at all times, with the Code of Ethics, adopted at the session of the High Judicial Council held on 14 December 2010. The Code of Ethics stipulates that the impartiality is one of the basic principles of the conduct of a judge and sets forth a concrete application of this principle. A judge shall perform judge's office objectively, without preference, bias and prejudice towards the parties, based on race, colour, national origin, religious belief, political affiliation, sex, age and other personal characteristics.

As regards to the judicial personnel, the Law on Organisation of Courts (*Official Gazette of RS* No. 116/2008, 104/2009 and 101/2010) stipulates that the judicial personnel is also required to perform their duties with due diligence and impartiality, and to safeguard the credibility of the court (in Article 69). In relation to the responsibility of the judicial personnel, regulations governing employment relations of civil servants and general service employees are applied, unless otherwise provided for by the Law.

11. Accountability and discipline:

a) Is there a code of ethics for members of the judiciary? If so, by whom has it been set up? What is its legal status? How is it being implemented?

The Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010) stipulates that a public prosecutor and deputy public prosecutor are obliged to adhere to the Code of Ethics which shall be adopted by the State Prosecutorial

Council on the basis of the Law on State Prosecutorial Council. The Code of Ethics is envisaged as a by-law obliging all bearers of the prosecutorial office under same conditions. The Code of Ethics will include the rules on its application as well. The Code of Ethics is currently in its preparatory stage.

Based on the Law on Judges (*Official Gazette of RS* No. 116/08, 58/09 – decision CC, 104/09 and 101/2010) (Article 3, paragraph 4), the High Judicial Council adopted the Code of Ethics at the session held on 14 December 2010. The proposal of the Code was published on the website of the High Judicial Council so that the judges could have got acquainted with the proposal of this act and delivered their suggestions and remarks.

The Code of Ethics establishes ethical principles and code of conduct of judges which must be complied with for the purpose of preserving and improving the dignity and reputation of judges and judiciary. Ethical principles are: Independence, impartiality, professional competence and responsibility, dedication in performing judge's office and the freedom of association. A judge is obliged to comply with the Code of Ethics at all times, and the principles of the Code are the way life of a judge.

The High Judicial Council shall decide which actions are contrary to the dignity and independence of a judge and damaging to the reputation of the court, on the basis of the Code of Ethics (Article 3 and Article 30, paragraph 4 of the Law on Judges). Violation of the provisions of the Code of Ethics to a greater extent represents disciplinary infringement and violation of the provisions of the Code of Ethics is determined in the disciplinary proceedings (Article 90 of the Law on Judges).

The Code of Ethics is not an imperative regulation. It is adopted by the High Judicial Council in order to guide judges in their conduct, in court and outside the court, in accordance with ethical and professional principles.

b) Are judges / prosecutors irremovable from the start of their career? How is this principle implemented and respected?

The Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010) precisely lays down the reasons for suspension from duty of a holder of the prosecutorial office. A public prosecutor and deputy public prosecutor may be suspended from duty when remanded in detention and may be suspended from duty when proceedings for their dismissal, or a criminal procedure for a dismissible offence, have been instituted. A public prosecutor decides on the mandatory suspension of a deputy public prosecutor, while a directly higher ranking public prosecutor decides on the mandatory suspension of a public prosecutor.

The Republic Public Prosecutor issues a decision if the suspension is non-mandatory, while the State Prosecutorial Council decides on the suspension of the Republic Public Prosecutor.

A public prosecutor and/or deputy public prosecutor are entitled to object the Republic Public Prosecutor's decision on non-mandatory suspension before the State Prosecutorial Council.

The Republic Public Prosecutor is entitled to object to the competent Committee of the National Assembly against a State Prosecutorial Council decision on non-mandatory suspension.

Suspension from office lasts until the revocation of detention, the final conclusion of dismissal proceedings, or until the final conclusion of criminal proceedings.

One of the basic principles guaranteed by the Constitution of the Republic of Serbia (*Official Gazette of RS* , 98/2006) and the Law on Judges (*Official Gazette of RS* No. 116/08, 58/09 – decision CC, 104/09 and 101/2010) is that a judge performs his office as permanent, unless he/she is elected for a judge for a first time. A candidate which is elected at judge's office for the first time is elected for the period of three years, after which he/she may be elected to the position of a permanent judge by a decision of the High Judicial Council. A judge performs his/her office in the court to which he/she was elected. A judge may not be relocated or transferred to another court without his/her own consent, except in cases prescribed by this Law. A judge may with his/her consent be transferred to another court, another state authority or institution, in accordance with the Law on Judges.

A judge shall be suspended from duty when he/she is ordered with the detention. A judge may be suspended from duty when proceedings for his/her dismissal, or a criminal procedure for a dismissible offence, have been instituted.

The president of the court decides on the mandatory suspension of a judge, and the president of directly higher instance court decides on mandatory suspension of the president of a court. The President of the Supreme Court of Cassation decides on the suspension if it is not mandatory. The suspension of the Judge of the Supreme Court of Cassation is decided upon by the General Session.

A judge is suspended from office until the revocation of detention, the completion of dismissal proceedings, or the completion of criminal proceedings. The High Judicial Council may return the judge to office before the completion of dismissal proceedings.

A judge is entitled to object to decision on suspension to the High Judicial Council, within eight days of the service of the decision, and the High Judicial Council decides on the objection within eight days of the service of objection. In 2010 the High Judicial Council decided on one objection to decision on suspension of a judge of the Commercial Court in Pozarevac and determined that the objection was unfounded.

c) Do the laws provide immunity to judges / prosecutors? If so, what does immunity cover? What is the procedure for lifting the immunity? What is done to ensure that

this is clear and transparent? Please give examples of how this has been implemented. What are the possible sanctions?

The Constitution of the Republic of Serbia (*Official Gazette of the Republic of Serbia* No. 98/06), the Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010) and the Law on State Prosecutorial Council (*Official Gazette of the Republic of Serbia* No. 116/08 and 101/2010) provide the immunity to public prosecutors and their deputies.

The immunity covers the impossibility of ordering detention for execution of criminal offence and criminal proceedings. A public prosecutor and deputy public prosecutor may not be held accountable for opinions expressed in the performance of prosecutorial office.

When it is determined that a public prosecutor or deputy public prosecutor have committed a criminal offence, he/she may not be deprived of liberty without the authorization of the competent Committee of the National Assembly of the Republic of Serbia.

A public prosecutor and deputy public prosecutor may not be held accountable for opinions expressed in the performance of prosecutorial office, except in cases when public prosecutor and/or deputy public prosecutor committed a criminal offence by violating the Law.

A public prosecutor and deputy public prosecutor may not be arrested in the proceedings instituted for a criminal offence committed in performance of prosecutorial duties, and/or offices, without the authorisation of the competent Committee of the National Assembly of the Republic of Serbia.

Territorially and materially competent prosecutor during pre-trial or preliminary criminal proceedings, i.e. investigation may, within his/her legally prescribed authorities, submit a proposal against suspected public prosecutor or his/her deputy to competent Committee of the National Assembly to make decision on lifting the immunity of the suspect in terms of ordering detention. In case that the indictment was raised, such proposal is submitted through the court, i.e. a single judge or the President of the Council.

The Committee, on the basis of reasoned proposal and submitted facts, makes decision lifting the immunity of the suspect or rejecting the lifting. The Committee forwards the decision to territorially and materially competent prosecutor who filed the proposal. If the decision is positive, detention is ordered to the suspect.

The fact that the rules of procedure for the application of immunity are prescribed by the Constitution and by the law indicates that such procedure is clear and transparent and that each such case, when it appears in practice, is available to the public, via print and electronic media.

The Law on Public Prosecution (Article 97) prescribes that a decision on termination of office is adopted by the National Assembly at the proposal of the Government. The State Prosecutorial Council issues the decision on termination of deputy public prosecutor's office. A decision on termination of office shall be published in the *Official Gazette of the Republic of Serbia*.

A judge may not be held responsible for his/her expressed opinion or voting in the process of passing a court decision, except in cases when he/she committed a criminal offence by violating the law. A judge may not be arrested in the proceedings instituted for a criminal offence committed in performance of judge's office without prior approval of the High Judicial Council (Article 151 of the Constitution of the Republic of Serbia and Article 5 of the Law on Judges). There have been no proceedings launched against judges for the responsibility relating to the expressed opinion in the process of decision-making.

E.g. the Criminal Code (*Official Gazette of the RS* No. 85/05, 88/05, 107/05, 72/09, 111/09 and 76/10) provides for criminal offence of violating the law by a judge, public prosecutor, and his/her deputies (Article 360) for which the punishment by imprisonment of six months to five years is prescribed and for sever forms is prescribed punishment by imprisonment of two to twelve years.

12. What is the salary scale for judges and prosecutors? How does this compare with other professions (high-ranking civil servants, attorneys, lawyers in private enterprises, etc.) and to the average income? How is the salary of judges and prosecutors set and adjusted in practice? Who is deciding about it?

Law on Public Prosecution ("Official Gazette of the Republic of Serbia", No. 116/08, 104/09 and 101/2010) lays down that the salary of public prosecutor and deputy public prosecutor is determined according to the base salary.

The base salary is defined by multiplying the ratio of calculation and payment of salaries by the base of calculation and payment of salaries.

The base of calculation and payment of salaries of public prosecutors is equal to the base of calculation and payment of salaries for the judges.

The ratio of calculation and payment of salaries is defined by classification of every deputy public prosecutor in one of the five payment groups.

Base salary, according to this law, is the value without calculating the percentage for past service.

Deputy public prosecutors are classified in four payment groups, which are expressed in ratios.

Deputy basic public prosecutors are in the first payment group.

Deputy higher public prosecutors and deputy prosecutors with special jurisdiction are in the second payment group.

Deputy appellate prosecutors are in the third payment group.

Deputy Republic Public Prosecutors are in the fourth payment group.

The Republic Public Prosecutors is in the fifth payment group.

The first payment group has the ratio 3.00.

The second payment group has the ratio 3.50.

The third payment group has the ratio 4.00.

The fourth payment group has the ratio 5.00.

The fifth payment group has the ratio 6.00.

The basic salary of the Public Prosecutor is equal to the basic salary of the President of the Court of General Jurisdiction in which the Public Prosecutor acts.

The basic salary of the War Crimes Prosecutor is equal to the salary of the President of High Court in which the Prosecutor acts.

The basic salary of the Republic Public Prosecutor is equal to the salary of the President of Supreme Court of Cassation.

The salary of the judges is established based on the following elements:

- Basis for calculation of salaries
- The ratio which multiplies by base
- Additions to salary
- Obligations paid by employee for the taxes and contributions for compulsory social insurance

The salary of the judges is established according to the Law on Judges ("Official Gazette of RS", No. 116/08, 58/09 - decision CC, 104/09 and 101/2010) which establishes the ratios and according to the Law on Budget which establishes the base of calculation and payment of salary. The basic salary of judge who performs the function in court, in which is not possible to fill the judge positions, can be increased for 50%. The basic salary of judge who acts in cases of criminal offences with the elements of organized criminal and war crime, can be increased for 100%. The High Judicial Council adopts a decision on increase.

The basic salary of the Public Prosecutor is equal to the basic salary of the President of the Court of General Jurisdiction in which the Public Prosecutor acts. The basic salary of

the Prosecutor with special responsibilities is equal to the salary of the President of Higher Court in which the Prosecutor acts. The basic salary of the Republic Public Prosecutor is equal to the salary of the President of Supreme Court of Cassation.

REVIEW OF NET SALARIES OF THE JUDICIAL OFFICE HOLDERS

	ratio	net base	net salary from 1 January 2010-RSD:	net salary from January 2010-EUR
The Judge of Supreme Court of Cassation	5,00	28.000,00	140.000,00	1.315
The Judge of Administrative Court	4,00	28.000,00	112.000,00	1.052
The Judge of Commercial Appellate Court	4,00	28.000,00	112.000,00	1.052
The Judge of Appellate Court	4,00	28.000,00	112.000,00	1.052
The Judge of Higher Court	3,50	28.000,00	98.000,00	921
The Judge of Commercial Court	3,50	28.000,00	98.000,00	921
The Judge of Basic Court	3,00	28.000,00	84.000,00	789
Appellate Public Prosecutor	4,00	28.000,00	112.000,00	1.052
Deputy Appellate Public Prosecutor	4,00	28.000,00	112.000,00	1.052
Republic Public Prosecutor	6,00	28.000,00	168.000,00	1.578
Deputy Republic Public Prosecutor	5,00	28.000,00	140.000,00	1.315
Higher Public Prosecutor	3,50	28.000,00	98.000,00	921
Deputy Higher Public Prosecutor	3,50	28.000,00	98.000,00	921
Basic Public Prosecutor	3,00	28.000,00	84.000,00	789
Deputy Basic Public Prosecutor	3,50	28.000,00	98.000,00	921
The Judge of Higher Misdemeanour Court	3,50	28.000,00	98.000,00	921
The Judge of Misdemeanour Court	2,50	28.000,00	70.000,00	658

SALARIES OF CIVIL SERVANTS ON POSITIONS	ratio	base	salary	
I group of positions	9,00	16.049,00	144.441,00	1.357
II group of positions	8,00	16.049,00	128.392,00	1.206
III group of positions	7,11	16.049,00	114.108,39	1.072
IV group of positions	6,32	16.049,00	101.429,68	953
V group of positions	5,62	16.049,00	90.195,38	847

According to the latest published data, the average net salary of civil servants for October of 2010 amounts 32,829 RSD, i.e. 309.71 €.

The salaries of the civil servants are regulated by the Law on Civil Servants ("Official Gazette of RS", No. (79/05, 81/05 - corrigendum, 83/05 - corrigendum, 64/07, 67/07 - corrigendum, 116/08 and 104/09) and by the Law on Salaries of Public Servants and Employees ("Official Gazette of RS", No. 62/06, 63/06 – corrigendum; 115/06 – corrigendum; and 101/07), where the payment groups, payment grades and ratios are defined according to the ranks. Furthermore, the base of calculation of salaries is established by the Law on Budget ("Official Gazette of RS", No. 101/10). The amount of base of judges' salaries and of base of civil servants' salaries is defined differently. According to the Law on Budget for 2010 ("Official Gazette", No.107/09 and 91/10) the amount of base of judges' salaries was 28,000.00 RSD and the amount of base of civil servants' and employees' salaries was 16,049.00 RSD, according to the Law on Budget for 2011 ("Official Gazette of RS", No. 101/10) the base of calculation and payment of salaries for judges is established in net amount of 28,560 RSD and for public servants and employees in net amount of 16,370 RSD with accompanying taxes and contributions for compulsory social insurance considering that the calculation according to this amount is being conducted starting from the salary for December of 2010.

There are no criteria based on which the salary of judge is able to compare with the salary of attorneys, given that for attorneys the Tariff for Rewards and Reimbursement of Expenses for the Attorneys is prescribed. The attorneys do not have guaranteed incomes, nor are paid from State budget funds. The attorneys' incomes depend exclusively on the number of clients, attorneys' actions and the charge of services.

The judge who is transferred, i.e. sent to the other court, ministry competent for justice, institution or international organization has the right on the basic salary of the judge of the court, i.e. on the basic salary in the ministry competent for justice, institution or international organization where he was transferred, i.e. sent, if it is more favourable for him. Benefits and other incomes of the judge who is transferred, i.e. referred to the other court, ministry competent for justice, institution or international organization are established by the High Judicial Council. The Decision on benefits of the judge who is transferred, i.e. referred ("Official Gazette of RS", No. 18/2010) establishes the conditions under which the judge who is transferred, i.e. referred to the other court exercises the right for reimbursement of expenses made regarding his work, manner of exercising rights and benefit amount. The judge shall be reimbursed with: expenses for accommodation, moving, visiting of family, expenses for the life separated from family and the expenses for the transport to and from the work.

Average monthly salary per employee in the Republic of Serbia is established according to the latest final published data of the state body competent for the statistical affairs and that amount is being established for each month, and according to this it is possible to notice the relation between the salary of the judges and the average salaries in the Republic.

13. Do judges / prosecutors receive non-monetary benefits such as free housing, real estate etc.? If yes, who decides on granting such benefits and upon which criteria?

Prosecutorial Office bearers do not have the right to non-pecuniary benefits like free accommodation, real estate etc.

The judges do not have the right to non-pecuniary benefits like free accommodation, real estate etc.

According to the Regulation on benefits and other incomes of elected and appointed persons in state authorities ("Official Gazette of RS", No. 44/2008) and the Decision on compensation of the transferred or referred judge ("Official Gazette of RS" No. 18/2010) a judge, who is transferred or referred to the other court, ministry competent for justice, institution or international organization, has the right to reimbursement of expenses made regarding his work. The above mentioned expenses include the expenses for accommodation, moving, visiting of family, expenses for the life separated from family and the expenses for the transport to and from the work.

In accordance with the Article 41 of the Law on Judges ("Official Gazette of RS", No. 116/2008, 58/2009 - CC decision, 104/2009 and 101/2010) benefits and other incomes of the judge who is transferred, i.e. referred to the other court are established by the High Judicial Council.

Regulation on benefits and other incomes of elected and appointed persons in state authorities ("Official Gazette of RS", No. 44/2008) is applied on prosecutors. The provision of Article 3 of the Regulation establishes that the elected person (public prosecutor) whose housing problem is not solved in the place where he works and who is not in use of state apartment, nor is provided the accommodation for him, has the right on reimbursement of accommodation expenses equal to the difference between the real accommodation expenses and the expenses if he used the suitable state apartment. The real accommodation expenses are accepted to the level of price of one night in hotel of second category (four stars).

The right on remuneration of other expenses in case of temporary or permanent transfer in other place of work is established by the Article 5 of the Regulation mentioned above, and in accordance with the application of regulations on civil servants, i.e. Regulation on remuneration of expenses of civil servants and employees ("Official Gazette of RS", No. 98/2007).

Compensation and other incomes of the deputy public prosecutor who is transferred, i.e. assigned to the other public prosecutor's office, are determined by the State Prosecutorial Council, with the consent of the ministry competent for the justice, in accordance with the Article 73 of the Law on Public Prosecution ("Official Gazette of RS", No. 116/2008, 104/2009 and 101/2010).

14. Do judges / prosecutors have to submit financial statements (for example to the Anti-Corruption Agency)? If yes, how detailed are these statements and which mechanism is in place to verify the content provided?

At the end of calendar year, all prosecutorial office bearers submit the tax returns for revenues made during that year to the competent tax administrations in the place of residence. Those reports are detailed and all the revenues have to be shown precisely. The tax administration verifies these tax returns and after that adopts the decision on final establishment of income taxes if the incomes of the relevant prosecutor exceed the pecuniary census established by the Government of the Republic of Serbia. Apart from that, all the prosecutors are obliged to register in the Anti-Corruption Agency (hereinafter referred to as: "Agency") all movable and immovable property they have. The Agency publishes the list of officials and registered property and, according to the law, it is authorized to check the accuracy of the data registered by each prosecutorial office holder.

The authority in which the official holds public function, is obliged to inform the Agency that the official has taken the office, i.e. that his office terminated, within seven days from the day of taking office, i.e. its termination. The Agency keeps the Register of Officials. The official is obliged, within 30 days from the day of election, assignment or appointment, to submit to the Agency the Report on his property and on incomes, i.e. on the right of usage of state apartment and on the property and incomes of spouse or common law partner, as well as of minor children if they live in the same household on the day of election, assignment or appointment (hereinafter referred to as: "Report"). If, after the expiry of the given period, he/she does not submit the Report, the Agency informs the authority in which the official holds public function. The Report is submitted within 30 days from the day of termination of the public function, according to the status on the day of termination of the public function. The official is obliged to submit the Report until 31 January of the current year at the latest with the state on the day of 31 December of previous year, if there were important changes regarding the data from the previously submitted Report. The Article 46 of the Law on the Anti-Corruption Agency ("Official Gazette of RS", No. 97/08 and 53/10) establishes the data which have to be contained in the report (data on ownership of the immovable property in country and abroad, ownership of movable property which are subject to registration to the competent authorities in the Republic of Serbia and abroad, deposits in banks and other financial organizations, in country and abroad, rights in respect of copyrights, patent and similar intellectual property rights, source and amount of net incomes from the exercising public function, i.e. public functions, membership in bodies of associations etc.).

Anti-Corruption Agency is controlling the timeliness of Report submission and the accuracy and completeness of data. For the purpose of control, the Agency can demand from the authorities which are competent to provide the data from the financial organizations, companies and other persons. The measures issued to the official because of the violation of this law are the following: cautionary measure and the measure of public announcement of recommendation for dismissal.

Considering that the judges perform their function, both those elected to mandate of three years and the judges on permanent position, abovementioned provisions of the Law on the Anti-Corruption Agency are mandatory for the judges.

15. What is the system for assignment (allocation) of cases? Are there any challenges to the practical implementation of the system?

According to the Article 39 (2) of the Law on Public Prosecution (“Official Gazette of RS”, No. 116/08, 104/09 and 101/2010) the Minister of Justice, after previously obtained opinion of the Republic Public Prosecutor, issued the Rulebook on Administration in Public Prosecution Offices (“Official Gazette of RS”, No. 110/09 and 87/10).

The abovementioned Rulebook establishes: the relation between public prosecution offices and other state authorities, citizens and public, method of keeping records, method of cases distribution, cases management, dealing with archive material and other questions important for the work of public prosecution offices. The Rulebook establishes that the distribution of cases is handled by the public prosecutor, and in case of his absence or incapacity for work, by the deputy public prosecutor set out in the annual schedule (Article 42). By authorization of public prosecutor the cases in Divisions are distributed by the Division manager. Before the assignment, the public prosecutor can classify the cases by complexity in accordance with the category of the processor. The cases, regularly, are distributed to the cases processors in the order of receiving, in a manner that the case shall be issued to the first following case processor from the list of processors made in the alphabetical order. The public prosecutor derogate from the abovementioned case assignment if it is justified by the reasons of overload and incapacity for work of some processors, specialization of processors for a certain area or if other reasons justify that. Deputy public prosecutor is, regularly responsible for the case until final court decision. Records are kept on case assignment.

In the Public Prosecution Offices, in which the conditions for keeping electronic registers by use of information - communication technologies exist, distribution of newly received cases is conducted by using a special program (mathematical algorithm), which provides that at the end of one cycle of distribution, all deputy public prosecutors have the same number of newly received cases in procedure and that they are equally overloaded. The duration of one cycle of distribution, that can not be shorter than one month, is determined by each public prosecution office in accordance with the annual inflow of cases, the annual work schedule and the number of deputy public prosecutors.

There are no difficulties for the practical application of the abovementioned system in prosecution offices.

The Law on Judges (“Official Gazette of RS”, No. 116/08, 58/09 – decision CC, 104/09 and 101/2010) establishes the principle of the randomized case distribution. The judge receives the cases in order independent of personalities of the parties and the circumstances of the legal matter. The cases are entrusted to the judge according to the work schedule in the court, in accordance with Court Rules of Procedure, in predetermined order for each calendar year, based solely on the mark and the number of case. No one has the right to form judge panels and to assign cases derogating from the work schedule and cases order of receiving. The case may be taken away from the judge

only in case of long absence or if disciplinary sanction for disciplinary violation of unjustified delay in proceeding is legally imposed on a judge. .

In order to ensure equal overloads of all the judges of the court, the Court Rules of Procedure ("Official Gazette of RS", No.110/2009) initially sorts newly received cases by urgency, type of procedure, i.e. the legal field, and then distributes them according to the astronomical calculation of the time of receipt, by the random method of election of judge, in accordance with the established annual schedule of activities (Articles 49 – 56). The cases are distributed by manually entry in the register in order of receipt and serial number that is by using business software for case management, although the group of newly received cases is distributed firstly and then the cases arrived in court in some other way. The courts in which the conditions for keeping electronic registers exist, the distribution of newly received cases is done by using a special program (mathematical algorithm), which provides that at the end of one cycle of distribution, all the judges have the same number of newly received cases in procedure and that they are equally overloaded. The cycle of distribution of cases lasts one month. Special decision of the President may derogate the order of case assignment due to the judge's justified incapacity to work (temporary incapacity to work, leave from work in accordance with special regulations, etc.). In the repeated procedure by a legal remedy remedy, the case is assigned to the judge or to the board that was previously acting in that case. The activities of classification and distribution of cases are conducted by the administrative offices according to the annual work schedule that is according to the special decision of the President.

The judge has the right to object the annual work schedule, change of the sort of work, derogation from the order of receipt of cases or their revoking to the President of the directly higher court within three days from the day of finding thereto. The General Session decides on the objection of judge of the Supreme Court of Cassation. The party has also the right to object the case revoking, within three days from the day of finding thereto. The President of the Court is obliged to notify, in written form, the President of a directly higher court on any derogation from the order of received cases.

In the courts, there are no difficulties in the procedure of distribution of cases in the courts.

In the automated case management (ACM) of the business software, which is owned by the Ministry of Justice, there is a system of case assignment and it is also enabled the complete management of all sorts of cases within the court. In addition, all the business procedures during the work with case are covered. Apart from this, all the actions under the jurisdiction of court administration are covered. The system is flexible and allows easy creation of new and modifying of existing registries (if there is a change in regulations), as well as the organization of the system through the system of codes in a standardized manner, in coordination with the Commission that, according to the provisions of the Court Rules of Procedure, is dealing with issues of standardization of the way the courts work by the application in the ACM. The difficulties for the proper implementation of case assignment do not exist if the ACM is used in everyday work in courts in a manner that employees were trained during ACM trainings. The trainings for

work in the ACM in each court lasted from minimum three weeks to two months depending on the size of the court. The case assignment is conducted in accordance with the algorithm that was created and it can be modified according to the submitted annual schedule of work in the court (if there is a change of the annual work schedule of the court) in coordination with IT services of the courts which request the modification of the algorithm and with the Commission that, under the provisions of the Court Rules of Procedure, is dealing with issues of standardization of the way the courts work by the application in the ACM (which apart from the representatives of the Department of Operations and Technologies of the Ministry of Justice, has also the representatives of courts, i.e. judges, representatives of the IT services of the court and the court administrative office representatives), as well as with the authors of ACM programme (within the warranty period). Any potential needs for "amendments to the module in ACM" are also conducted in coordination with IT services of courts and the Commission that under the provisions of the Court Rules of Procedure is dealing with issues of standardization of the way the courts work in ACM, as well as with the authors of ACM programme (within the warranty period). There is an ongoing project in coordination of the Ministry of Justice and the Delegation of the European Union which should, until spring of 2012, provide the creation of DATA centre of courts, that should become a centre of IT services of the courts, significantly simplify the communication with the Commission regarding the future requirements regarding the maintenance of business application.

16. What are the measures in place to prevent conflict of interest in judiciary? Who can decide on it? How is implementation ensured and what are the practical challenges in the implementation of these measures?

The Law on Public Prosecution ("Official Gazette of the Republic of Serbia", No. 116/08, 104/09 and 101/2010) prescribes the incompatibility of prosecutorial office with other offices, activities or private interests. Public Prosecutor and Deputy Public Prosecutor may not have an office in the bodies which adopt regulations and in the bodies of executive authorities, public services and provincial autonomy bodies and local self-government units, may not be members of political parties, engaged in public or private paid work, nor provide legal services or give legal advices for a fee.

As an exception, the prosecutorial office bearers can be members of management bodies of the institution competent for the training in the field of justice, according to the decision of the State Prosecutorial Council.

Other offices, activities or private interests, that are contrary to the dignity and independence of public prosecution office or damage its reputation, are also incompatible with the public prosecutor office.

The State Prosecutorial Council determines other functions and activities that are contrary to the dignity, i.e. disturb independence or damage the reputation of public prosecution office.

The Public Prosecutor and Deputy Public Prosecutor may practice teaching and scientific activities, out of working hours, without special permission, for a fee.

The Constitution of the Republic of Serbia (“Official Gazette of RS”, 98/06) establishes that political activities of judges are prohibited and that the law establishes which other functions, activities or private interests are incompatible with the judicial function.

The judge can not hold office in bodies which adopt regulations and in the bodies of executive authorities, public services and provincial autonomy bodies and local self-government units. The judge may not be a member of political party, nor act politically in some other way, may not be engaged in public or private paid work, nor provide legal services or give legal advices for a fee. As an exception, the judge may be a member of the management body of institution responsible for judicial training, based on the decision of the High Judicial Council in accordance with the special law (for example the four judges are, in accordance with the Law on the Judicial Academy, members of the Management Board of the Judicial Academy). Other offices, activities or actions, that are contrary to the dignity and independence of judge or damage the court reputation, are also incompatible with the judicial office.

The Law on the Anti-Corruption Agency (“Official Gazette of RS”, No. 97/2008, 53/2010 (hereinafter referred to as: “Agency”) in Article 28 establishes that the official may only hold one public function, unless the law and other regulations require to carry out more public functions. As an exception, the official may hold other public function, with the consent of the Agency. The official who is elected, appointed or assigned on other public function and who intends to simultaneously hold more offices is obliged to ask for the consent of the Agency within three days from the day of election, appointment or assignment. Along with the request, the official delivers a positive opinion from the body that has elected, appointed or nominated him/her to a public office. The Agency will not give approval to carry out other public office, if the exercise of that office is in conflict with the public office that the official already holds that is if it finds a conflict of interest, and shall accordingly issue a reasoned decision. If the Agency does not decide within the prescribed period, it is considered that it gave an approval for official to carry out other public office, unless an official is banned by another regulation to exercise simultaneously those two public offices. The official, when entering his duties and during the exercising of public office, is obliged within eight days to notify in written the directly superior and the Agency on suspicion on a conflict of interest or on a conflict of interest that he/she or related party has. If the Agency establishes that there is a conflict of interest, it shall notify the official and authority in which he/she holds public office and propose measures to eliminate conflicts of interest. The individual act, in which adoption the official who had to be exempted because of the conflicts of interest participated, is null and void.

The laws which regulate court procedures establish situations in which a judge must be exempted, i.e. excluded from procedure in the concrete case so as not to raise the doubt in the impartiality of the judge or in existence of the conflict of interest. The Civil Procedure

Law ("Official Gazette of RS", No. 125/2004 and 111/2009) establishes that a judge can not perform his duties if the person is a party, legal representative or a proxy of a party, if he/she is in relation of co-authorized person with the party, co-shareholder person or recourse taxpayers, or if in the same case was questioned as a witness or an expert; if he is a shareholder, a member of a company or a member of the cooperative and when one of the parties is his/her creditor or debtor; if his/her party or his/her legal representative or proxy of a party is his next of kin relative in linear relations, and in the lateral line to the fourth degree, or his spouse or cohabiting partner (current or former), a relative by marriage to the second degree, regardless of whether the marriage is terminated or not; if he is the guardian, adoptive parent or adopted child of the party, legal representative or attorney, or if between the judge and party, legal representative or authorized party there is a common household; if he/she participated as a bankruptcy judge or member of Bankruptcy Council in bankruptcy proceedings, due to which there has been a dispute, or if any other litigation is pending between the judge and the previously mentioned persons or if there is a conflict of interest. The Criminal Procedure Code establishes the reasons for judge exemption. A judge can not perform his duties if he suffered damages by the criminal offence, if the defendant is his counsel, the prosecutor, the injured party, their legal representative or attorney, spouse or next of kin relative in linear relations to any degree, the lateral line to the fourth degree, a relative by marriage to the second degree; if he/she is with the the defendant, his defence attorney, prosecutor or the injured party in a relation of a guardian, adoptive parents, adopted child, foster parent or foster, if he/she conducted enquiries, or participated in the proceedings as prosecutor, defense counsel, legal representative or attorney of the injured party, i.e. prosecutor in the same criminal case, or he/she was interrogated as a witness or as an expert witness, and if in the same case, he participated in the decision making before lower court, or if in the same court he participated in making a decision contested by the appeal. Disrespect of the legal provisions, relating to exclusion and exemption of judge, represents substantial violation of civil or criminal procedure, as well as one of the reasons for lodging of appeal against this decision.

The provisions of the Criminal Procedure Code are accordingly applicable to the public prosecutors and their deputies.

High Judicial Council decides which activities are contrary to the dignity and independence of a judge and damaging to the reputation of the court, based on the Code of Ethics. A judge is required to notify in written the High Judicial Council, on every service or engagement that may possibly be incompatible with the judicial office. The High Judicial Council notifies the president of the court and a judge on the existence of the incompatibility of service or work with the judicial function.

In 2010 the High Judicial Council acted on the request for reaching a decision on the incompatibility of judicial office with the activities of an interpreter and determined that these activities are incompatible with the activities of a court interpreter. Furthermore, acting on the request of judges, it was established that the position of the President of Commission for conduction of proceedings and making a decision on the request for return of land is not incompatible with the judicial function, given that a special law

prescribes that a judge shall be appointed for the President of the Commission - the Law on the manner and conditions of rights recognition and restitution of land that became public property based on the agricultural land fund and by the confiscation of the outstanding commitments from the compulsory purchase of agricultural products ("Official Gazette of RS", No. 18/91, 20/92 and 42/98).

The President of the Court is obliged to file disciplinary charges as soon as he/she learns that the judge performs service or work or actions for which there is a possibility that they are incompatible with his function.

17. What are the measures to ensure freedom from undue external influence and how are they implemented in practice? Does the law provide sanctions against persons seeking to influence judges? Are judges criminally liable only for offences committed outside their judicial office? Is there a system of civil responsibility of judges for their decisions?

The judge is obliged, in every situation, to preserve trust in his independence and impartiality. In order to keep impartiality, the laws which regulate court procedures (The Civil Procedure Law, ("Official Gazette of RS", No. 125/2004 and 111/2009), the Criminal Procedure Code ("Official Journal of the FRY", No. 70/2001, 68/2002, "Official Gazette of RS", No. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2008, 20/2009, 72/2009, 76/2010), the Law on the General Administrative Procedure ("Official Journal of FRY", No. 33/97 and 31/01, 30/10), establish the reasons for exclusion of a judge and non-compliance with these provisions represents a substantial violation of the procedure. The judge is obliged to refrain from trial in procedures where there are reasons for doubt in his impartiality. The Code of Ethics establishes that doubt about the impartiality of judges is in particular encouraged by family, friend, business, social and similar relationships with clients and their representatives. The violation of the principles of impartiality and independence is one of the disciplinary violations.

The provision of the Law on the Anti-Corruption Agency ("Official Gazette of RS", No. 97/2008, 53/2010 (hereinafter referred to as: "Agency") establishes that the official is obliged to immediately inform the Agency on the prohibited influence he/she was exposed in exercising of public office (Article 37). The Agency shall notify the competent authority about the allegations of the official, in order to initiate disciplinary, misdemeanour and criminal proceedings, in accordance with the law. The competent authority is obliged, within 30 days from the day of receipt of the notice, to inform the Agency on the measures it has taken.

If a person trying to influence a judge has committed criminal offence therewith, the sanction prescribed for that criminal offence shall be ordered. The Criminal Code ("Official Gazette of the RS", No. 85/05, 88/05, 107/05, 72/09, 111/09 and 76/10) regulates the criminal offence of bribery, which carries a penalty of imprisonment up to five years, and the criminal offence of unauthorized public comment on court proceedings which stipulates that whoever during the proceedings before the court and before a final court decision is issued, with the intent of violating the presumption of

innocence and independence of the court, gives public statements in the information media, shall be sentenced by imprisonment up to six months and a fine.

Parties and other participants in judicial proceedings are entitled to file complaints against judges when they consider that there is any prohibited influence on its course and outcome. The judge is responsible for all committed criminal offences, but he can not be deprived of liberty in proceedings instituted for a criminal offence committed in performing their judicial office without the approval of the High Judicial Council. If criminal proceedings for the offence for which the judge could be dismissed is conducted against the him/her, the judge may be suspended from judicial office. Furthermore, the judge is removed from the office when convicted for a criminal offence to an unconditional imprisonment lasting minimum six months, or for a criminal offence making him unworthy of conducting judicial office.

The Republic of Serbia is liable for damage caused by a judge through unlawful or improper actions. According to the legal interpretation, which was adopted at a meeting of the Civil Department of the Supreme Court of Serbia of 15 March 2007, it is not allowed to lodge direct claim against the judge for the damage caused by improper work. This is in accordance with the European Law on Judges from 1998 which in Article 5 point 1 contains a rule on the civil and legal immunity of judge and inability of his delict responsibility for error in the trial (unlawful or improper work) with the possibility of recourse of the state from the judge in the specified cases. The Law on Judges ("Official Gazette of RS", No. 116/2008, 58/2009 – decision CC, 104/2009 and 101/2010) establishes the rules on recourse in the case when the damage was caused intentionally or by gross negligence of the judge. When it is determined by the final decision of the Constitutional Court, a final and binding court decision or settlement before a court or other competent authority, that the damage was caused intentionally or by gross negligence, the Republic of Serbia may demand compensation of paid amount from the judge. When the decision of the European Court of Human Rights and other international court or international organization, in which Serbia is a member, determined that there was a violation of human rights and fundamental freedoms during the trial and that the judgement was based on such violations, or that the judgement failed, due to violation of right to a trial within a reasonable period, the Republic of Serbia may demand compensation of paid amount from the judge, if the damage was intentional or grossly negligent. The High Judicial Council decides on the existence of conditions for compensation of paid amount, at the request of the ministry competent for justice (Law on Judges).

18. Have there been any allegations on corruption in the judiciary and, if so, are there any convictions in such cases? Is there a strategy/action plan to fight corruption in the judiciary? If so, what are the practical results in their implementation? Please provide statistics on indictments and convictions in cases of corruption in the judiciary over past 5 years.

Chapter Thirty Three of the Criminal Code (*Official Gazette of RS*, No. 85/05, 85/05 - corrigendum, 107/05 - corrigendum, 72/09, 111/09) provides for criminal offences against official duty, which include criminal offences of corruption, such as violation of

law by a judge, public prosecutor or his/her deputy (Article 360), accepting bribes (Article 367) and bribery (Article 368).

The National Assembly of the Republic of Serbia passed the National Anti-Corruption Strategy in 2005. The Government of the Republic of Serbia adopted the Action Plan for the Implementation of the National Anti-Corruption Strategy in 2006. There is a section within the Anti-Corruption Strategy which addresses the fight against corruption in the judiciary. The Action Plan provides recommendations for the establishment of specialised divisions within the public prosecutors offices for the prosecution of corruption cases, recommendations for banning the political activity of barers of judicial functions, for the adoption of an integrity plan in courts and prosecutors offices, for the adoption of a code of conduct for barers of judicial functions with mandatory regulation of the prohibition of corruptive behaviour and ensuring its effectiveness, for specialist advanced training of barers of judicial functions , for the introduction of mandatory periodical analyses of the work of bodies responsible for investigation, prosecution and adjudication, for mandatory periodical evaluation of the work of bearers of public prosecutor functions, holders based on predetermined criteria, for mandatory subsequent review of prosecution decisions not to initiate or discontinue proceedings involving criminal offences with elements of corruption, or in cases of procrastination of criminal proceedings, for the elimination of influence of political structures on pre-trial proceedings. Practical results of the implementation of this section of the Anti-Corruption Strategy in judiciary are reflected in professionalism, coordination, more responsibility and control of everyone responsible for the prosecution of criminal offences with elements of corruption, as well as prevention of the influence of political and unofficial groups on the work of barers of public prosecutor functions, reduction of corruption risks, improvement of the success rate of conducting pre-trial proceedings and criminal proceedings, independence, expertise and autonomy in work.

In accordance with the National Strategy and the Action Plan, the Republic Public Prosecutors Offices is in charge to pay special attention on cases with elements of corruption in judiciary, so an auxiliary register has also been formed. This register contains data on criminal charges, which according to higher and basic prosecutions, may have elements of corruption (e.g. abuse of office referred to in Article 359 of the Criminal Code, unlawful mediation referred to in Article 366 of the Criminal Code, illegal crossing of state border and human trafficking referred to in Article 350 of the Criminal Code, violation of law by a judge, public prosecutor or his/her deputy referred to in Article 360 of the Criminal Code etc.)

Data in the public prosecution register indicate that proceedings regarding prosecution of criminal offences which could have elements of corruption inside or outside of the judiciary or which were perpetrated in connection with corruption in Serbia, in the period between 2003 and 2007, were conducted in the following manner:

Year	Criminal offences	Convictions	Appeals	Upheld	Denied	High-level corruption
2003	bribery and accepting bribes	89	67	11	4	

	abuse of office, dereliction of duty	683	319	95	104	
	unlawful mediation	21	13	2	1	
	other criminal offences	1				
		65	25	5	8	
2004	bribery and accepting bribes	316	148	43	67	
	abuse of office, dereliction of duty	691	385	105	130	
	unlawful mediation	13	10	2	3	
	other criminal offences	2	1			
		46	18	3	9	
2005	bribery and accepting bribes	82	39	9	12	
	abuse of office, dereliction of duty	687	377	116	159	
	unlawful mediation	16	13	2	7	
	other criminal offences	0	0		0	
		63	36	10	14	
2006	bribery and accepting bribes	75	27	3	9	1
	abuse of office	725	374	102	118	
	dereliction of duty	-	-	-	*	
	violation of law by a judge,	3	1			
	unlawful mediation			2	22	
	other criminal offences	109	25			
2007	bribery and accepting bribes, abuse	64	48	4	10	1
	of office, violation of law by a	734	540	168	152	
	judge, unlawful mediation					
	other criminal offences	28	57	13	23	
Total						

The new methodology for monitoring corruptive criminal offences and the data in the register indicate that in 2007, there were 578 cases of criminal charges with elements of corruption filed in Serbia.

In 264 (two hundred and sixty-four) cases out of this number, criminal charges were dismissed after being checked by the Ministry of Interior of RS, or after an investigation had been conducted, due to lack of evidence. Indictments were raised in 49 cases, requirements to conduct investigation were submitted in 97 (ninety-seven) cases, whereas 8 (eight) cases were referred to the competence of then District and Municipal Public Prosecutors Offices. 12 cases resulted in conviction, 7 in acquittal and 2 in dismissal (due to the death of the defendant) in the period considered.

The rest of the cases were in the stage of checking the allegations of the criminal charges and the work of the prosecution regarding these cases is still being monitored. Note that the presented data do not contain information on cases already familiar to the public, such as the “bankruptcy mafia case”, the “road mafia case”, the “case of the professor of the Faculty of Law in Kragujevac”. All reports submitted by Municipal and District Prosecutors Offices are being considered by the Republic Public Prosecution Commission.

Pertaining to corruption in judiciary in particular, charges were filed in 2005, when two persons were charged with the criminal offence of violation of law by a judge, public prosecutor or his/her deputy referred to in Article 360 of the Criminal Code. In this case, suspended sentence was passed, which was confirmed upon appeal along with a security measure. In the same year, one person was charged with the criminal offence of accepting bribes referred to in Article 367 of the Criminal Code, who was sentenced to jail by final

judgment. In 2006, two persons were charged with the criminal offence of violation of law by a judge, public prosecutor or his/her deputy referred to in Article 360 of the Criminal Code. Proceedings are pending against one person, whereas the other person was acquitted and the judgment was confirmed on appeal. In 2007, two persons were charged with the criminal offence of violation of law by a judge, public prosecutor or his/her deputy referred to in Article 360 of the Criminal Code and proceedings are pending against both persons. Furthermore, in 2008, two persons were charged with the criminal offence of accepting bribes referred to in Article 367 of the Criminal Code and proceedings are pending. In 2009, one person was charged with the criminal offence of bribery referred to in Article 368 of the Criminal Code, who was acquitted in 2010 and proceedings upon appeal are pending (Republic Public Prosecution).

In its hitherto work, the Prosecution for Organised Crime has initiated criminal proceedings against three judges and one former deputy prosecutor because of criminal offences of accepting bribes and abuse of office, which belong to the group of corruptive criminal offences.

The Prosecution for Organised Crime charged Vuckovic Ljubomir, judge of the Supreme Court of Serbia with criminal offences of accepting bribes referred to in Article 367, abuse of office referred to in Article 359 of the Criminal Code of RS and unlawful mediation referred to in Article 366 of the Criminal Code of RS. Upon the criminal proceedings, the Special Division of the Higher Court in Belgrade convicted the defendant Ljubomir Vuckovic and imposed an aggregate sentence of imprisonment of 8 years. Upon appeal, this sentence was altered to imprisonment of 6 years.

The Prosecution for Organised Crime charged Caslav Maslarevic, former public prosecutor in Pozega with committing the criminal offence of accepting bribes as a barer of judicial function. In proceedings before the Special Division of the Higher Court in Belgrade, he was sentenced at first instance to imprisonment of 4 years and a fine of 500,000,000 dinars, and a security measure of prohibition of performing judicial functions for a period of 5 years was imposed.

President of the Commercial Court Goran Kljajevic was sentenced to one year of imprisonment due to commitment of the criminal offence of abuse of office, before the Special Division of the Higher Court in Belgrade, upon the indictment of the Prosecution for Organised Crime. Criminal proceedings are still pending against him under reasonable suspicion that he committed criminal offences of criminal conspiracy, accepting bribes and abuse of office (Prosecution for Organised Crime).

Judge of the Commercial Court Delinka Djurdjevic is being tried for the commitment of criminal offences of accepting bribes and abuse of office in the same proceedings, before the Special Division of the Higher Court in Belgrade, upon the indictment of the Prosecution for Organised Crime (Prosecution for Organised Crime).

According to the information of the Supreme Court of Serbia and the High Personnel Council, there were cases when criminal proceedings were initiated ex officio for criminal offences with elements of corruption against judges. The District Court in Smederevo conducted proceedings against judge of the Municipal Court in Pozarevac Slobodan Kojadinovic in the case K No. 63/05 for criminal offences of violation of law by a judge referred to in Article 360 of the Criminal Code of RS and counterfeiting

official documents referred to in Article 357 of the Criminal Code of RS. The Supreme Court of Serbia confirmed the suspended sentence in the procedure of second instance by judgment KZ I2539/07 and imposed the security measure of prohibition of performing duty for a period of 10 years. The Municipal Court in Valjevo conducted proceedings against judge of the Municipal Court in Mionica Dragan Radosavljevic, who was convicted by final judgment for the criminal offence referred to in Article 208(1) of the Criminal Code of RS and sentenced to imprisonment of three months. In this case, the High Personnel Council established reasons for release of the judge. The District Court in Novi Sad convicted judge of the Municipal Court in Backa Palanka Dragan Samardzija in case K No. 438/06 for the criminal offence of accepting bribes referred to in Article 367 of the Criminal Code of RS. The sentence of imprisonment of one year was imposed. The appeal of the district public prosecutor was upheld by the ruling of the Supreme Court of Serbia - the defendant was sentenced to imprisonment of 2 years. In this case, the High Personnel Council established reasons for release of the judge. The District Court in Nis convicted judge of the Municipal Court in Knjazevac Vladimir Radivojevic for the criminal offence of violation of law by a judge referred to in Article 360 of the Criminal Code. The judgment of the Supreme Court of Serbia found the aforementioned person guilty of the criminal offence he was charged with, and he was sentenced to imprisonment. In some cases, criminal proceedings were conducted against judges for the criminal offence of violation of law by a judge, criminal offence of accepting bribes and criminal offence of abuse of office, but these proceedings ended with a final judgment of acquittal or dismissal of proceedings (High Court Council).

II ANTI-CORRUPTION

Policy and domestic institutions

19. Educational system:

a) Are internships for law graduates organised within the judiciary? If so, how is this done?

Articles 49 and 50 of the Law on the Judicial Academy regulate the status of interns. Interns within courts or prosecutors' offices are required to pass an entrance exam to be admitted for internship. The programme for the internship entrance exam is passed by the Judicial Academy's Managing Board at the proposal of the Training Programme Council. The total entrance exam mark is composed of the undergraduate studies average mark and the entrance exam mark. The undergraduate studies mark accounts for 40%, whilst the entrance exam mark accounts for 60% of the total entrance exam mark. The successful candidates are those with the highest total mark. Interns are trained according to the Training Programme and under a mentor's supervision.

The provisions of the Law on Judicial Academy governing the status of interns have considerably improved the intern selection regime (an entrance exam is introduced as an objective and transparent selection procedure) and their training. Before, the selection of interns depended exclusively on the presidents of courts which left room for a certain measure of subjectivity in the process.

For the duration of their internship, the interns will be trained by their mentors. The mentors are experienced judges or prosecutors with at least 7 years of experience. In addition to the knowledge and work experience, the mentors are to attend special training in additional skills. The Law on Judicial Academy envisages a special mentor training programme. A Standing Committee for Mentors and Trainers has been nominated to work with the Association for Adult Training and the Adult Education Department of the Faculty of Philosophy in order to develop a mentor and trainer training curriculum. The envisaged mentor training lasts for three days, whilst the fourth day of the training seminar is dedicated to training of the Academy's trainees. This training segment focuses on adult teaching, methodology, transfer of knowledge, etc. The areas covered by the specialist mentor and trainer trainings include European law; Human rights; Civil law; Administrative law; and Commercial law.

b) Is there any other form of pre-service training?

Initial training has been stipulated in the Law on Judicial Academy explicitly and in detail. It is a **precondition** for judges or prosecutors to be appointed. The Law also provides for a possibility, in case where no candidates with initial training have applied, that candidates fulfilling only the general requirements for a judge or prosecutor stipulated in the Law may be proposed for appointment as minor offence or basic court judges, or deputy basic public prosecutor.

Please note that in order to apply for initial training at the Judicial Academy the successful candidate needs to meet the GENERAL REQUIREMENTS including to have passed the bar exam and fulfil the general requirements for employment at State authorities. Studying for a bar exam and requirements to take the bar exam can be regarded as yet another additional form of training before the initial training at the Judicial Academy.

In order to take the bar exam, the candidate should have graduated from a Faculty of Law, and should have experience working as a legal professional, as follows:

- Two years' experience at a court, public prosecutor's office, public attorney office, or as lawyer;
- Three years' experience at the minor-offence authority, other State authority, or a body of territorial autonomy or local self-government;
- Four years' experience at a company, institution, or other organisation.

The bar exam is composed of a written and oral part, and it is administered by the Ministry of Justice pursuant to the Law on Bar Examination (*Official Gazette of the RS*, No 16/97) and relevant by-laws.

20. Training:

a) Please describe the training system for judges and prosecutors. Is it compulsory? In the case where vocational training is an obligatory requirement for entering the career of a judge or prosecutor, what are the selection criteria for being admitted to such training? If there is a requirement to have passed a final examination, how is such an examination organised?

A judge has the right and obligation to professional training at the expense of the Republic of Serbia in accordance with a particular law. Training of judges is organized acquiring and advancing of theoretical and practical knowledge and skills necessary for independent, professional and efficient performance of judge function. Training is compulsory based on the law or the High Judicial Council decision evaluation. Training programme content is determined depending on the judge professional experience (The Law on Judges, Art. 9).

The procedure of organizing permanent training for judges has been regulated by the Law on Judicial Academy (*Official Gazette of the Republic of Serbia*, No. 104/2009) (hereinafter "The Academy"). Permanent training can be voluntary or compulsory. Permanent training is voluntary except it is anticipated as compulsory by the law or the High Judicial Council decision in the case of specialization change, significant change of rules and regulations, introduction of new operation techniques or in order to eliminate deficiencies observed in their performance as well as for judges who are appointed to the judicial position for the first time and have not attended initial training programme. The permanent training programme is adopted by the Judicial Academy Steering Committee upon the Programme Council proposal and with the agreement of the High Judicial Council. The High Judicial Council decision for particular categories of judges may

prescribe a compulsory permanent training in the case of the election for court, i. e. public prosecutor office of higher instance, specialization change, significant change of rules and regulations and introduction of new work techniques. The Academy is obliged to develop a special permanent training programme in accordance with the High Judicial Council decisions. For family relations proceedings and in juvenile criminal proceedings judges have to experience compulsory training and the obligation has been regulated by special laws defining these proceedings. Judicial Academy which, according to the Law on Judicial Academy has undertaken the jurisdiction for acquiring special knowledge in accordance with the Law on Juvenile Criminal Perpetrators and criminal and legal protection of juveniles, organized the training of judges to acquire the necessary knowledge according to the mentioned law; the training is intended for judges lacking the certificate for proceedings where a juvenile is a perpetrator or a victim of the crime (I and II training cycle stages); it has also organized the training for judges who have passed the previous two cycles of specialist training and already have a certificate on completed training for juvenile – victim of the crime (III training cycle stage).

It is the Academy's duty, once a year, till December 01 the latest, to submit to courts an approximate annual programme of voluntary training for the next calendar year. Judges send their applications for the programme to the Academy till December 31 of the current year for the next calendar year. For each of the offered programmes the Academy defines participants and informs courts and public prosecutor offices about that.

Professional training is not a requirement for the appointment to judge position, except that the participants to initial training at Judicial Academy (hereinafter "the Academy") have to apply for judges of a misdemeanor court or basic court, i. e. deputy public prosecutor. High Judicial Council is obliged, when proposing candidates for judges of a misdemeanor court or basic court judges to propose the candidates who have completed the initial training at the Academy and according to the results achieved on the initial training.

Judicial Academy has started to work since January 01, 2010, thus the process of creating the contemporary system of judge and prosecutor education has been encircled. By opening Judicial Academy, the transformation of Judicial Center has been completed and for the last eight years it has been delivered permanent training programmes for judges and prosecutors. The first generation of the Academy attendees was enrolled in September and the period from the beginning of the year till autumn has been directed primarily towards constituting the Academy bodies and establishment of initial training programme.

In addition to permanent training of judges and prosecutors, the Law on Judicial Academy introduced the initial training for preparing the future holders of judicial functions. The number of initial training participants for judges of a misdemeanor court, basic court judges or public prosecutor deputies is determined, each year, by the High Judicial Council and State Prosecutorial Council according to the objective administration of justice needs. The Academy opens the competition for candidates for initial training programme.

General requirements for individuals to apply are successfully taken judicial exam and fulfillment of general conditions for work in public bodies. Candidates take an entrance exam that includes practical test, theoretical test and personality test. Conducting of entrance examination has been regulated by the Rulebook on Taking Admission Exam and is based on transparent and objective criteria. The first generation entrance exam was carried in the period September 20 - 30, 2010.

The entrance exam programme is developed by a special Committee for Entrance Exam Programme Preparation and is adopted by the Programme Council. The Programme Council has also approved of the Rulebook on Taking Entrance Exam. The Rulebook regulates the mode of taking the entrance exam, duration of individual entrance exam segments, as well as candidate rights and obligations. In accordance with the Law, Steering Committee has confirmed Exam Programme and the Rulebook on Entrance Exam. In order to achieve transparency, the Programme and the Rulebook are published on the Academy Internet site and sent to all courts, prosecutor offices and Serbian Chamber of Lawyers so the interested candidates may introduce themselves with the programme and start preparing for taking Entrance exam.

Entrance ad is published in the Official Gazette and daily newspapers.

Committee for Entrance Exam determines the ranking list of applicants according to the achieved results from all three parts of the entrance exam (written, personality test and oral part). Each Exam Committee member gives individual grades for each candidate, it is written down and put into mutual minutes. Candidates from the ranking list are admitted to the training programme till the number of initial training participants, determined for the current year has been filled in. After completing the oral part of the entrance exam the list of candidates with the results of each admission exam part and final evaluation is published.

The initial training programme participants are trained under mentor supervision in courts, prosecutor office and the part of the training is spent outside the administration of justice. In each initial training stage, mentors evaluate participants, except during the period they spend outside the administration of justice. At the end of the initial training programme, participants take final practical exam. Final exam is in the form of simulated trial, case study in duration of three days. Participants will have the opportunity to take the role of civil department judge the first day, criminal department judge the second day and a prosecutor the third day. Final grade is the average of the sum of grades from each part of the training.

High Judicial Council and State Prosecutorial Council must propose for the position of judge in basic court, judge of a misdemeanor court or a deputy in public prosecutor office, the candidate who has completed initial training, to the Assembly. If there are no candidates who have completed initial training then they can propose candidates fulfilling general criteria for the position of judge in basic court, judge of a misdemeanor court or a deputy in public prosecutor office.

Continuous training of judges and prosecutors is voluntary in general, unless other laws, such as the Law on Juvenile Perpetrators and criminal and legal protection of juveniles and Family Law, defines it as compulsory. Another exception to the principle of voluntarism for continuous training is when High Judicial Council or State Prosecutorial Council prescribe a compulsory training. It refers to the cases, such as, specialization change, significant change of rules and regulations, introduction of new operation techniques and elimination of deficiencies in judge and prosecutor performance observed during their evaluation.

The Academy conducts a special continuous training programme for judges and prosecutors chosen for the first time to these functions and not having completed the initial training. The contents and duration of the special continuous training programme is defined by the Programme Council act, depending on participant professional experience. Special continuous training programme participant will have smaller work volume and work hours up to 30 percent during the programme and it is based on the High Judicial Council decision, i. e. State Prosecutorial Council decision. The meaning of this training is to facilitate and enable judges and public prosecutor deputies, elected for the first time, to start working more efficient and effective.

The Academy keeps the record of continuous training programme participants and sends the data to High Judicial Council, i. e. State Prosecutorial Council. These data, as well as the data on lecturers and mentors will influence the promotion of judges and public prosecutor deputies, as an expression of their readiness to additional involvement.

b) Judicial Academy: Give information on its programmes, staff, number of students, financing etc. Are there other training facilities?

Judicial Academy is established as an institution which performs activities in order to provide the achievement of rights defined by the Law on Judicial Academy (Official Gazette of the Republic of Serbia, No. 104/2009) which are significant for the judicial system of the Republic of Serbia.

Judicial Academy (hereinafter “The Academy”) is an institution responsible for judges, prosecutors and administrative personnel training. It was established by the Law and it is a legal follower of the Center for Training and Professional Advancement (Judicial Center). Judicial Academy delivers various continuous training programmes and currently it delivers initial training for the first generation of participants.

Its basic goal is to provide professional, independent unbiased and efficient performance of judge and prosecutor functions and efficient work of judicial and prosecutor personnel in accordance with the Constitution of the Republic of Serbia (Official Gazette of the Republic of Serbia, No. 98/06) and international documents of both the United Nations and the Council of Europe.

The Academy activity is not limited only to the organization and conducting of training but it includes the establishment of cooperation with domestic, foreign and international

institutions, organizations and associations, as well as publishing and research and documentation activities through documentation and information center. Such a solution that regulates the establishment of cooperation with other institutions, organizations and associations follows “the best practice” of contemporary training in justice system and it increasingly means an active cooperation not only with training centers of other related professions (lawyers, notary public, etc.) but also with judicial academies and schools in other countries (with which the cooperation is often based on written agreements) or with various international networks within which there are various institutions dealing with training in justice administration (Lisboa Network of the Council of Europe or European Network for EU Justice Training). The creation of legal assumptions for establishing documentation and information center enables the gathering and development of materials referring to initial and permanent training organized by the Academy. In addition, the collection of the highest court decisions in the Republic of Serbia and the development of professional manuals intended for practitioners in justice administration represent an important factor for successful delivery of initial and permanent training of judicial function holders.

The bodies of the Academy are Steering Committee, Director and Programme Council. The Academy Steering Committee consists of three representatives appointed by the High Judicial Council, one of whom upon the Association of Judges proposal; three representatives appointed by the State Prosecutorial Council, one of whom upon the Association of Prosecutors proposal; and three members appointed by the Government. The most important responsibility of the Steering Committee is to adopt training programmes in agreement with High Judicial Council and State Prosecutorial Council. Steering Committee also approves of the members of the Entrance Exam Committee and other permanent Programme Council committees, decides on lecturer and mentor fees and passes the Academy Statute and other acts.

Programme Council is a professional body of the Academy responsible for establishing initial and continuous training programmes, i. e. lecturer trainings and determination of entrance exam programme; it is in accordance with the practice of many countries having institutions for justice administration training and the mentioned international standards. The composition and conditions that must be fulfilled by the programme Council members appointed by the Steering Committee, provide the representation of both judges and public prosecutors and judicial and prosecutor personnel.

The Academy has its premises in Belgrade, Nis, Kragujevac and Novi Sad. Currently there are 19 employees at the Academy but the systematization will be enlarged. The new organizational structure (systematization) proposal, developed in December, 2010, anticipates 50 employees.

The size of the Judicial Academy headquarters in Belgrade is 350 square meters. The area is functionally equipped and there are offices for staff and two premises for training – a smaller one for up to 25 participants and a larger one for up to 50 participants. In addition to working office, the Judicial Academy premises in Novi Sad include an Appellate court room for 25 participants (70 square meters). The similar situation is in

Nis where there is a department with a classroom for 30 participants (30 square meters) in the Appellate Court building.

There were 22 participants admitted to the initial training of the first generation in 2010 (13 participants by the decision of High Judicial Council and 9 by the State Prosecutorial Council decision). The initial training programme includes theoretical and practical part. The training is delivered on theoretical and practical levels which are connected by contents and represent an entity within criminal, civil, misdemeanor and general professional culture matters. Theoretical part of the training is delivered in the Judicial Academy or in the organization of the Academy, through covering certain topics. Practical part of the training is performed through practice in judicial institutions and stays, visits or work in institutions outside justice administration.

According to the contents, the training is divided in criminal, civil, magistrate and general and professional culture matters.

Continuous training programme is divided in 7 areas:

- Criminal Law
- Civil Law
- Commercial Law
- Administrative Law
- Human Rights Programme
- European Legislation
- Special Seminars.

Special seminars refer to the obligations Serbia has undertaken by signing or preparing for signing agreements and conventions as well as to justice administration sensibilization for certain topics, such as, vulnerable groups, discrimination and violence in families. The practice is that special seminars for the year are included in the regular training programme later.

Statistical data about trainings shown by areas, number of delivered seminars and participants are given in details in the annex, Graph 1.

The Academy finances are provided from the Republic of Serbia budget, donations and gifts as well as from the revenues of published materials and project realization. Determining the Republic of Serbia budget as the source of financing the Academy represents the development of the principle established by the Law on Judges (Official gazette of the Republic of Serbia, No. 116/2008, 58/2009 – decision CC, 104/2009 and 101/2010) and the Law on Public Prosecution (Official Gazette of the Republic of Serbia, No. 116/2008, 104/2009 and 101/2010) that prescribe that training and professional advancement of judicial function holders are the right and obligation achieved at the expense of the Republic of Serbia. Because of the special importance that training candidates for judicial function bearers, i. e. training of judicial function bearers has, the source of financing the Academy must be stable, predictable and sustainable. In addition

to the Republic of Serbia budget, the Academy has two additional sources of financing so the training could be improved and developed better.

Besides its own premises for training, Judicial Academy also uses the premises of courts and public prosecution offices.

c) Do training programmes for judges and prosecutors include both vocational / initial training and continuous training? Is the training compulsory? Please, give information on the length of the vocational /initial training (including information on the average number of hours covered per week), on the curricula and on the average time a judge, prosecutor and a court clerk spend annually on in-service training.

There is basic and continuous training. The basic training is compulsory in the sense that candidates who have completed the basic training have an advantage in selection of the judges and prosecutors. Basic training lasts for 24 months, 40 hours per week.

Continuous training is not compulsory, except in exceptional cases, when prescribed by other laws or when the High Council or State Council decides that training is required.

Continuous training of judges and prosecutors is generally voluntary, except where other laws such as the Law on juvenile offenders and criminal and legal protection of minors (The Official. Gazette of RS, no. 85/2005) and The Family Law (Official Gazette of RS No. 18/05), envisaged as required. The second exception to the principle of voluntariness of continuous training is when the High Judicial Council and State Council of Prosecutors prescribe compulsory training. This applies to cases such as the change of specialization, the essential change in regulations, the introduction of new working techniques and the elimination of deficiencies in the work of judges and prosecutors noted in evaluating their work.

Continuous training program is being approved by the Steering Committee of the Judicial Academy (hereinafter: the Academy), upon the proposal of the Programme Council, with the consent of The High Judicial Council. By the decision of the High Judicial Council for particular categories of judges, the constant training may be prescribed and in case of elections for the court or public prosecutor of a higher instance, specialization changes, substantial changes in regulations and the introduction of new working techniques. The Academy is obligated to prepare a special programme of continuous training, in accordance with the decisions of the High Judicial Council. To act in cases of family relations and in criminal proceedings against the juvenile, judge must undergo mandatory training, and that commitment is regulated by special laws governing these procedures. The Judicial Academy, to which, in accordance with the Law on the Judicial Academy (Official Gazette of the Republic of Serbia no. 104/2009) responsibility for the acquisition of specific knowledge is transferred in accordance with the Law on Juvenile Offenders and Criminal Protection of Minors, organized the training of judges for the acquisition of specific knowledge in accordance with mentioned law and for judges who do not have need certificate to act when juvenile offender is perpetrator or a victim of crime (I and Phase II of training cycle), as well as training for judges who passed the

previous two cycles of specialized training and already have a certificate of completed training for the minor - the victim of crime (Phase III of training cycle).

The Academy is obliged to annually, no later than by December 1, submit to the courts a framework of annual program of voluntary training for the next calendar year. Judges are submitting applications for the programme to the Academy ~~to~~ till 31 December of the current year for the next calendar year. For each of the listed programmes, the Academy shall determine users and notifies the courts and public prosecution.

The Academy conducts a special program of continuous training for judges and prosecutors who have been elected for the first time, and have not completed initial training. The content and duration of special continuous training programs is being established by the act of the Programme Council, depending on the experience of the professional training users. To a user of the special program of continuous training, the workload and working hours reduce to 30% for the duration of the program, by order of the High Judicial Council and the State Prosecutorial Council. The essence of this training is to facilitate and enable faster integration into work to the judges and deputy public prosecutors, who are elected for the first time to the function.

The Academy keeps records on participants of the continuous training and submits the information to the High Judicial Council and the State Prosecutorial Council. These data, and data on teachers and mentors will have an impact on the advancement of judges and deputy public prosecutors, as an expression of their willingness to additional engage. Article 43 of the Law on the Judicial Academy is regulating this matter and states that a continuous training of judges and prosecutors and deputy prosecutors, in principle, is voluntary unless the other laws, such as the Law on Juvenile Offenders and Criminal Protection of Minors and the Family law, sets it as an obligation. The second exception to the principle of voluntariness of continuous training is when the High Judicial Council and State Prosecutorial Council prescribe mandatory training and determines which categories and how many days of the training they have to attend during the year. This applies to cases such as the change of specialization, the essential change in regulations, the introduction of new working techniques and the elimination of deficiencies in the work of judges and prosecutors noted in evaluating their work.

As a part of the Judicial Centre, which legal successor is Academy, in 2009 the judges and prosecutors had an average of 5.57 days of continuous training.

d) Please describe the training system for lawyers.

The training program for lawyers is within the Bar Association. Training of lawyers is voluntary and depends on the wishes, interests and abilities of the lawyers. The Academy organizes only training of lawyers who act in cases with juvenile offenders and juvenile victims of crime, since the training is prescribed by the Law on juvenile offenders and the criminal law protection of minors. According to the Law on Judicial Academy (Official Gazette of the Republic of Serbia no. 104/2009) the Academy is responsible for training of the judges, public prosecutors, deputy public prosecutors, judicial and prosecutorial assistants, interns and administrative staff in courts and public prosecutors' offices.

According to the Law on Advocacy, the Bar Association is in charge of the training of lawyers.

e) Is linguistic training an aspect of training of judges, public prosecutors or lawyers?

Linguistic training is organized for judges and prosecutors and it is voluntary. As part of the Judicial Centre, the legal predecessor of the Judicial Academy, courses of German and French are being held in cooperation with the German Foundation for International and Legal Cooperation (IRZ Foundation) and the French Cultural Centre.

f) Are specific training courses organized for judges in new areas such as company law, cyber crime, financial crime, EU law, ECHR case-law, etc., but also on ethics in justice as well as on fundamental rights? Is there any continued training for judges?

The Judicial Academy organizes special training in the field of commercial law, cyber crime, financial crime, EU law, judicial practice of the European Court of Human rights, ethics, disciplinary responsibility of judges, a special training program of the Presidents and Secretaries of the courts on court management, programs for the PR service of the courts and prosecution. Continuous training is generally voluntary.

Company law is a part of continuous training in the field of commercial law. The Judicial Center, the legal predecessor of the Judicial Academy, in cooperation with the project CCAS-USAID has organized a series of one-day seminars on implementing the Law on Companies (Official Gazette of the RS, no. 125/04), as well as specialized seminars dealing with joint stock companies for all judges and judicial assistants of the commercial courts in Serbia. In early 2009, the Judicial Centre has organized numerous one-day seminars on Controversial issues in the implementation of the Company Law for judges of the High Commercial Court and judges of the commercial courts in Serbia.

The Judicial Centre of Serbia, in cooperation with the European Integration Office of the Republic of Serbia, and EIPA - European Centre for judges and lawyers in Luxembourg, has organized a seminar on Basic principles and Standards of the European law with particular emphasis on areas of contractual, company and insolvency law, competition right and consumer protection, as well as introducing the practice of the European Court of Justice, through addressing the previous issues in these areas, which was realized in two phases. The first phase of the seminar was held on November 04, 05 and 06 and then the second phase was held on December 01 and 02, 2009 with foreign teachers, at the Judicial Center in Belgrade. Participants of the seminar (the judges of the High Commercial Court and Commercial Courts), have gained expertise in the field of EU regulations aimed at training the other judges of commercial courts on EU regulations.

In the third phase of education, the Judicial Centre of the Republic of Serbia, in cooperation with EIPA, has organized a study tour from January 27 to 29, 2010 in

Luxembourg for the judges to familiarize themselves with the EU institutions and practice of the European Court of Justice and the Court of First Instance.

The Judicial Academy, in cooperation with the Prosecutors Association, has organized 10 one-day training for prosecutors in the field of cyber crime, and the speakers were colleagues from Spain and local experts.

In cooperation with the Association of Prosecutors, numerous seminars and trainings on European law were organized for prosecutors, deputy prosecutors and assistant prosecutors in almost every country in the period from 2008-2010.

In 2010, the Judicial Centre, in cooperation with the Serbian European Integration Office and EIPA - European Centre for Judges and lawyers in Luxembourg, has organized a three-day seminar on: European judicial cooperation in civil matters for the judges of the Commercial Appellate Court, the High Court in Belgrade, the Basic Court in Belgrade as well as a three-day seminar on Judicial cooperation in criminal matters in the European Union, with special emphasis on questions on evidences for national judges and prosecutors of Serbia.

The Judicial Centre, and then the Judicial Academy has organized, in cooperation with the Association of Prosecutors, 45 one-day trainings on European law, for prosecutors, deputy prosecutors and assistant prosecutors in almost every prosecutor's office in the country in the period from 2008-2010. Topics include: Introduction to the EU institutions, the third pillar of the EU, the Lisbon Treaty, the European Arrest Warrant, Stockholm program, Warrant for submission of evidences and the European Public Prosecutor.

In late 2003 until 2010, the Judicial Centre, in cooperation with the Council of Europe, held 65 one-day seminars on European Convention on Human Rights (Articles 3, 5 and 6) with reference to the judicial practice of the European Court for prosecutors, 1 counsellors of the civil, criminal and administrative departments of the Supreme Court of Serbia, the counsellors of the Constitutional Court and judges of District Courts in Serbia. Two-day seminars have been organised on the European Convention on Human Rights (Article 1 of Protocol 1-State interventions into the right to peaceful enjoyment of possessions, Article 6 and Article 13 - Right to an effective remedy) with regard to the practice of European Court for judges of the High Commercial Court as well as for the judges and judicial assistants of commercial courts.

Regarding this area and the European Convention on Human Rights, discrimination and human rights for judges and public prosecutors numerous training have been organized since 2005.

In 2005, the seminars were organized for judges of municipal and district courts and the prosecutors of municipal and district offices on the *fight against discrimination*. Topics included:

1. The UN Conventions against discrimination, standards and practice of the Committee. Seven one-day seminars on this topic have been organized. The seminars were attended by 163 participants. The topic was the UN Conventions and Standards of the Committee and the responsibilities of the judiciary in the fight against discrimination. The lecturers were the judges and prosecutors and national experts on discrimination.

2. The standards of the European Court of Human Rights, Article 14 of the European Convention and Protocol 12 to the Convention.

Three one-day seminars for judges and prosecutors have been organised. The seminars were attended by 82 participants. Seminar topics have included the standards of the European Court of Human Rights concerning Article 14 of the Convention and the novelties introduced by the Protocol No. 12 to the Convention. The lecturers were judges and prosecutors and the national coaches of the Council of Europe.

Organised in 2006:

1. The standards of the European Court of Human Rights, Article 14 of the European Convention and Protocol 12 to the Convention.

12 one-day seminars for judges and prosecutors have been organised. The seminars were attended by 376 participants. Seminar topics have included the standards of the European Court of Human Rights concerning Article 14 of the Convention and the novelties introduced by the Protocol No. 12 to the Convention. The lecturers were judges and prosecutors and the national coaches of the Council of Europe.

In 2007, the seminars on special topic of the fight against discrimination were held.

1. The UN Conventions against discrimination, standards and practice of the Committee.

4 one-day seminars on this topic have been organized. The seminars were attended by 127 participants. The topic was the UN Convention and Standards of the Committee and the responsibilities of the judiciary in the fight against discrimination. The lecturers were the judges and prosecutors and national experts on discrimination.

2. The standards of the European Court of Human Rights, Article 14 of the European Convention and Protocol 12 to the Convention.

5 one-day seminars for judges and prosecutors have been organised. The seminars were attended by 173 participants. Seminar topics have included the standards of the European Court of Human Rights concerning Article 14 of the Convention and the novelties introduced by the Protocol No. 12 to the Convention. The lecturers were judges and prosecutors and the national coaches of the Council of Europe.

3. Gender equality and prohibition of discrimination

4 one-day seminars have been organized. Seminar topics included issues of gender equality and the emergence of gender discrimination. Participants of the seminar were judges and prosecutors. Total number of participants-103. Lecturers were domestic and international experts on gender equality.

In 2008, the following seminars have been organised:

1. The UN Conventions against discrimination, standards and practice of the Committee.

4 one-day seminars on this topic have been organized. The seminars were attended by 117 participants. The topic was the UN Convention and Standards of the Committee and the responsibilities of the judiciary in the fight against discrimination. The lecturers were the judges and prosecutors and national experts on discrimination.

2. The standards of the European Court of Human Rights, Article 14 of the European Convention and Protocol 12 to the Convention.

6 one-day seminars for judges and prosecutors have been organised. The seminars were attended by 179 participants. Seminar topics have included the standards of the European Court of Human Rights concerning Article 14 of the Convention and the novelties introduced by the Protocol No. 12 to the Convention. The lecturers were judges and prosecutors and the national coaches of the Council of Europe.

3. Familiarisation of judges and prosecutors with the proposal of the Law Against Discrimination.

4 one-day round tables for judges and prosecutors have been organised. Total number of participants 138. Lecturers were experts on matters of discrimination.

The Judicial Training Centre has since 2007 included in its regular program the training of judges and prosecutors on fight against discrimination. Also, in the processing of other thematic units in the framework of the criminal law programme, a part of the seminar deal with the aspect of discrimination in the treatment by certain organs. During the specialization of judges and prosecutors who handle cases with a juvenile offender or a juvenile victim of crime, topics dealing with the protection of children from discrimination had special significance.

During 2008, 2009 and 2010, training from the above-mentioned areas according to the regular annual training program are being held annually. According to the annual training programme, six seminars on the subject of discrimination were held every year. In 2010, in cooperation with the UNDP Programme and the Commissioner for the protection from discrimination, a program of specialized training for judges and prosecutors was developed to ensure compliance with the new Law on prohibition of discrimination.

“The Council of Europe and the European Convention on Human Rights”

In cooperation with the Council of Europe has been implemented a training programme "Council of Europe and the European Convention on Human Rights, Article 5 and 6" for judges and prosecutors in Serbia. The Programme started its implementation in 2004. In the first half of 2006 all the judges of the district courts in Serbia participated in this cycle of seminars.

The Judicial Centre, in cooperation with the Council of Europe, organized in September of 2006 the special seminar for judges of the High Judicial Council. In this seminar participated 95% of judges of the High Judicial Council. The lecturers on this programme were the judges of the European Court of Human Rights and trainers – experts of the Council of Europe.

In the end of 2006 started the implementation of the training programme "Council of Europe and the European Convention on Human Rights, Article 5 and 6" for prosecutors. In the period from 2006 until the end of 2007, all 25 district prosecution offices participated in this programme.

Since June of 2008 began the implementation of the programme “European Convention on Human Rights, Article 3 and Article 5”, the programme intended for prosecutors and judges of criminal divisions. This programme until December of 2008 included all 25 district prosecution offices and the Republic Prosecution Office.

In 2009 the following seminars are organized:

European Convention on Human Rights and Case Law of the Court regarding Article 8 of the EC. 14 seminars for judges of the civil departments were organized and were attended by 462 participants.

The European Convention on Human Rights (hereinafter: “EC”) and case law of the court regarding Article 8 of the EC. Six seminars for judges and three for prosecutors on the criminal aspect of Article 8 of EC were organized. They were attended by totally 322 participants.

The special seminar for counsellors of the Supreme Court of Serbia and the Constitutional Court, which was organized at the Academy. All the counsellors are divided into groups according to subjects they are dealing with (criminal, civil, administrative). Each group participated at six thematic seminars which were dedicated to the EC, members and practice of court.

In 2010 were organized:

Three seminars on EC and Article 9. The seminars were attended by 98 participants, judges and prosecutors.

Three seminars on Article 10 of EC which were attended by 103 participants, judges and prosecutors.

European Convention and media law, two seminars organized in cooperation with journalist associations attended by judges, prosecutors and newspaper editors.

UN Convention on Human Rights and UN Convention on the Prohibition of Torture and Inhuman Treatment and Punishment

The Judicial Centre has organized in 2009 and 2010 four seminars for judges and judicial assistants on "Convention on Human Rights - Standards, Committee Practice and the cases before the UN Committee. There is a particular emphasis on the application of the standard in national practice and direct application in judgments of the highest courts.

The Judicial Centre, and then the Academy, has organized in 2008, 2009 and 2010 ten seminars for judges of district/high courts in Serbia on "Convention on Human Rights - Standards, Committee Practice and the Cases before the UN Committee". There is a particular emphasis on the application of the standard in national practice and the possibility of application and reference to the standards and practice of Committee.

The Judicial Centre has organized in 2008, 2009 and 2010 ten seminars for prosecutors of district prosecution offices in Serbia on "Convention on the Prohibition of Torture and Inhuman Treatment and Punishment - Standards, Committee Practice and the Cases before the UN Committee". There is a particular emphasis on the application of the standard in national practice and the possibility of application and reference to the standards and practice of Committee.

The Judicial Centre organized 13 two-day seminars, in the period 2002/03, of which 10 seminars for judges of general jurisdiction and three seminars for judges of commercial courts on judicial ethics. One of the results of these seminars is the preparation of the Code of Judicial Ethics by the Association of Judges of Serbia and of the Code of Ethics for the Association of Prosecutors.

g) How is training ensured for specialised judges and prosecutors?

To act in proceedings of family relations and in criminal proceedings against the minors, the judges must attend mandatory training, and that commitment is regulated by special laws governing these proceedings. The Judicial Academy, to which, in accordance with the Law on Judicial Academy ("Official Gazette of the RS", No. 104/2009) is delegated the responsibility for acquisition of specific knowledge in accordance with the Law on Juvenile Offenders and Criminal Protection of Juveniles ("Official Gazette of RS", No. 85/2005), organized the training of judges for the acquisition of specific knowledge in accordance with above mentioned law and for judges who do not have need certificate to act when a juvenile is offender or a victim of criminal offence (I and II phase of training cycle), as well as training for judges who attended the previous two cycles of specialized training and already own a certificate of completed training for the minor - the victim of

crime (III phase of training cycle). The Academy in 2010 on several occasions organized training regarding implementation of the Family Law ("Official Gazette of RS", No. 18/05), as well as the seminar for the Improving efficiency and judicial cooperation in international family matters. (VSS)

The Organized Crime Prosecutor's Office from the 1st of January 2010 has the jurisdiction for criminal offences of "high" corruption, that is corruption whose actors are officials elected by the National Assembly of the Republic of Serbia, nominated or appointed by the Government of the Republic of Serbia, i.e. the High Judicial Council or the State Prosecutorial Council.

In the prosecution of the offenders of these criminal offences there is some experience. It was acquired through many criminal proceedings in which corruption was the subject of charges as a criminal act of organized crime or in connection with these criminal offences.

Because of the way of performing these criminal acts, big secrecy, absence of the damaged, which is regularly significant evidence, social position of perpetrators and their real-existing or potential impact on institutions of the system, it is not easy to bring to justice the holders of the most dangerous aspects of corruption in Serbia.

Prosecution intends to overcome this challenge by participation of the Prosecutor for Organized Crime and his deputies in the educational programmes, conferences, seminars, driving up the capacity of the prosecution, but also through various forms of international cooperation and exchange of experiences.

Since 2004, trainings for specialized judges and prosecutors are being intensively organized (specialized prosecutors and courts departments were established in the Republic of Serbia for organized crime, war crimes and cyber crime). A large number of training sessions has been organized in cooperation with the Council of Europe, European Union, U.S., German, Norwegian, Italian and other Embassies, the OSCE mission, UNICRI, UNDP and many other international and regional organizations and institutions.

Regular training of specialized judges and prosecutors is carried out within the framework of the Judicial Academy (formerly Judicial Centre). By 2005 a number of specialized trainings, seminars, study visits were organized in direct cooperation between individual courts, i.e. public prosecutor offices which are responsible for this matter with international and regional organizations and institutions, or on a bilateral basis. After 2005, aiming towards a systemic and organized approach to training, this training is being organized by the Judicial Academy.

Funds for training are provided partly from the Republic of Serbia's budget, which finances the work of the Judicial Academy, but the number of trainings has been conducted thanks to international support and projects.

The most important training included the areas and topics related to money laundering prevention, confiscation of property derived from crime, human trafficking, command responsibility, special investigative techniques, the plea agreement, protection of witnesses and victims, cyber crime, etc.

By the Law on juvenile offenders and the criminal and legal protection of minors, a mandatory training is envisaged for judges, prosecutors, police officers and lawyers who handle cases with the juvenile offender or a victim of crime in the Judicial Centre and then in the Judicial Academy. This specialization is mandatory and if a judge or prosecutor do not have this specialization it is absolutely fundamental breach of procedure.

According to the family law, the judges acting in family cases must have specialized knowledge about child rights and child protection. The specialization is mandatory and is implemented by the Judicial Academy.

h) What percentage of judges, prosecutors and other staff in the judicial sector has received further training over the last 5 years (compared with the profession as a whole)?

According to the Judicial Centre's data, which legal successor is the Judicial Academy, 95% of judges and prosecutors attended the extra training in various programmes of continuous training, civil, criminal, economic, human rights, administrative law, EU law and specialized programmes required by the law.

According to the Judicial Centre's data, the training included 32% of other staff in the courts and prosecutors' offices, excluding judicial assistants. Training programs were attended by 86% of judicial and prosecutorial assistants.

21. Clerical staff: Please give further details on the training for clerks at courts and prosecutors' offices. Do they receive particular initial and vocational training (on case management, IT, relations with the public etc.)? Which institution is in charge of offering this training?

A training of judicial staff that performs administrative duties in the courts is envisaged. The training for judicial staff is an organized acquisition of knowledge and skills for professional and efficient working. The High Judicial Council approves the training programme for the court staff and supervises its implementation, while the training will be implemented by the Judicial Academy.

Law on Judicial Academy ("Official Gazette of the Republic of Serbia" No. 104/2009) defines the goal of the Academy, which is contributing to professional, independent, impartial and efficient performance of judicial and prosecutorial functions and professional and efficient work of judicial and prosecutorial staff. In accordance with this Law, one of the responsibilities of the Judicial Academy is to organize and conduct training of judicial and prosecutorial staff. The program is made for each category of the

court staff. Training of judicial staff is voluntary, unless otherwise defined by a special law.

According to the Judicial Centre's data, whose legal successor is the Academy, 62% of administrative staff in courts and public prosecution is included in the training programs organized for the administrative staff: applying new techniques, budget planning, and organization of judicial administration's work.

The Judicial Center, which legal successor is the Academy, organized a training on case management, information technology, public relations, annual operational planning. The Judicial Academy, in collaboration with USAID, has developed a five-day seminar for training court managers consisting of five modules (introduction, control and management of courts, court budget and financial management, case management, evaluation of the quality of court operations, management and accountability) some of which will be attended the court presidents. Implementation of the training starts in January 2011. The Judicial Academy, in collaboration with USAID, has developed a training programme for secretaries of the courts, which consist of six modules, such as: budget and finance, human resources, court administration and information technology.

Besides this, the Ministry of Justice is responsible to, within the scope of judicial administration in development of judicial information system, provide adequate training for administrative staff in courts and public prosecutors' offices: In implementation of any information-communication technology (ICT) project in the judiciary, the Ministry of Justice, as a responsible body for administration of justice affairs, which includes development and implementation of the judicial information system, seeks to provide training for administrative staff, as well as for judges and public prosecutors. This method of project organized ICT training has shown excellent results in practice and without this training the Ministry of Justice would not have successfully completed its previous projects.

Thus, along with the introduction of AVP business software for automatic case management, the training for the administrative staff was successfully implemented in 34 basic and 26 higher courts in 2010 and 15 court units. The court employees were included in the training, of which 120 IT system administrators who manage the computer network, operating system and database, 1080 employees for the module *Registry* and 1515 employees for the module *Clerk*. More than 110 employees were trained for the *Court Administration* module, and the presentation has been presented in all courts to more than 1,350 judges and 700 judicial assistants and associates. Previously, until 2008, the same training was attended by all employees in all commercial courts, in total about 800 employees.

Within all donor projects of the European Agency for Reconstruction (EAR), the Delegation of the European Union and other funds, there is always a mandatory part which relates to the initial ICT training, professional ICT training, and vocational training in case management. In previous years, under donor projects, in this way this sort of training had been successfully attended by thousands of administrative staff in courts and public prosecutors' offices.

Efficiency

22. What is the annual budget of the judiciary? Please provide a breakdown for the last five years. What is the procedure for deciding the budget? Who is managing the budget in judiciary?

The total budget of the judiciary for:		
2005	11,016,170,000.00 RSD	128,844,094 EUR
2006	13,568,436,124.00 RSD	171,752,356 EUR
2007	20,933,154,832.00 RSD	264,186,759 EUR
2008	22,509,825,946.00 RSD	254,058,373 EUR
2009	19,306,667,103.00 RSD	201,344,339 EUR
2010	19,387,627,000.00 RSD	182,152,053 EUR

Law on the budget is being adopted for each year and is valid for a period from January 01 to December 31.

The process of preparation and adoption of the budget is being performed according to the budget calendar in accordance with the Law on Budgetary System ("Official Gazette of the Republic of Serbia, No 54/2009 and 73/2010). Upon the adoption of a fiscal strategy report, the Ministry of Finance submits to the Direct Budget Beneficiaries the Instruction for making medium-term and financial plans. The Ministry of Justice notifies the indirect beneficiaries of the budget - the judicial organs on the basic economic assumptions and guidelines for budget preparation. Then it reviews the judicial authorities' requests in the proposals of their plans and merges them by the level of judicial authority. Thus unified proposal is being submitted to the Ministry of Finance. The Ministry of Finance submits to direct beneficiaries a draft budget law for a review.

1. The Law on Public Prosecution ("Official Gazette of RS, no. 116/08, no 104/09 and 101/2010) prescribes that the State Prosecutorial Council shall propose the scope and structure of budgetary resources necessary for current expenditures with the prior opinion of the Ministry of Justice and allocates funds for public prosecution.

2. The Law on Organization of Courts ("Official Gazette of RS, no. 116/08, no 104/09 and 101/2010) prescribes that the High Judicial Council proposes the scope and structure of budgetary resources necessary for current expenditures with the prior opinion of the Ministry of Justice and allocates funds for the courts. The same law stipulates that the Ministry of Justice is in charge of proposing a part of the budget for investments, projects and other programmes for work of the judicial authorities, taking care of accommodation conditions , equipment and security of courts, planning and development of the judicial information system, development and implementation of capital projects and other programs for the judiciary.

By the Law on Budget of the Republic of Serbia for 2011 ('Official Gazette of RS'. No. 101/10) it is prescribed that the jurisdiction of the President of the High Judicial Council regarding the issuing of order for transfer of funds to the courts or the President of the State Council of prosecutors regarding the issuing of order for transfer of funds to public prosecutors' offices will be the duty of the Minister of Justice until August 31, 2011.

23. What is the average duration of (a) a civil case, (b) criminal case and (c) administrative law cases? In case of delays in handling cases, which problems are they mainly linked with?

(For example: complex summoning process, prolonged period for collection of evidence; police evidence not being accepted in courts; failure by witnesses to appear; failure by judicial experts to appear; workload associated with enterprise registration; workload associated with high number of appeals; absence of alternative dispute resolution mechanisms; complex case management; lack of technical equipment.)

a) The average duration of a civil litigation in the Basic courts is 1.52 years, and in the Higher Court in the first degree it is 1.7 years, in the second degree it is 1.3 years.

a) The average duration of a criminal proceedings in the Basic courts is 1.47 years, and in the Higher Court in the first degree it is 1.6 years, in the second degree it is 1 years.

The average duration of the procedure in administrative proceedings is two years.

The accused adults by type of decision and the length of the process (from the charge-private proceedings to validity of the decision)														
	Total		Up to 2 months		over 2 to 4 months		over 4 to 6 months		Over 6 months to 1 year		over 1 to 2 years		over 2 years	
2009	total	%		%		%		%		%		%		%
Republic of Serbia	50404		3604	7.2	6316	12.5	5704	11.3	12184	24.2	11085	22.0	11511	22.8
Found guilty	40880	81.1	3104	7.6	5571	13.6	4991	12.2	10429	25.5	9034	22.1	7751	19.0
Found not guilty	9524	23.3	500	5.2	745	7.8	713	7.5	1755	18.4	2051	21.5	3760	39.5
2008														
Republic of Serbia	53035		3619	6.8	6458	12.2	5941	11.2	12357	23.3	11566	21.8	13094	24.7
Found guilty	42138	79.5	3091	7.3	5641	13.4	5195	12.3	10479	24.9	9108	21.6	8624	20.5
Found not guilty	10897	20.5	528	4.8	817	7.5	746	6.8	1878	17.2	2458	22.6	4470	41.0
2007														
Republic of Serbia	48903		3833	7.8	6434	13.2	5442	11.1	11773	24.1	10407	21.3	11014	22.5

Found guilty	38694	79.1	3305	8.5	5553	14.4	4765	12.3	9722	25.1	8176	21.1	7173	18.5
Found not guilty	10209	20.9	528	5.2	881	8.6	677	6.6	2051	20.1	2231	21.9	3841	37.6

The delays in processing cases are often due to the following reasons: 1) abuse of procedural powers of the parties directed towards delaying the proceedings, (2) **failure by witnesses to appear** (3) the increased workload associated with a large number of complaints, (4) extended period of evidence collection, etc.

24. Please provide data on how many cases have been pending more than 1 year, 2 years or 3 years.

The number of cases pertaining to civil disputes that have been pending in basic and higher courts for more than one year, two years or three years:

Basic courts

Up to 2 years 41998

Up to 5 years 35928

Higher courts – first instance

Up to 2 years 467

Up to 5 years 455

Higher courts – second instance

Up to 2 years 11807

Up to 5 years 9405

The number of cases pertaining to criminal offences that have been pending in basic and higher courts for more than one year, two years or three years:

Basic courts

Up to 2 years 26078

Up to 5 years 17265

Higher courts – first instance

Up to 2 years 1061

Up to 5 years 1078

Higher courts – second instance

Up to 2 years 0

Up to 5 years 0

25. Do simplified procedures exist in civil and / or criminal cases? If yes, please describe them and give statistics on their usage.

Civil Procedure Law (Official Gazette of RS, no. 125/2004 and 111/2009) provides rules and requirements for the implementation of civil proceedings. In addition to the regular court procedure, special civil actions are regulated by the law, where shorter periods and simpler procedures of treatment are required in order to achieve efficiency. Such procedures are, for example, processes of small value, payment order issuing, procedure in cases regarding disturbance of possession.

Also, there is a possibility of a simplified procedure in the situations where the court can decide on a legal matter without holding a main hearing. During the preparation of the main hearing, the court may bring adjudication based on a confession, based on a denial and adjudication due to the absence and may receive the record on settlement of the parties. In addition, the presiding judge may, during the preparation of the main hearing, after receiving responses to the suit, bring the adjudication if he/she determines that the parties have no dispute and that there are no other obstacles to making the decision.

In so-called low-value proceedings (value in RSD up to 3000 euros by the middle exchange rate of the National Bank of Serbia on the day of arraignment in the courts of general jurisdiction, i.e. up to 30,000 euros in the equivalent value in RSD by the middle exchange rate of the National Bank of Serbia on the day of arraignment in the commercial courts) the procedure is foreseen by the Law on Civil Procedure and simplified so that the suit is not being submitted to the response but immediately a hearing is scheduled and, together with an invitation, a suit with the evidences is being submitted. If the invited defendant doesn't come to the hearings, the adjudication which adopts the suit is being brought, unless it is contrary to the evidences or in case of illegal disposal of the parties. If the invited prosecutor doesn't come to the hearings, the suit is deemed withdrawn. The court enters only the essential facts and evidence in the records of the hearings, the verdict is announced immediately after the conclusion of the hearings, and a written copy of the court decision is delivered to the party which requests it at the announcement of the verdict. The court's decision may be contested only because of violations of the procedure and the incorrect application of substantive law, but not due to the wrongly determined facts.

Law on Civil Procedure envisages special procedures of issuing payment orders for monetary claims. The court issues a payment order without hearings and plea hearing or statement of the other party (defendant), in the case when the claim is proved by an authentic document (public documents, bills, invoices, extracts from the business registry). Against the decision of the court on issuing a payment order, the defendant may object and the same court that issued the payment order decides upon it after the debate, and the decision by which the payment order is in force may be appealed directly to the High Court. The payment order may be issued for due monetary claim in respect of which there is no authentic documents, but on condition that it is a claim that does not

exceed EUR 2.000 in dinar equivalent at the middle exchange rate of National Bank of Serbia on the date of arraignment.

Even simpler procedure for the achievement of monetary claim is that the person in possession of valid document now proposes payment on the basis of valid documents, so that the enforcement proceedings if the other party does not dispute, the claim may be paid without taking civil proceedings. If the debtor gives timely, allowed complaint (the deadline is three days), which disputes the claim for any reason (not to submit any proof for the reasons stated), the first instance judge makes a decision to reject the solution in the part in which the execution is envisaged, and the process continues in the litigation as in the objection to the payment order. The process is regulated by the Law on Enforcement Procedure (Official Gazette No. 125/04).

Special procedure for the realization of a monetary claim is so called simplified *enforcement procedure*, also envisaged by the Law on Enforcement Procedure if a creditor has authentic documents prescribed by the law (bills, checks, unconditional bank guarantees receivable, unconditional letter of credit, a notarized statement that the debtor authorizes the creditor to transfer of cash, notarized contract in the economy). The procedure differs from the execution on the basis of valid documents because these documents are of a stronger evidence force (issued by the debtor itself), the objection may be lodged from the statutory grounds and the objection must be accompanied by evidence of statutory grounds set out in the objection (the deadline for a objection is three days). The council of three judges of the same court that has issued an enforcement order meritoriously decides on the objection and if they reject the objection, the payment of receivables is immediately accessible, because the appeal (filing period is three days), which is allowed to a directly higher – second instance court, shall not stop execution.

In the processes relating to the disturbance of the possession the court must make a decision on the request within 90 days because it is a particularly urgent procedure and relating to the protection of vital rights of the parties. The claim is not submitted to the answer but a hearing is scheduled immediately and a complaint and invitation is submitted to the opposite side. During the procedure, the discussion relates only to the facts of the last state of possession and the disturbance occurred. The court may, without request of the claimant, and without hearing of the other side, define the interim measures to remedy urgent threat of unlawful damage, eliminate violence and irreparable damage and against such a decision the appeal is not allowed. When it makes a decision on the request, the court may for an important reason, order that the appeal does not influence the execution of decisions.

In proceedings regarding trespass court must deliver a verdict on claim in 90 days because special urgent procedure is in the question and protection of the essential rights of parties. Law suit is not delivered to answer but hearing is appointed immediately and law suit is delivered to other party along with the appeal. During proceeding case of argument consider just facts in respect of the last state of possession prior to trespass and the trespass occurred. The court can, without suggestion of the prosecutor and without hearing of other party, order injunctions in order to mitigate the risk of unlawful damage, to prevent violent acts, or to alleviate irreparable damage and against such order complaint is not allowed. Having regard to reasons of great importance the court may rule that an appeal shall not delay an execution of the ruling.

We do not have statistics on these simplified procedures but minor disputes are present in a significant number in the courts of general jurisdiction and the commercial courts and enforcement based on an authentic document appears in very large numbers.

The Criminal procedure is regulated by the Criminal Procedure Code (Official Gazette. FRY, no. 70/2001 and 68/2002 and “Official Gazette of RS” No. 58/2004, 85/2005, 115/2005, 85/2005 - other Law 49/2007, 20/2009 - other Law 72/2009 and 76/2010). In addition to general rules of criminal procedure, there are simplified procedures with respect to which the special provisions are applied, such as the simplified procedure, the procedure for imposition of criminal sanctions without main trial and guilt plea.

The simplified procedure is provided for criminal affairs for which the main punishment is a fine or imprisonment of up to five years. Criminal proceedings are instituted on the basis of the indictment of the Public Prosecutor or the injured party as a prosecutor or the private charge. Unlike the regular procedure, in this procedure an investigation is not being initiated, but some of the investigation actions may be carried out. The deadline for filing appeals against the verdict in this process is 8 days.

Proceedings for criminal sanctions without trial hearing- for crimes that may be imposed a fine as a main punishment or imprisonment up to three years, the judge may, on motion of the Public Prosecutor, issue a decision on punishment without trial hearing. The prosecutor puts in the indictment the proposal for the decision on punishment, when he considers that the trial hearing is not necessary. By the decision on punishment, the judge may impose a fine, penalty of work in the public interest, revocation of driver's license and, besides that, one or more of the following measures: confiscation of objects, prohibition of driving a motor vehicle and confiscation of property.

Proceedings for criminal sanctions without trial hearing– in case of a complete confession of the accused or suspect, given in the presence of the attorney to the investigating judge, or to an internal affairs body, supported by other evidence gathered during the investigation, the Public Prosecutor may immediately after the investigation, and no later than within eight days, suggest in the indictment that, instead of the trial hearing, a special public hearing is scheduled before the investigating judge, in which, after hearing of the parties and with the expressed consent of the defendant, a verdict may be brought. This procedure is applied to criminal affairs for which the main punishment is a fine or imprisonment of up to five years. If the conditions are met and no objections submitted to the indictment the investigating judge may impose a fine, sentence of community service, drivers license suspension penalty, conditional sentence and a sentence of imprisonment up to one year, and accompanied by one or more of the following measures: confiscation of objects, prohibition of driving a motor vehicle and confiscation of property.

Plea Agreement - When the criminal proceedings is conducted for one criminal offence or for criminal offences in conjuncture for which the predicate is punishable by imprisonment up to 12 years, the public prosecutor may propose a defendant and his counsel the conclusion of the plea agreement, or the accused and his attorney may

propose to Public Prosecutor the conclusion of such agreement. The plea agreement must be in writing and may be submitted no later than the end of the first hearing for the trial hearing. The court, decides upon the plea agreement, which may reject, adopt or decline the agreement. The court shall adopt the plea agreement by the decision with argumentation and decides which suits the content of the agreement if conditions set in the Article 282c (8), Criminal Procedure Code are fulfilled. When the decision to accept the plea agreement becomes binding, it is considered an integral part of the indictment, if it is already filed, or the public prosecutor within three days should draw up an indictment that includes a plea agreement, if the indictment had not been previously submitted, and a presiding judge promptly renders a verdict that the accused is guilty and pronounces sentence or other criminal sanction and decide on other matters provided for in the plea agreement. Against this verdict, the appeal is not allowed.

26. Please provide statistics (separate figures for civil, criminal, administrative and enforcement cases) on the number of pending cases over the last five years.

In **2006**, there were 2,309,704 cases, in total, at all general jurisdiction courts in the territory of the Republic of Serbia. There were: (1) 2,033,416 cases of all kinds and in all matters, in process, at municipal courts; (2) 229,137 cases at district courts; and (3) 47,148 at the Supreme Court of Serbia.

The total number of cases in process include 1,610,659 ones received in 2006 and 699,045 cases transferred from previous years as unsolved ones. The number of unsolved cases in 2006, by courts are the following:

- Municipal courts: in criminal matters 47,044 unsolved cases, 165,205 litigations, 501,304 unsolved cases in enforcement matters at the end of the reporting period;
- District courts: 4,249 unsolved cases in criminal matters in original jurisdiction procedure, 2,255 unsolved cases in criminal matters in appellate procedure, 24,367 unsolved litigations and 1,506 unsolved administrative indictments;
- Commercial courts: 24,151 unsolved cases at the end of the reporting period;
- The Supreme Court of Serbia: 3,355 unsolved cases in civil department, 2,000 ones in criminal department and 14,559 unsolved cases in administrative department.

In **2007** there were 2,251,081 cases, in total, at all general jurisdiction courts in the territory of the Republic of Serbia. There were 1,975,827 cases of all kinds and in all matters, in process, at municipal courts, 225,596 cases at district courts, 145,292 cases at commercial courts and 49,658 cases at the Supreme Court of Serbia.

The total number of cases in process include 1,579,522 ones received in 2007 and 671,559 cases transferred from previous years as unsolved ones. In 2007, there were 698,576 unsolved cases at all courts (629,123 cases at municipal courts, 47,442 cases at district courts and 22,011 cases at the Supreme Court of Serbia). The number of unsolved cases in 2007:

- Municipal courts: 49,043 unsolved cases in criminal matters, 143,301 unsolved litigations and 372,440 unsolved cases in carrying out of sentences at the end of the reporting period;
- District courts: there were 4,592 unsolved cases in criminal matters, in original jurisdiction, 2,444 unsolved cases in criminal matters, in appellate procedure, 32,140 unsolved litigations and 1,968 unsolved cases in administrative area;
- Commercial courts: 23,061 unsolved cases;
- The Supreme Court of Serbia: 3,490 unsolved cases in civil department, 2,041 ones in criminal department and 10,079 unsolved cases in administrative department.

In **2008** there were 2,395,699 cases in process, in total, at all general jurisdiction courts in the territory of the Republic of Serbia. There were 2,108,513 cases of all kinds and in all matters in process at municipal courts, 236,016 cases at district courts, 145,292 cases at commercial courts and 51,170 cases at the Supreme Court of Serbia.

The total number of cases in process include 1,579,522 ones received in 2007 and 671,559 cases transferred from previous years as unsolved ones. In 2008, there were 789,850 unsolved cases at all courts (712,509 cases at municipal courts, 55,823 cases at district courts and 21,518 cases at the Supreme Court of Serbia). The number of unsolved cases in 2008, by courts:

- Municipal courts: 58,324 unsolved cases in criminal matters, 135,466 unsolved litigations and 392,334 unsolved cases in carrying out of sentences at the end of the reporting period;
- District courts: there were 8,959 unsolved cases in criminal matters in original jurisdiction, 2,472 unsolved cases in criminal matters in appellate procedure, 40,257 unsolved litigations and 1,867 unsolved cases in administrative matters;
- Commercial courts: 18,801 unsolved cases;
- The Supreme Court of Serbia: 3,470 unsolved cases in civil department, 2,185 ones in criminal department and 15,251 unsolved cases in administrative department.

At the end of **2009**, the total number of unsolved cases had been redistributed according to the newly established court network, so, on January 01, 2010, from the Supreme Court of Serbia, 4,842 cases, in total, were taken over by the Supreme Court of Cassation, out of which there were 4,470 in civil and administrative matters and 372 in criminal matters. At the beginning of 2010, Administrative Court had 18,088 cases in process, in all matters and appellate courts had 38,165 cases in all matters.

Data about the number of unsolved cases for all matters monitored in 2010:

Matters	Basic Court	
	No. of unsolved cases up to 5 years	% of unsolved cases up to 5 years

L+L1	35, 928	21.42%
C + CI	17, 265	16.27%
COP	20, 879	45.37%

Higher Court in the First Instance

Area	No. of unsolved cases up to 5 years	% of unsolved cases up to 5 years
L+L1	455	20%
C + CI	1, 078	17%

Higher Court in the Second Instance

Area	No. of unsolved cases up to 5 years	% of unsolved cases up to 5 years
2 nd DCP+2 nd LD	9, 405	29.12%
2 nd CP	0	0%

AVERAGE LENGTH OF PROCEDURE DURATION IN ADMINISTRATIVE MATTERS for the period Jan. 01, till Dec. 24, 2010

		Total number of solved cases	Up to 1 year	Up to 2 years	Up to 5 years	Over 5 years	Total
1	ALS	11, 321	5, 091	4, 010	2,218	2	11,321
2	EACV	191	71	118	2		191
3	ERDPI	208	73	128	7		208
4	APA	815	815				815
5	VAC	118	112	6			118
6	ALS COP	85	56	28	1		85
7	PEA	90	90				90
8	ODIJ	10	10				10
9	RAJP	24	24				24
10	TOTAL	12, 862	6, 342	4, 290	2, 228	2	12, 862

AVERAGE LENGTH OF LAW SUIT DURATION IN ADMINISTRATIVE
MATTERS for the period Jan. 01, till Dec. 24, 2010

		Total number of unsolved cases	Up to 1 year	Up to 2 year s	Up to 5 years	Over 5 year s	Total
1	ALS	19, 804	19, 113	689	2		19, 804
2	EACV	212	166	45	1		212
3	ERDPI	210	169	41	0		210
4	APA	84	84	0	0		84
5	VAC	168	168	0	0		168
6	ALS COP	207	185	16	6		207
7	PEA	4	4	0	0		4
8	ODIJ	10	10	0	0		10
9	RAJP	108	108	0	0		108
10	TOTAL	20, 807	20, 007	791	9	0	20, 807

L – Litigation

L1- Labour dispute

CI – Criminal investigation

CP – Criminal proceedings

JCP – Juvenile criminal proceedings

JCI – Juvenile criminal investigation

2nd CP – Second instance criminal proceedings

2nd CP – Second instance civil proceedings

2nd LD – Second instance degree labor dispute

COP – Enforcement proceedings

ALS – Administrative law suit

PEA – Postponing the execution before an appeal

ODIJ – Objection to the decision of individual judge

RAJP – Repetition of administrative-judicial proceedings

VAC- Various administrative cases

APA – Administrative proceedings appeal

EACV – Extraordinary examination of Administrative Court verdicts

ERDPI– Extraordinary examination of decisions in retirement and disability pension insurance

**27. What is the rate of appeals compared with the number of first-instance decisions in civil and criminal matters? (please provide global breakdown of pending cases.)
What is the rate of successful appeals compared to the total number of appeals?**

In **2008**, there were 82,169 appeals on the first instance decisions, making it 12,687 appeals more than in the previous year.

There were 19,435 appeals stated to the municipal court decisions in criminal matter or 1,437 more than in the previous year. There were 9,523 confirmed case decisions (49.20 percent), 2,678 cases altered (13.83 percent) and 3,946 cases suspended (20.38 percent). The remaining percentage of 16.59 refers to the cases solved in other ways (non-legal, non-relevant decisions).

There were 62,734 appeals on municipal court decisions in litigations and labor disputes (L and LD), 29,844 decisions were confirmed (51.41 percent), 3,111 altered (5.36 percent) and 10,371 decisions suspended (17.86 percent). The remaining percentage of 25.37 refers to the cases solved in other ways (non-legal, non-relevant decisions). Compared to the previous year of 2007, the percentage of confirmed decisions in criminal matters decreased from 59.69 percent to 49.20 percent, as well as the percentage of suspended decisions, from 26.20 percent to 20.38 percent.

In district courts, in criminal matters, there were 2,955 appeals to the decisions, out of which 1,626 ones were confirmed (55.02 percent), 643 altered (21.75 percent) and 668 decisions suspended (22.60 percent). In civil matters at district courts, there were 159 appeals stated - 97 confirmed (61.00 percent), 11 altered (6.91 percent) and 37 suspended (23.27 percent). Compared to the previous year of 2007, there was a slight increase of district court confirmed decisions, from 53.12 percent to 55.02 percent while the number of altered decisions was lowered from 24.87 percent to 21.75 percent and suspended decisions from 23.78 percent to 22.60 percent.

In **2007**, 69,482 appeals were stated on first degree decisions.

There were 17,998 appeals to the municipal court decisions in criminal matters, in 2007, or 2,264 more than in the previous year. There were 10,744 decisions confirmed (59.69 percent), 2,771 ones altered (15.39 percent) and 4,720 cases suspended (26.22 percent). There were 38,414 appeals to the municipal court litigations – 25,909 confirmed (67.44 percent), 2,996 altered (7.79 percent) and 9,421 suspended (24.50 percent). In labor disputes, there were 13,070 appeals, out of which 9,432 decisions were confirmed (72.16 percent), 1,303 altered (9.96 percent) and 2,559 decisions suspended (19.57 percent). Compared to the previous year, in criminal matters, the percentage of confirmed decisions increased from 57 percent to 59.69 percent and the percentage of suspended decisions from 25 percent to 26.2 percent. In litigations, the percentage of confirmed decisions slightly decreased from 68.5 percent to 67.64 percent and the percentage of suspended decisions was the same, 24.5 percent.

In 2007, there were 2,846 appeals to the district court decisions – 1,512 were confirmed (53.12 percent), 708 altered (24.87 percent) and 677 (23.78 percent) suspended decisions. There were 5,057 appeals in civil matters - 4,171 decisions confirmed (82.47 percent), 312 ones altered (6.16 percent) and 444 decisions suspended (8.77 percent). Compared to

the previous year, in criminal matters, there was a significant increase of the number of confirmed decisions, from 46 percent to 53.12 percent and the number of altered decisions decreased from 31 percent to 24.8 percent. The number of suspended decisions was the same as in 2006, i. e. 23 percent. In civil matters, the number of confirmed decisions decreased from 84 percent to 82.47 percent and the number of suspended decisions lowered from 10.5 percent to 8.77 percent.

Basic Court

MATTERS	TOTAL SOLVED	NUMBER OF CONSIDERED APPEALS	% of ADOPTED APPEALS
L	107, 063	13, 754	19.41%
LD	33, 715	1, 351	64.40%
CI	40, 459	26	0%
CP	43, 479	5, 758	22.58%

Higher Court

MATTERS	TOTAL SOLVED	NUMBER OF CONSIDERED APPEALS	% of ADOPTED APPEALS
CI	5, 487	10	0%
CP	4, 909	1165	20.94%
JCP	2, 247	83	21.69%
JCI	4, 909	185	11.35%
L	2, 221	84	32.14%
LD	1,473	15	73.33%

L – Litigation

LD - Labor dispute

CI – Criminal investigation

CP – Criminal proceedings

JCP – Juvenile criminal proceedings

JCI – Juvenile criminal investigation

2nd DCP – Second instance criminal proceedings

2nd CP – Second instance civil proceedings

2nd LD – Second instance labor dispute

28. Are there plans to reduce the backlog of cases? If so, please provide details.

According to Law on judges ("Official Gazette of RS", no. 116/08, 58/09 - decision CC, 104/09 and 101/2010) the judge is obligated to inform the President of the Court why first instance procedure has not been terminated within one year as well as inform him on the further development of the procedure every three months. The first notice in legal remedy proceeding is given by the judge to the President of the Court after two months, and the next on each 30 days. In the first instance trial, the President of the Court is obligated to inform the president of immediately higher court about each proceeding which has not been terminated within two years and the reasons for it. In the legal remedy proceeding not terminated within one year, the President of the Court is obliged to notify the President of the Supreme Court of Cassation. Deadline for notification in enforcement, non-contentious and other uncontested proceedings is determined by Court rules. Duty of notification comes into effect from the day of receipt of cases at the court. According to Court rules old cases are cases lasting more than two years. The length is calculated from the date the case was received at the court for the first time. In investigation process, old cases are considered the ones in which the investigation was not terminated after 9 months of duration. If while considering annual report on activities, it is confirmed that there is a larger number of unsolved cases, the President passes the Program of solving old cases by 31 January at the latest, for the current year. The President then submits the Program proposal to be considered at the session of all judges.

The program can introduce measures for timely performing of the activities at court, such as changes of internal court organization, introduction of additional work of judges and court staff, temporary distribution of working hours and other measures, in accordance with the law and these Court rules. The president may, in the course of preparation and implementation of the Program, refer to judges from the other court and bring about change of the annual schedule. The president notifies the president of immediately higher court about the adopted Program, as well as the president of Supreme Court of Cassation. The president monitors and supervises carrying out of the Program on a monthly basis, in order to change or supplement it, or suspend its further carrying out.

Old cases have advantage in scheduling of hearings. In order to reduce the number of unsolved proceedings, changes of procedure laws have been predicted, which would lead to quickening of the proceeding, and disable long term proceeding duration.

Separation of Powers Program (SPP) of the Agency for international cooperation USA (USAID) offers help to courts in Serbia in reduction of number of old proceedings. Within Separation of Powers Program, USAID have submitted a draft of the Strategy to solve old proceedings to the Ministry of Justice, which should be forwarded to Supreme Judicial Council to be analysed and adopted.

As a result of cooperation of SPP with five courts in the Republic of Serbia, as well as prior cooperation with courts supported by USAID, and which was terminated in 2006, guidelines have been created considering solving the problem of a large number of old cases in first instance courts. SPP have immediately worked with Second Municipal Court in Belgrade, Municipal Court in Nis, District Court in Novi Sad, Municipal Court in Subotica and Municipal Court in Vranje. These guidelines seek to help court presidents

to make up annual programs for reduction of number of old proceedings in individual courts. Guidelines are not binding.

Currently, Ministry of justice and USAID are working on success analysis to create and implement strategies for solving old proceedings brought in the region, with the aim of creating a similar strategic document, relevant and applicable for Republic Serbia.

Old cases gain priority and must be solved by chronological order of recording, except for urgent old cases in accordance with the law or decision of the president of judicial department; then they gain the special priority, e.g. when a criminal case is threatened to become obsolete. In every old case to be solved, the hearing should be scheduled as soon as possible, within thirty days at the latest. Administration office is in charge of meeting deadlines. Enough time is left for the trial, so that after its termination it will be possible to close the case. Each judge has to explain why old cases have not been terminated; if the reason is not good enough, the president makes a note. When necessary, the president of the court issues the order and directive to certain judges to terminate certain old proceedings. The judge should control and monitor the proceeding, and when necessary, conduct the following measures: apprehension of a witness, a proceeding party, or an expert witness to court; punishment of the proceeding party or the expert witness due to disrespect of deadlines; concentration of all evidence in one proceeding/hearing; rejection of new evidence according to law, i.e. in cases when evidence could have been deducted in preliminary hearing, in the indictment or plea; exclusion of irrelevant testimony; limiting of witnesses to a reasonable number if too many were proposed, etc.

The trial judge shall, in all proceedings (both old and new) prevent delay and postponement, except in cases of justified reasons. Program for reduction of number of old proceedings should include criteria for equal assignments to judge, or judges, or council of new proceedings to be assigned to a certain judge or council according to annual working plan, as well as criteria for repeated assignment of old proceedings equally to all judges by President of the court, Court secretary or Court administration manager, in order to prevent concentration of old or new cases with one or more judges, who will not be able to solve them over a long period of time, no matter how hard they might try.

As far as old proceedings are concerned, courts have mostly accessed elaboration of program for solving old proceedings, and depending on engagement of judges certain results have been achieved.

According to the data from annual working reports, **in 2008**, municipal courts transferred 185.192 old proceedings in total. Resolving old cases as to determined programs, in municipal courts on all grounds (investigation, guilt, proceeding) there were 112.743 old cases left at the end of 2008. The quoted number of old cases left at the end of 2008 participates with 15,82% in the total number of unsolved proceedings with municipal courts (712.509 cases), which means improvement in relation to the previous year, when this percentage was 17,37%.

In district courts according to data from reports on old proceedings, in 2008, 11.690 old proceedings were transferred, and 6.990 remained unsolved. In the total number of unsolved proceedings they participate with about 12,52%, in relation to the previous year when this percentage amounted to 12,43%.

According to the data from reports, municipal courts in 2007 transferred 192.592 old proceedings in total. Resolving old proceedings as to determined programs, in municipal courts on all grounds (investigation, guilt, proceeding) there were 106.858 old cases at the end of 2007, which means that they participate with about 17,37% in the total number of unsolved proceedings.

In district courts, according to report on old proceedings, in 2007 a total number of 6.538 old proceedings were transferred, while 5.294 remained unsolved. They participate with about 12,43% in the total number of unsolved proceedings.

29. Which roles / competencies do judges have (including ones outside normal proceedings such as in the execution of judgements, in registry issues etc.)? Which roles / competencies do prosecutors have (including outside criminal proceedings such as in the execution of judgements, civil of family law cases etc.)?

The judge is obligated to lead the procedure objectively and according to his conscience, according to his own estimate of facts and law interpretation, with providing a fair trial and respect of procedural rights of the parties guaranteed by the Constitution, law and international acts. Services, activities and acts incompatible with duty of the judge are determined by law. In addition to performing judicial activity and making decisions in the procedure, the judge is obligated to perform other tasks of importance for affirmation of judicial activity and improvement of court acting. Judge has to perform all activities for which he has been assigned by annual schedule (deputy of the president of the court, president of the council, president of the department).

1. In the enforcement process of verdict, the judge makes decision on allowing enforcement, that is, passes enforcement or rejects the proposal according to creditor proposal. During the whole course of enforcement procedure the judge decides on proposals of the parties which they submit to the court. The judge decides on: proposal to change the means of enforcement, proposal to postpone enforcement, objection of the third party (who claims to have such a right to prevent enforcement considering the case of enforcement), makes decisions on imposition and collection of fines. In the immovables sales proceedings the judge is in charge of the sale in public competition, and in cases of physical taking of minor children away from one parent to be given to the other one, the judge is in exclusive charge of that procedure. If the hearing is to be held in the process of enforcement, it is managed by the judge. The judge instructs the court enforcement officer to undertake execution activities, as well as the other bodies helping the court (National bank of Serbia, registers...). In second instance proceedings lead for enforcement of verdict, the council composed of three judges passes verdicts on legal remedy declared by the parties on verdict of the first instance court. In the enforcement process, the judge decides on enforcement

proposal on grounds of authentic document (invoice, bill, cheque, bank guarantee, letter of credit, extract from accounting books for communal and similar services, calculation of interest), as well as on objection declared against enforcement verdict on grounds of authentic document. We are here speaking about a large number of legal proceedings in basic and commercial courts, and annually several thousands of proceedings get there. Judges in basic and commercial courts also decide in proceedings referring to securing claims (money or other), by making temporary and prior measures (only for money claims for which decision of a domestic court has been made and which is not executive), and before the judge of the party, to secure money claims, they conclude the agreement on existence and amount of the claim and its securing by putting lien on immobvles and movables. In commercial courts the register judge decides on various kinds of register entries managed by commercial courts. These are registers where data on different institutions are kept, such as health, educational, cultural, scientific, social protection, as well as public agencies. The subject of the entry is establishment (firm and its seat, initial capital, activity, authorized representative, branches of the registration subject), but also all changes of the quoted data, status changes (e.g. deleting), as well as notes (bankruptcy and liquidation proceedings). When economic entities are at stake, registers are managed by the Agency, not the court.

2. In certain basic courts, Register of property is still kept (land registry book), and the judge decides on various kinds of registration in connection with immobvles such as registration of property, different kinds of load (mortgage, easements), registration of temporary measures brought by courts which refer to prohibition of disposing and load on immobvles, and also notes are entered in relation to litigations on immobvles as well as status questions of parties holding certain rights on immobvles. The proceedings apply the Law on land books ("Official paper of the Kingdom of Yugoslavia", 146/30 and 281/31) and the Law on Non-contentious proceedings ("Official Gazette of RS", no. 25/82 and 48/88 and "Official Gazette of RS", no. 46/95-state law and 18/2005-state law). The largest part of these registers was taken over by Republic Geodetic Authority – immobvles cadastre office, so that they are no more under jurisdiction of courts.
3. Judges can be nominated as members of working groups for drafting proposals of laws and other documents. The High Judicial Council formed several working groups, with the task of drafting act proposals, the passing of which lies under jurisdiction of the High Judicial Jouncil, as well as working groups important for improving the activities of courts. Also, working groups were formed to compose Rulebook on disciplinary proceedings and disciplinary responsibility of judges, Rulebook on criteria and measures for evaluation of judges and presidents of courts, as well as the working group for evaluation of the proceedings gravity. The government has formed a working group for Codification of the civil code, assisted by the judges. The Ministry of justice forms working groups for elaboration of law proposals within its jurisdiction, being composed of relevant experts in the given areas, as well as judges and prosecutors with adequate experience.

4. Members of the Election commission of High Judicial Council are nominated among judges. The Election commission comprises of the president and four members and their deputies, elected by the Council of judges holding constant judicial position, with their consent (Article 25 of the Law on High Judicial Council).
5. Judges take part in the activity of disciplinary bodies according to Law on judges ("Official Gazette RS", no. 116/2008, 58/2009 - decision CC, 104/2009 and 101/2010). The Council nominates members of disciplinary bodies, with their prior supplied consent, among judges holding constant judicial position (Article 10, par 1 of the Rules on disciplinary proceedings and disciplinary responsibility of judges).
6. The work of judges in low level courts is evaluated by the councils comprising three judges who are chosen by secret ballot at the session of all judges, for the period of four years (Article 33 of the Law on judges).
7. Judges are included in the activity of Judicial Academy, in the activity of the Steering committee and Program Council. The Steering committee of Judicial Academy is the management body of the Academy and is comprised of nine members. Four members of the Steering Council are nominated by High Judiciary Council among judges, two of whom are nominated at the proposal of the association of judges. Program Council is an expert body of the Academy, consisting of 11 members nominated by the Steering committee, among judges and prosecutors, other experts and judiciary and prosecution staff. At least five members of the Program Council are judges, one of whom is proposed by the association of judges (art. 7 and 16, Law on Judicial Academy ("the Official Gazette RS", no. 104/2009).
8. Judge can be a member of any professional association or other organization, and participate in their activity, which will in turn, for the sake of protection and enhancement of reputation of judicial profession, represent their interests and protect the independence and position of their profession.
9. Article 2. Paragraph 1 of the Law on methods and conditions of recognition of property rights and return of land, which was transferred into public property on the grounds of agricultural property fund and confiscation due to outstanding obligations from compulsory purchase of agricultural products ("Official Gazette RS", no 18/91,20/92 and 42/98) prescribes that proceedings on request for return of land are handled and resolved by the commission formed by Minister of agriculture, forestry and water management at the proposal of the municipal assembly, whereas paragraph 3 of the same article proposes that a judge be appointed President of the commission.
10. The High Judiciary Council signed the agreement on cooperation with the Faculty of Law, Belgrade University on October 12, 2010. This agreement predicts that judges, above other things, can hold lectures and organize practice for students, out of their working hours, so that these activities should not hinder them from holding judicial office.

The Constitution of the Republic of Serbia ("Official Gazette RS", 98/2006) determines public prosecution as independent state body prosecuting offenders of criminal and other punishable acts and undertaking measures for protection of constitutionality and legality. Public prosecution performs its function on the grounds of the Constitution, Law, confirmed International agreement and directions made on the grounds of the Law. Formation, organization and jurisdiction of public prosecution are ordered by the Law. Republic public prosecution is the highest public prosecution body in the Republic. The Law on public prosecution ("Official Gazette RS", no 116/08, 104/09 and 101/2010), prescribes that real jurisdiction of public prosecution be determined in accordance with law regulations valid for estimation of subject matter jurisdiction of the court, unless differently regulated by law. Territorial jurisdiction of public prosecution is determined according to laws regulating seats and districts of public prosecutions.

Fundamental right and duty of the public prosecutor is prosecution of criminal offenders.

According to Criminal Procedure Code ("Official Gazette SRJ", no. 70/2001, 68/2002, "Official Gazette RS", no. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2008, 20/2009, 72/2009, 76/2010), for criminal acts prosecuting ex officio, the public prosecutor's duty is to: handle the pre-criminal procedure, demand investigation and direct the course of the previous criminal procedure according to Criminal Procedure Code, bring and represent charges, i.e. indictments before a competent court, complain against instance court decisions and submit extraordinary remedies against instance court decisions, as well as perform other acts defined by Criminal Procedure Code.

According to Code on Civil procedure ("Official Gazette RS", no. 125/2004 and 111/2009) public prosecutor has the authority to raise claims for protection of legality against instance court decisions. According to Family law, the prosecutor has the authority to: take charges to confirm existence or non-existence of marriage, submit charges to annul marriage, take charges to annul the statement of recognition of fatherhood, take charges to protect children's rights, take charges for loss of parental rights or to annul adoption due to quoted reasons by Law or to take charges to determine protection measures in case of family violence.

Prosecutors in the procedure of execution of verdict in civil affairs can still out of restrictively prescribed reasons raise a request for judicial review as the only extraordinary remedy in execution process (against final decision on execution), but this is rarely the case. The same applies for civil procedures where legally-binding verdict is at stake.

In execution as well as in non-contentious proceeding, the prosecutor is liable to raise the demand for protection of legality against court verdicts reached in those proceedings. The public prosecutor is therefore, by Law on public prosecution authorized to demand and postpone enforcement when there exist reasons to annul the verdict passed in court or other proceeding by extraordinary legal remedy.

In administrative procedure, the public prosecutor is authorized to submit request for re-examining of verdicts of the Administrative court, according to Law on administrative proceedings (“Official Gazette RS”, no. 111/09). He is also authorized to submit demand for protection of legality against verdicts reached in administrative matter against which, it is not allowed to conduct administrative action, according to Law on General Administrative procedure (“Official Gazette SRJ”, no. 33/97 and 31/2001 and “Official Gazette RS”, no.30/2010). He is also authorized to take action for annulment and elimination of the final decision of administrative body under the right of supervision and according to Law on General Administrative Procedure act.

In addition to liabilities confirmed by law, the role of the public prosecutor has been expanded to the area of international cooperation against criminal and in the area of offering legal aid. New institutional capacity of the prosecution is the Department for international cooperation and legal aid of Republic public prosecution, which provides implementation of fast and efficient direct informal legal aid and information exchange through prosecuting contact points. The main legal instruments of this kind of legal aid are the Law on international legal aid in criminal matters passed in 2009 (“Official Gazette RS”, no. 20/2009), which is in tune with European convention on giving legal aid in criminal matters from 1959, and with the Second additional protocol on this convention ratified on May 11, 2006 (Official Gazette SCG- “International contracts”, no. 2/2006, which has been in application since August 1, 2007), as well as Memorandum on cooperation of prosecution at bilateral or multilateral level.

Cooperation on implementation of the National Judicial Reform strategy:

During 2009, exchange of experiences in the process of stimulating international prosecution cooperation continued and brought about results in the area of judicial reform as well. Legislative process was finished by adopting Draft Law on public prosecution and Law on the State prosecutorial council, which is the result of intensive cooperation and joint efforts with the representatives of Prosecutor Association and Public prosecutor deputy, experts of the Council of Europe and the Commission for implementation of the National judicial reform strategy, the Ministry of justice of Republic Serbia and Department for legislative affairs and international legal aid, representatives from academic circles, representatives of OEBS Mission, members of the office of American Bar Association ABA-CEELY, Office of the Legal Adviser of the American Embassy in Belgrade (RLA), representatives of the European Commission Mission, UNDP representatives, managers of the Program of Canadian Ministry of justice for supporting judicial reform and others.

In accordance with provisions of the new Law on public prosecution and Law on State prosecutorial council (“Official Gazette RS” no. 116/08) a new concept of public prosecution was created as foundation for selection of all public prosecutors and prosecutor deputies who were evaluated as the most qualified for future more efficient fight against crime. It was estimated that changes in the organization of public prosecution in Serbia enabled the prosecutors to do their duty independently, and thus preserved their integrity in procedures with the aim to maximize their engagement in the

fight against criminal in accordance with Recommendation Rec.(2000) 19 of the Council of Europe and Venice Commission on acts regulating the role of prosecution in criminal procedure.

In 2009, with support of these and other bodies, seminars were organized, where both EU experts and members of working groups took participation, and where application of new legislative solutions was considered for organizing public prosecution in Republic Serbia.

Direct legal aid through EUROJUST and other agencies for law enforcement:

By decision of the Minister of Justice, contact prosecutor was appointed for cooperation through EUROJUST and thus, the way was paved to further institutionalization of relations of Ministry of Justice and this European network of prosecutors. Within the course of year 2009, negotiations with EUROJUST continued on reaching the Agreement on cooperation with EUROJUST. Representatives of Republic public prosecution are included in the course of negotiations, but this process is slow due to the fact that our legislation has to pass new regulations according to EU standards, which would regulate protection of data and other procedures determining compatibility of our legislation for cooperation with European agencies for law enforcement.

In 2009, the procedure of direct legal aid was not changed, since the adoption of Law on international legal aid in criminal matters allows acting without formally addressed request, reaching agreement on forming joint investigation teams, video conference etc. which only confirmed the legality of prior application of the principles of the Second additional protocol on the Convention from 1959, as was evaluated in PROSECO project by EU experts. The Republic public prosecution continued the practice of meeting the requirements of foreign prosecution, whenever possible. The requirements sent by e-mail or fax were evaluated from the position of validity according to positive regulations, they were translated and then forwarded to competent prosecutor offices, courts or the police. The estimate is that priority procedure is required by foreign public prosecution offices, court or the police addressed through EUROJUST, since procedure on these requirements is estimated in EU as contribution of Republic Serbia in the fight against cross-border crime.

Previous cooperation has been estimated as successful, also in respect of pleas addressed to accelerate regular legal aid through Ministry of Justice of Republic Serbia. Therefore, we have issued a statement that Republic Public Prosecution are expanding their institutional capacities for international cooperation.

Regional cooperation of specialized prosecution:

Well-developed international cooperation of the prosecution with judicial bodies of other countries and representatives of international organizations and institutions is one of the major conditions for successful fight against organized crime. Organized crime is only in rare cases linked to the national framework and therefore the Specialized prosecution has,

ever since its establishment, been working on development of international cooperation, not only at regional but also at wider level.

Following all concluded Memorandums on cooperation with foreign prosecution cooperation of prosecution offices is regulated in the fight against organized crime which will be implemented by exchanging information and documents related to organized crime and persons involved. The signing parties have agreed to, within the limits of their authorities undertake all possible measures to enable efficient timely execution of requests for extradition, transmission and giving legal aid in criminal matters, in relation with organized crime. They have also committed to stimulating development of expert contacts and cooperation among members of their services in the aim of efficient updating of experiences, exchange of information and data on legislations of their countries. They will particularly exchange texts of laws and other legal acts, analytical material, statistical data and reports on organized crime and money laundering of crimes committed by organized criminal groups. In order to implement the Memorandum, it has been predicted that parties contact each other directly, which not exclude usage of diplomatic channels. Cooperation should be implemented on the grounds of request for information delivery. Each party, however can, without prior request, deliver information to the other party whenever it considers the information could facilitate the beginning or conducting of the investigation. The parties decide on all issues related to Memorandum interpretation and implementation according to principle of mutual understanding and respect.

The Prosecution for organized crime (until January 1, 2010 the Special prosecution for organized crime) entered into Memoranda of cooperation with competent authorities in the fight against organized crime of the countries from the region and Europe (Italy, Slovakia, Spain, Bulgaria, Ukraine, Hungary, FYR Macedonia, Bosnia and Herzegovina, Croatia, Montenegro).

Of special importance for the Special prosecution is the cooperation with National Directorate of Italy for the fight against mafia. National Prosecutor for the fight against mafia in Italy, Pietro Grasso and Special Prosecutor Miljko Radisavljevic, have had regular meetings in connection with proceedings of mutual interest for both institutions since the beginning of cooperation. This has resulted in concrete action and a larger number of initiated criminal proceedings in both countries. Cooperation has been implemented and developed owing to engagement of the OEBS Mission in Serbia and the Italian Embassy in Belgrade.

Cooperation in the fight against cyber crime:

Bearing in mind that crime acts of cyber crime often have international character, efficient cooperation has been implemented with the National Bureau of Interpol in Belgrade, therefore this prosecution regularly receives information and data related to computer crime, committed or suspected to have been committed out of the territory of Republic Serbia.

The total number of proceedings recorded in Registers of the Special prosecution for cyber crime in 2009 was 537 cases as follows: -in KT register 88 cases, - in KTR register 109 cases, -in KM register 40 cases, which is far more than in 2008, with 184 case proceedings.

Criminal charges were filed against 115 persons, which, in comparison to 2008 year, when charges were filed against 166 people, represent a considerable reduction. Criminal charge was rejected against 15 people, whereas investigation was requested for 74 people and investigation suspended against 10. Charges were brought in 79 cases, while indictment was submitted against 8 people.

The structure of processed criminal acts is such that the majority of them refer to protection of intellectual property, in which field there were proceedings against 95 people, whereas 32 people were charged for acts against safety of computer data and only against 6 people for criminal acts against property. The majority of criminal acts refer to unauthorized copy and marketing of the Law on protection of copyright.

Violations of these rights are sanctioned both according to TRIPS Convention and Convention on cyber crime, therefore, legislative profile of Republic Serbia in this area is fully compatible with international protection standards, being particularly complex in international criminal law and demanding constant training and improvement of prosecutors, so as to have the best possible cooperation with foreign prosecution and agencies for law enforcement.

Referring to the need of training the prosecution for international cooperation, the special Prosecution for cyber crime made an Agreement on cooperation in the area of cyber crime with the National Gendarmerie of France on May 27, 2008. Following the invitation of the National Gendarmerie and with consent of the Republic public prosecution, Special Prosecutor for cyber crime attended the Third international forum on computer crime held in Lion on March 24, 2009. Special Prosecutor and his deputies attended the conference of the network for cooperation of prosecutors "Orthopus" in Strasburg from 10 – 11 March 2009. On June 2, 2009, at the Institute for Intellectual property deputies of public prosecutor for cyber crime participated in the training for the fight against violation of property rights, together with Presidents of courts of market inspection and other prosecution offices. They also attended seminar held in June 2009, at the Judicial Centre with the topic: "Confiscation of property gained in a criminal act". In relation to these activities Special Prosecutor for cyber crime participated in making of the monograph on cyber crime in Serbia, which collects the experiences acquired in the course of addressing proceedings of cyber crime.

From 27-28 October, the Seventh AmCham Conference on protection of intellectual property rights was held on Divcibari, organized by a nongovernmental organization of the American Chamber of Commerce. The conference considered a legislative profile in the field of applying principles of the Convention on cyber crime, and particularly in connection with adopting the Law on optical drives, tightening of penal policy in the field of intellectual property protection, implementation of the convention on cyber crime into

national legislation and modernization of resource regulations (harmonization), and linked to the need for coordination among national authorities to give input to new or change the existing regulations in the field of information systems. Some new concrete suggestions have been given to change and supplement the Law on copyright and similar rights in the sense of introducing obligation of evidence of broadcast material ("play lists"), introducing additional criteria for public procurement so that only firms having the proof of legal software can participate in the tender (particularly in case of infrastructure projects). It was concluded that legislative authorities should be encouraged to process procedures related to protection of intellectual property rights more quickly, that average sentences should be raised above legal minimum, and that recommendations and expert assistance of international organizations and good practice from other countries should also be used in this field.

30. What is the percentage of the civil cases where the executive authorities are asked to enforce the judgement/final decision? Give equivalent information about fines in penal cases (the percentage of the cases where the fine is enforced by the executive authorities out of the total number of cases where a fine is imposed). How much time elapses, on average, until the enforcement of judgements? Is there any plan to improve enforcement?

In 2006 in total of with unsolved cases from 2005, there were 805946 processed cases (all types of enforcement proceedings). At the end of the year, there were 334088 unresolved cases.

In 2007 in total there were 871049 of enforcement proceedings, with remaining of 372440 unresolved cases.

In 2008 in total there were 911420 of cases (all types enforcement proceedings), with remaining of 392334 unresolved cases, with unresolved 219382 cases in Belgrade alone.

In 2007, total number of convicted adult persons who have been fined was 7413, in 2008 - 7270 and in 2009 - 6753.

According to some statistical data, with which Ministry of Justice disposed of, in average it takes little over 600 days for the enforcement of sentence.

There is a plan for improving the execution of sentences and it consists primarily in the fact that the new law regulate enforcement procedure in order to improve the efficiency of conducting enforcement. This would be achieved primarily by introducing private enforcement officers, as well as some changes to the procedure solutions in the current law which should contribute to efficiency. The introduction of private enforcement officers (persons with law degree and state exam passed, with adequate physical and technical conditions, appointed by the Ministry of Justice) should relieve the courts from conducting the enforcement. It is assumed that the private enforcement officers due to their expertise (current court enforcement officers are employees with high school degree and with no special exam for the enforcement job) and the salary, will be able to accomplish their job better and more efficiently. They will carry out all types of

enforcement (collection of pecuniary claim, non-financial enforcement, like evictions, cessations of immovables or movables) and the police will be obliged to assist them in enforcement of sentences. Private enforcement officers would allow enforcement based on credible documents related to utilities and similar services, which would relocate these cases that Serbia numbers in hundreds of thousands from the courts in the phase of enforcement, but the courts would retain jurisdiction to decide on complaints against such enforcement decisions. Ministry of Justice as the designated proposer of the law that regulates the enforcement procedure considers that the procedure of enforcement will be improved in a way that judicial remedy submitted against the decision on enforcement, and other decisions of the First Instance Court, which now is a appeal, should be replaced by the complaint decided by the First Instance Court, not the immediate superior, Second Instance Court. The complaint would be decided by the council made out of three judges from the same court that issues a enforcement order and thus is expected to shorten the time needed now for the Appellate court to rule on the appeal. Postponing of enforcement on the debtor's proposal will not be allowed which also accelerates the procedure, possibilities for exemptions in the procedure are limited and it prevents the possibility to seek delegation to another court, which has been so far subject of abuse by debtors, all to delay the proceedings.

31. Please describe the procedure for enforcement/ criminal judgements.

The procedure of execution, when it comes to civil judgement, is initiated by the creditor, after the verdict becomes enforceable. The procedure is initiated by the formal act – proposal for enforcement which must be accompanied by enforcement document (verdict). Procedure is initiated and implemented before the basic courts or before commercial courts depending on jurisdiction in given case. If the statutory requirements are fulfilled, the court brings the decision on enforcement and sets out the means (ways) of enforcement which is stated by the creditor in the petition. Currently the appeal is the judicial remedy against the decision on enforcement, decided by immediate higher court. The appeal does not delay the enforcement or satisfaction of the creditor, except in the few statutory cases (seized movables are sold after the decision on enforcement, immovable is sold after decision of enforcement is legally-binding and the decision which determines the value of the immovable for auction). If it's the case of pecuniary claims which are charged from the debtor's account in the bank, decision on enforcement is delivered to the National Bank of Serbia, Department for Enforced Collection, which immediately reacts upon receipt of decision in favour of the creditor, if there are monetary funds in the account or it locks the account (accounts if there are many) of the debtor until the funds appear.

When the pecuniary claims are charged from the earnings of debtor, decision of enforcement is delivered to the employer who is obliged to act upon, but can not seize more than two thirds of debtors earnings. If the employer fails to do so, without reasonable excuse, enforcement would be carried out on the employer to his property. If the pecuniary claims are charged by selling the movables, enforcement is conducted by the court enforcement officer who inventories, assesses values and sells the seized items. Currently, requirements for transportation of items are mostly provided by the creditor.

Court enforcement officer conducts various types of performances (eviction from immovables, parcel sales, demolition of objects etc.), and costs for these actions that should be taken when implementing enforcement are paid by creditor, but finally by debtor. Sale of immovables is carried out by the judge, and the judge also conducts the subtraction of minor children from the debtor with mandatory presence of practitioner from the social service centre or a school psychologist.

Once the decision of enforcement is issued, then the further process of execution is conducted without special proposals from the creditor for enforcement of execution, that is, the court shall execute the actions *ex officio*. Currently it is possible to delay the enforcement on the proposal of debtor on two bases. First in case if the first instance decision issued by the court that questions the enforcement documents (enforceable civil judgement) and to the validity of the first instance decision, and second due to special justification, but only up to three months and once during the enforcement. Under the special justification the court considers: illness of the debtor or family members, death of family members etc. The court assesses whether to delay the enforcement and if the proposal is rejected, appeal on such a decision does not delay further execution of the decision.

If there are any problems during the enforcement (interference with the court, threats, resistance...) the police is obliged, upon the request of the court, to assist during the implementation of executing actions and enable the freely conduct of enforcement. Also different authorities are obliged to cooperate with the court in conducting of execution and provide assistance, National Bank of Serbia, commercial banks, various public registers, social work centres.

When it comes to enforceable criminal judgements, then here we consider only the collection of fines and legal costs. These verdicts are carried out *ex officio* in a way that the court that issued the criminal verdict initiates enforcement proceedings before the competent court for enforcement (it can be the same court), which also brings the decisions on enforcement *ex officio* and conducts execution actions depending on enforcement means (seizer of debtor's earnings, seizure and sale of movables, seizure of funds from a bank account, sale of immovables). This means that a fine and legal expenses are charged as all other monetary claims, and just in case that expenses could not be collected even by enforcement, fines can be replaced with prison sentences with 1000 RSD being equivalent to one day of imprisonment, but the prison sentence can not be longer than 6 months, except in case where the fine is larger than 700.000,00 RSD and can be replaced by imprisonment up to one year. Also, it is possible to replace the imprisonment sentence which couldn't be charged by enforcement replace with the work in the public interest, so that 1000,00 RSD fits 8 hours of work in public interest, but up to 360 hours of public interest work, at most.

According to the Law on Enforcement Procedure (*Official Gazette of RS* No. 125/2004), special section regulates enforcement of decisions from the area of family law – cession and subtraction of a child. The proposal for enforcement can be submitted by a parent or another person to whom the child has been entrusted for care and education as well as guardianship. The court with territorial jurisdiction for the party requesting enforcement also has the jurisdiction to decide on the proposal, or the court in whose territory the child

is located. The court at whose territory the child is located at the moment of execution has the jurisdiction. During the enforcement, the court shall pay special care to protecting the interests of a child. Debtor shall be given the three days deadline to hand over a child to a parent or another person, or organization to which the child was entrusted for care, under the threat of fine. If the enforcement does not take place in this manner or by enforcement of the decision on a fine, the child will be taken away from the person with whom it is, and given to a parent or person entrusted for care and education. Revocation and submission of the child can be done only by the judge in cooperation with the guardianship psychologist, school, family counselling or other specialized institution.

Regarding the enforcement in labour disputes, Law on Enforcement Procedure specially regulates the enforcement order of restoring the employee to work. The procedure is initiated by the proposal for enforcement on the basis of executive title upon which the employer is obliged to return the employee to work or to assign him to a proper work position. The proposal should be submitted within 30 days from the day when enforcement creditor has obtained the right to submit proposal to the court in whose area the residence of the employer is located. Law on Enforcement Procedure regulates compensation for lost wages in case of an employee returning to work. Namely, the enforcement creditor may propose that the court issue the ruling that would order the enforcement in order to collect defined amounts. A decision by which the proposal for compensation is adopted has the effects of decision on enforcement.

32. Equipment:

a) Is there an IT supported case management system in the courts? Are systems and software compatible across the country? (The need to manage the computerisation on the national level calls for a central capacity to define needs, implement computerisation, including procurement of software and hardware, as well as to advise and help computerised courts.) Please describe briefly the main tools provided by the system.

In the courts of general jurisdiction (34 basic courts in 15 court units, as well as in 26 supreme courts) and in commercial courts (16 commercial and the Commercial Court of Appeal) as of today, an automated system for handling cases is installed (AVP) business application. This system or software for handling the cases in courts of general jurisdiction and commercial courts is fully compatible. The results of work in AVP is shown in most transparent way on a web portal of Serbian courts (www.portal.sud.rs). Namely, by the same criteria of search, citizens or public are able to monitor each of 4 million cases that are in jurisdiction of these courts and can gain insight during the procedure, free of charge. Insight in the case procedure “online” 24 hours a day, from any location, represents a record of chronological tracking of information on a particular case in jurisdiction of 77 courts and 15 court units, in accordance to regulations.

Pursuant to Article 66. of the Law on Organization of Courts (*Official Gazette of RS*, No. 116/2008, 104/2009 and 101/2010), affairs that constitute the judicial administration are also related to activities of planning and developing Judicial Information System of

Serbia (which involves the implementation of standardized ways of working in a business application up to date, as described in 77 courts and 15 judicial units). In a framework of a various donor projects implemented in the justice system, special attention is directed to realization of actions related to implementation of compatible information and communication technologies (ICT) in operation of courts of general jurisdiction. Based on the previously mentioned law, the Ministry of Justice has the jurisdiction for implementation of information and communication technologies in all courts in the Republic, and the new court rules of procedure has the use of a computer in courts clearly defined. Within the Ministry of Justice there is a separate organizational unit, Sector of Information Technology, as well as Section for informatics and analytics, dealing with computerization, including the procurement of computer software and hardware, and counselling and providing aid to the computerized judicial authorities.

Main tools provided by the system (up to date the most advanced AVP system in 77 courts and 15 judicial units) are keeping basic data on such matters as: number of the case, type of the case depending on the register and the date of receipt. This implies the need for entry, correction and overview of data related to the cases; record of judges responsible for cases (random selection of judges enabled the full right of a party for independence of judicial proceedings); filing all proceedings and actions, as well as decisions on the subject case (acts and actions include the following: submissions, and under decisions process solutions, correspondence and other actions in the procedure of the court); filing of regular and exceptional legal remedies; forwarding and receipt of documents; distributing the cases, or distributing the final court decisions and relevant data as one of the most important statistic parameters; evidence of mutual relations of cases; evidence of participants in the procedure with all relevant data (participants in the procedure are selected from one of 5 categories as follows: persons, legal entities, lawyers, state bodies, and others); tracking of all judicial taxes on the level of the case (billing, collection and all tax procedures); scanning of all documents on certain case and creating electronic database of all cases; creating forms for all documents resulting within the court; allowed the subsequent defining of new proceedings in case of alterations in judicial practice by the user, with coordinating the IT services with commission for AVP.

Introducing the new AVP business software in work of courts (deployment) up to date presents the greatest challenge for the Sector for operations and technologies in reforms regarding the implementation of informational and communication technologies (ICT), which provided the courts with handling all types of cases. This covered all business processes with dealing with the case, and manual records are relocated to the electronic records. With regard to this, all operations within the jurisdiction of the court administration are covered. AVP in terms of technology is created in accordance to the standards of modern practice in the European Union and developed world countries. One of the successfully executed tasks of AVP is that it has replaced the existing non-standardized applications with unique harmonized or standardized business application.

Keeping the register in electronic form (via AVP) assists the court in:

- More accurate handling of information and cases, from the filing section to the conclusion of the case;
- Allows the creation of the database for all types of cases and participants in the procedure;
- Allows insight in every case within a few seconds and provides the information on the cases to the clients without waiting;
- Creates the reports for tracking the work of courts and judges individually in real time;
- Allows the parties and general public to keep track information on the cases via the web pages of courts of Serbia, thus reducing the time necessary to obtain the information, increase the transparency of court works and relieves the administrative office workers in every possible situation;
- Allows recording contracts on immovables market via centralized database and thus increases the law security with these transactions (proper use prevents abuses that have occurred before regarding the sales of one immovable many times);
- Allows allocation of the judges or determining the procedural judges by method of random distribution, by the right to a “natural judge”, with respect to the annual work schedule in the court;
- Allows the calculation of court taxes and informing the parties with the amount immediately after application of the case to the court. Also, monitors the collection of court taxes and thus influence the acceleration of the collection of the court taxes;
- Allows the presidents of the courts daily monitoring of case inflow into the court and follow up with the work of every judge individually in order to influence the efficiency and prevent delays in procedures.
- Its functionality provides increased efficiency, transparency of the court works, the shortening of the length of the proceedings, the resolution of old cases and increases the confidence of the parties to the courts.

b) Is there a Supreme Court database with case law accessible to courts, legal and judicial professions?

Via the internet presentation of Supreme Court of Cassation of Serbia on www.vk.sud.rs it is possible to access to the practice of the Supreme Court of Cassation in criminal matter, civil matter and administrative matter, bulletins of Supreme Court of Serbia and Supreme Court of Cassation (judicial practice bulletin), law understandings, states and conclusions in all matters, as well as in the practice of European Court for Human Rights and the practice of Constitutional Court of Serbia.

Within the European Agency for Reconstruction (EAR) project in 2006 in the Ministry for Justice of the Republic of Serbia, an electronic Database of legislation and case law was created (LDBS). The activities initiated by Ministry of Justice aiming to examine the possibilities for this database to be updated are in progress, having in mind that there was a setback in implementing the project from 2006. Therefore it is still not in use for the needs of judicial system of Serbia. The aim is enable all employees in courts during 2011 to apply this standardized database of regulations and case law.

c) Are databases of law enforcement agencies accessible by courts?

All databases of services for law enforcement that are available to both public and through Internet, are also available to the courts via computer network.

d) How is the penal register updated with information on new sentences in penal cases and on execution of imprisonment including suspended sentence?

Within the framework of CMS it is possible to daily update information on new penalties in criminal cases, including a suspended sentence and imposed prison sentence, as well as standardized management and creation of reports on criminal policy in these courts. On the other hand, the commercial courts perform daily records on economic offences. Having in mind that the project for implementing CMS in 102 court units by the end of 2011 is in progress, as well as in coordination of Delegation of the European Union and the Ministry of Justice the project aiming to computerize case managing in Supreme Court of Cassation, Administrative Court with divisions in Novi Sad, Nis and Kragujevac, Appeal Courts in Belgrade, Novi Sad, Nis and Kragujevac, to the March of 2012 it will be possible in a standardized way within the business application to obtain punitive policies in the mentioned courts (according to their work processes). Mutual integration of business applications or exchange of information between the basic courts with court units, higher instance courts and commercial courts with appeal courts, Administrative court with divisions and Supreme Court of Cassation is planned in the period of 2012 – 2014 in the framework of proposal for “rule out” project for Delegation of European Union in Belgrade.

Correction facilities run separate registers, and the central evidence holds only evidences on persons admitted for the imprisonment, measures of compulsory treatment, corrective measures, and sanctions imposed in misdemeanour proceedings, sentence of community service, suspended sentence with supervision, evidence of excessive use of force, and other records in accordance with regulations governing this area.

In relation to the jurisdiction of Administration for the Execution of Criminal Sanctions, records on sentence executions are kept in the institution. Under the Law on Enforcement of Criminal Sanctions (“Official Gazette of RS” No. 85/05 and 72/09) the institute is obliged to inform the court that directed the offender to the serving the sentence about the exact date of the entry for serving the sentenced time. Also, when releasing convicted person, the court that directed the offender to serving the sentence is informed, as well as the police. If the convicted person is legally convicted during serving the sentence, the court is obliged to deliver such a verdict to the institution in which the convicted person is already serving time. Upon the delivery of such sentence, the institute is obliged to calculate the new expiration date of the sentence. The court is not obliged to forward the verdict of a suspended sentence to the institute.

Register of sentences is a criminal record kept by the Ministry of the Interior based on the information delivered by judicial authorities.

Namely, Criminal Code of the Republic of Serbia ("Official Gazette of RS", no. 85/05, 88/05, 107/05, 72/09, 111/09) and the Criminal Procedure Code ("Official Gazette of FRY" No. 70/01, 68/02 "Official Gazette of RS No. 58/04, 85/05 – state law, 85/05, 115/05, 49/07, 20/096 – state law 72/09, 76/10) are managing the contents and manner of conducting the sentence records, and conditions and manners of providing data from this record. By-law, or Rulebook on criminal records (Official Gazette of SFRY No. 5/79) regulates jurisdiction of Ministry of the Interior for keeping the criminal records and providing data from this record. Criminal records are managed by analytical units in police directorate, and Administration for analytics in the headquarters of the Ministry supervise the conduct of these records and providing information from them and gives technical assistance to regional administrations in terms of performing these tasks.

Criminal records contain information about the legally-binding court convictions and convicts persons. It is kept for all persons (domestic citizens and foreigners) convicted for criminal actions executed in the territory of the Republic of Serbia, and for all persons convicted for criminal actions by the foreign courts if the verdicts of these courts were delivered to state authorities of the Republic of Serbia.

Criminal records are kept by the system of card files, place of birth - at the local level and for convicted domestic citizens, foreign citizens and stateless persons who were born in Serbia, and for domestic citizens born abroad are kept by the headquarters of domestic court that ruled the verdict.

Along with the files (local level), an automated database – Criminal record (on national level) is kept on the unique informational system of MoI of the Republic of Serbia.

All acts that courts, institutions for serving sentences and other authorities deliver regarding sentences and their execution, are filed into the card files of criminal records and recorded on criminal paper with labelling the number and date of receipt in juridical police directorate, and at the same time data is recorded and updated on unique information system in centralized database – Criminal records.

33. General working conditions:

a) Do judges and prosecutors have appropriate offices, computers, secretaries, law clerks?

- *Prosecution office*

Minister of Justice upon obtaining opinion of the State Public Prosecutor issued the Rulebook on administration in public prosecutions ("Official Gazette of RS" No. 110/2009, which prescribes standards on service spaces and equipment. Thus, the overall standard that service spaces and premises in which the public prosecution is located should meet the standards on surface, layout and equipment and fulfil standards necessary for executing duties from the jurisdiction of public prosecution. It is stated that working and other facilities have to be in good order, clean and equipped with fire extinguishers, and that public prosecution take measures for providing unrestricted access for persons with disabilities. Layouts of rooms in official facilities are determined by public prosecutor. Layout specifies the facilities for public prosecutor, deputy public prosecutor, employees, departments, registry and other services in public prosecution. Layout of the facilities is adapted so that the rooms designated for working with cases of the same kind are mutually connected and have proper registries in proximity. Area in near proximity of the building's entrance, or public prosecution office, is designated for reception of written statements. Layout of the facility is displayed in the visible place at the entrance in official building or working area. The arrangement of offices with working hours for clients, as well as which facilities are designated for duty service, which facilities hold employees that work on processing cases altogether with their names, last names and functions are clearly stated in the facility layout. Public prosecutor's office is labelled with special inscription.

Public prosecutions use by rule, information-communication technologies for text processing, keeping records, gathering and processing statistical data for electronic exchange of information, accounting businesses, as well as for following regulations, judicial and public prosecutor's practice. In working with information-communication technologies, regulations from this field and provisions from Rulebook on administration in public prosecutions are applied, accordingly. All data entered via information-communication technologies are secured in a proper manner. Computer equipment for the needs of working in standardized business application in prosecutions is expected to improve through the project of European Commission – IPA 2008 (which is in progress) and developing computer equipment for working in standardized business application (development of this business application is also expected during 2011).

In public prosecutions having 10 or more deputy public prosecutors in performing the tasks of prosecutor administration, public prosecutor is assisted by secretary. The secretary assists the public prosecutor in handling tasks of prosecution administration and tasks of joint services in accordance to jurisdictions and instructions of public prosecutor, manage and is responsible for the work of registry, typist office, participates in preparation and creation of normative acts laid down by the public prosecutor and ensures of their implementation, manages other tasks upon order of public prosecutor or authorized person. Public prosecutions with less than 10 deputy public prosecutors may

request the Ministry of Justice to approve systematization of working position of public prosecutor secretary assistant.

Public prosecutor, as an administration manager in public prosecution, determines the organization and work of public prosecution, decides on rights based on the work of deputy public prosecutors and on labor relationships in public prosecution. Number of employees is determined by the public prosecutor via Rulebook on internal organization of and job classification with compliance of Minister for Justice and in accordance with measures for determining employees in public prosecution, laid down by Minister for Justice. The public prosecutor shall deliver the draft personnel plan to the Ministry of Justice, no later than 1st of November of current year for the following year. Draft contains representation of numbers for general service employees and public servants according to the working positions and number of state clerks with open-ended working status needed in the year to which this personnel layout applies. Draft also contains the number of prosecution apprentices whose reception is planned and number of public servants whose admission in employment is planned as temporarily because of possible increase of work. Employees on administrative-technical positions are general service employees and public servants.

- ***Judiciary***

Law on Organisation of Courts (*Official Gazette of RS* No. 116/08, 104/09, and 101/2010) states that headquarters of the court is in the same building as court. Court manages all facilities and immovables allocated to the court. Individual departments of the court may be located in other facilities in the area of the court. One facility may hold more courts or departments of those courts. The President of Higher Misdemeanour Court may determine that certain number of judges and judicial staff utilises facilities outside the department of Higher Misdemeanour Court. The president of Appellate court may determine that certain number of judges may utilise facilities outside the headquarters of Appeal court. If the same building houses many courts, the highest instance court of the housed courts shall govern the court building. If the court building houses other state authorities, the building is managed by the court. The layout of the rooms is determined by the President, so that it determines areas rooms for trials (courthouses), reception of clients and their detention in the building, accommodation of the President, court administration, judges, jurors, court departments and councils, registry and other services in the court. When designating rooms for the court registry, cadastral and other public books, simplifying the procedures for clients will be taken into account. Reception office is located into near proximity of the entrance. In case that headquarter of the public prosecution is not located in the court building, the room for public prosecutors and their deputies will be assigned. The courts with large scope of work shall have separate room for lawyers. If the court building houses more courts or other state authorities, the president of immediately higher court shall, upon acquired opinion from the court president or officials governing other state bodies, determine which rooms in court building will be used by lower instance court i.e. other state bodies.

House order provides the means for using the working and other rooms in the court building, time of detention in the building, necessary measures regarding safety of the rooms in court building and other measures required for preservation of means of work

and objects found in the court. House order provides the obligations of persons who use the court's facilities or occasionally stay in them. Both judges and court staff are introduced with house order, and an extract from house order regarding citizens is displayed in visible site in court or by some other mean.

Majority of courts in Serbia have their own facilities and good housing conditions, with adequate equipment, except that for Misdemeanour Court in Belgrade, Appellate court in Kragujevac adequate working conditions have yet to be provided.

Judges and prosecutors have adequate offices. Those are cabinets – offices with average surface area of 15-20 meters square or 20-25 meters square if the judge/prosecutor and co-worker/assistant are in the same office. Offices are furnished with adequate office furniture which is, in accordance to financial circumstances, replaced with new furniture after deterioration; however in some regions it is still in pretty bad condition due to lack of funds.

Judges and prosecutors have adequate computers or computer equipment, that need to be periodically replaced with new, if the existing one can not be maintained for the needs of everyday operation. Equipment of the highest instance courts (Supreme Court of Cassation, Administrative Court and Appellate Court) will be upgraded within the development of DATA court centre for the needs of working in business application. In comparison to all courts, or judges, that use new equipment, Misdemeanour Courts use obsolete computer equipment is still in use, that is expected to be upgraded with new through USAID project (in the beginning of 2011) or replaced with equipment of new generation (for the needs of work in standardized business application which should be developed during this project 2011 - 2016).

Judges do not have personal secretaries. The secretary exists on the court level and together with servants in court administration it provides general administration-technical support to all employees. Secretary of the court assists the court president in court administration and is independent in operations entrusted to him, by decision of the court president, in accordance with the Court Rules of Procedure. The court president appoints secretary of the court. The Supreme Court of Cassation has its own Secretariat. Secretariat of the court assists the court president in court administration, performs administration tasks for the General session and performs other tasks entrusted to him by Rules of Procedure on governing and work of the Supreme Court of Cassation. The Secretariat is governed by the Registrar, appointed by the General session on proposal of court president.

The court personnel is consisted of court assistants, court apprentices, public servants and general service employees working on administrative, technical, accounting, informational and other tasks significant for court authorities. The court president determines number of staff by act on internal organization and job classification of working positions in court, in accordance with personnel plan.

Court servants who serve the judges are recording secretaries in court councils and court assistants. Recording secretaries perform tasks of administrative-technical nature, mostly

one per two judges, and performing those activities related to keeping records at the trials, drafting letters and shorter decisions, writing the subpoenas. The court assistants deal with mostly legal affairs in terms of preparing cases for trial, finding the regulations and drafting decisions. The court clerks working in registries also assist the judges in their work by doing the administrative – technical tasks.

b) Do judges and prosecutors have access to the archives and legal databases? How is access to recently adopted laws ensured?

The Law on Public Prosecution (“Official Gazette of the Republic of Serbia” No. 116/08, 104/09 and 101/2010) and the Criminal Procedure Code (“Official Journal of FRY”, No. 70/2001, 68/2002, “Official Gazette of RS”, No. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2008, 20/2009, 72/2009, 76/2010) provides that everyone is obliged to directly provide explanations and data to the public prosecution, upon its request, necessary to take action authorized by the law. Public prosecutors have the authority to access adequate archives, legal databases, court practice, academic practice and legislation, because those are application packages of specialized companies. Access to most recently adopted laws is executed through information-communication technologies, as well as through Official Gazette of the Republic of Serbia, which is sent to the public prosecutor immediately upon publication of adopted laws.

Judges have access to the legal databases. All laws are published in Official Gazette of the Republic of Serbia, which are delivered regularly to all courts. In addition, courts have adequate databases of legal regulations, regularly renewed and updated. Ministry of Justice has the authority for planning, developing and maintaining of database of regulations, in accordance to Article 71 of the Law on Organisation of Courts (*Official Gazette of RS* No. 116/08, 104/2009 and 101/2010).

Judges and prosecutors have access to CMS databases, on the web Portal of courts of Serbia on address www.portal.sud.rs, to a total of 5 million resolved cases in authority of basic courts, higher instance courts and commercial courts. The vast majority of these cases were resolved and archived, and bearing in mind that the CMS in 34 basic courts (and 15 court units) and 26 higher instance courts was introduced during 2010, this database on cases will be even more filled with new cases or resolved and achieved cases in 2011 and beyond. Commercial courts possess electronic archives of scanned cases, created years ago during the realization of the CMS project. Having in mind that the creation of electronic archives of scanned cases in all headquarters of basic and supreme courts during CMS project began in 2010, it is expected that this archive will increase during 2011. At the same time, the Ministry of Justice plans to grid the court units with court headquarters in 2011, to proceed with storing the scanned documents in court headquarters (due to rationalization of assets), and formation of electronic archives of scanned documents in Supreme Court of Cassation, Administrative court and Appellate court initiates during the IPA 2007 project which is in progress, or in project in cooperation with USAID from the beginning of 2011 and for Misdemeanour Courts. Simultaneously, courts have manual archives, which are almost entirely in use in courts that do not have program for automated case handling implemented yet.

Also, through access via internet, on the web sites of the Serbian Parliament (www.parlament.gov.rs) it is possible to access to the adopted laws, on the web site of Government of Serbia (www.srbja.gov.rs) to adopted regulations, and via web site of Administration for Joint Services of the Republic Bodies (www.uzzpro.gov.rs) it is possible to obtain limited access to scanned Official Gazettes etc. Access to most recently adopted laws is provided via access to Internet presentation of the Serbian Parliament (<http://www.parlament.gov.rs/content/cir/akta/zakoni.asp>) where adopted laws in past 10 years can be found. Also, access to laws and other acts is enabled through other web sites, such as the decisions of Supreme Court of Cassation relevant to the practice of law and all general legal views, which in addition of being published in special collection, are also published on the web site of Supreme Court of Cassation.

In addition, by Article 41 Court rules ("Official Gazette of RS", No. 110/2009) the work of a court library is regulated. The court library is consists of publications, laws and other regulations, professional books and journals, official gazettes, publications and court practices in books, in printed as well as in electronic form. The president, or a judge appointed by the president is responsible for procurement of books and subscriptions to magazines and other publications, and on maintaining library fund.

c) Are archives in courts well managed and computerized? Explain.

The CMS (which is implemented into majority of all courts) keeps record on any action from initializing the procedure in court until the conclusion of the procedure, including validity or archiving the case.

Archives are well managed. Archives are neat and articulated. Archives may be kept in electronic form or in any other appropriate way in accordance to the law. Archived cases, registries, directories and other auxiliary books are kept and separated in accordance to regulations on cultural property and provisions of these rules of procedure. The data from the archived cases, registries, directories and other records that are stored in electronic form, as all electronic documents are kept in accordance to regulations governing electronic commerce.

Archives are organized in paper form (beside the cases being scanned in CMS). Cases are filed in archives after completion of the procedure, kept for a certain while defined by the Court rules ("Official Gazette of RS", No. 110/2009). According to the regulations of the Court Rules, legally binding cases are archived and stored based on written decision of the judge, who determines the case for archiving with its signature on a stamp. Archives are located within registries, by rule in a separate room. Completed cases can be stored in a registry (handy archives) up to two years, and after this period together with adequate registers and other auxiliary books are handed for storage to the archives. Cases must be protected from damp and fire, and secured from damage, destruction or theft. Upon completion of the storing period, records are destroyed in a presence of commission, and some types of cases (family and marital status etc.) are kept permanently. Data in which the property rights are acquired are kept for 30 years. The plan is to further expand archive computerization in 2011 during the above described projects.

34. Clerical staff:

a) Please give the number of clerical staff. How does this compare with the number of judges and prosecutors? Who is responsible for deciding about the number of the clerical staff?

- Numbers of clerical staff:

	POSITION					CIVIL SERVANTS							GENERAL SERVICE EMPLOYEES					APPRENTICES			APPRENTICES	TOTAL:		
	GROUPS					TITLE							TYPE OF EDUCATION											
																		LEVEL OF EDUCATION						
DESCRIPTION	FIRST	SECOND	THIRD	FOURTH	FIFTH	SENIOR ADVISOR	INDEPENDENT ADVISOR	ADVISOR	JUNIOR ADVISOR	ASSOCIATE	JUNIOR ASSOCIATE	OFFICER	JUNIOR OFFICER	MASTER'S DEGREE	BACHELOR'S DEGREE	ACADEMY DEGREE	SECONDARY SCHOOL (3 or 4 years)	First and second Degree (acknowledged)	ELEMENTARY SCHOOL	MASTER'S DEGREE	BACHELOR'S DEGREE	Secondary education qualifications		
1 SUPREME COURT OF CASASSION			1	6	2	57	8			6		26	1		1	1	63		60					240
2 ADMINISTRATIVE COURT						2	41	5	2	2	2	37	14				24							129
3 APPELLATE COURT						1	9	201	57	14		95	67				126		19					589
4 HIGHER COURT							18	243	86	37	4	303	215	1	1	6	512	4	112				87	1.629
5 BASIC COURT							16	471	414	73	1	1.882	794	5	1	15	1.524	1	346				363	5.906
6 COMMERCIAL APPELLATE COURT						3	38	5		2		10	13		1		9							81
7 COMMERCIAL COURT							15	130	77	25		218	108				127		29				38	111
8 HIGHER MISDEMEANOUR COURT						2	39	28	7	1		47	42				34		6					206
9 MISDEMEANOUR COURT						1	6	144	49	32		866	418				402		65				46	2,029
10 REPUBLIC PUBLIC PROSECUTION OFFICE			1			3	12	2		2		9					14							43
11 APPELLATE PUBLIC PROSECUTION OFFICE							6	36		10	1	33					37		1					124

12 HIGHER PUBLIC PROSECUTION OFFICE						4	4	58	16	30		125	17		2		89		2				33	380
13 BASIC PUBLIC PROSECUTION						2	3	104	50	46		225	32				189		11				71	733
14 PROSECUTION FOR WAR CRIMES						2		12		3		10		1			4							38
12 PROSECUTION FOR ORGANIZED CRIME							14	10		2		6					10							43
TOTAL OF EMPLOYEES PER TITLE			2	7	2	77	229	1.457	710	285	8	3.892	1.725	7	6	22	3.164	5	651				638	
																	TOTAL NUMBER OF EMPLOYEES					12.887		

Relationship of prosecutors and judges to clerical staff:

- *Prosecution office*

The court personnel in public prosecution office is consisted of court assistants, court apprentices, public servants and general service employees working on administrative, technical, accounting, informational and other tasks significant for public prosecution. Number of clerical staff in public prosecutions of the Republic of Serbia is 1361 in total.

Based on Rulebook on criteria for determining the number of staff in public prosecution (*Official Gazette of RS*, no. 72/09 and 79/09) a number of staff of public prosecution offices is determined by the number of public prosecutors and deputy public prosecutors.

Criteria for basic and higher public prosecution office:

The number of prosecutorial assistants and apprentices shall be determined by the two prosecutors having one assistant or one apprentice. Number of court reporters-typists is determined in a way that three prosecutors have one court reporter – typist, and number of personnel on administrative tasks so that one prosecutor have 0,4 executors in average.

Criteria for appeal public prosecution office:

The number of prosecutorial assistants shall be determined in a way that three prosecutors have one assistant. Number of court reporters-typists is determined in a way that three prosecutors have one court reporters – typist, and number of personnel on administrative tasks so that one prosecutor have 0,4 executors in average.

Criteria for public prosecution office of special jurisdiction:

The number of prosecutorial assistants for war crimes is determined in a way that two prosecutors have one assistant. Number of court reporters-typists is determined in a way that two prosecutors have one recorder-typist.

The number of prosecutorial assistants for prosecution office is determined in a way that one prosecutor has one assistant. Number of recorders-typists is determined in a way that one prosecutor has one court reporter – typist and number of personnel on administrative tasks for prosecution of special purposes is determined so that one prosecutor has 0.8 executors in average.

Criteria for Republic Public Prosecution Office:

The number of advisors in Republic Public Prosecution office is determined in a way that three prosecutors have one advisor. The number of senior advisors is determined so that there are five executors for this title. The number of court reporters-typists is determined in a way that two prosecutors have one typist. The number of personnel engaged in administrative tasks is determined in a way that one prosecutor has 0,8 executants in average. Number of clerical staff on information-technical tasks in all public prosecutions is determined in a way that one prosecutor has 2 executants for information tasks, or 0,2 executants for technical tasks.

The required number of court staff for other tasks in public prosecution (lecturer, spokesperson, librarian, court interpreter etc.) is determined in a way so that at least one executive is designated for these types of tasks.

The number of personnel engaged in maintenance in public prosecution offices is determined in accordance with the surface area and in a way that one executor covers 400 sqm..

- Judiciary

The court personnel is consisted of court assistants, court interns, state clerks and appointees working on administrative, technical, accounting, informational and other tasks significant for court authorities. The court president determines number of staff by act on internal organization and job classification in court, in accordance with personnel plan.

Based on Rulebook on standards for determination the number of court staff in courts (*Official Gazette of RS*, no. 72/09 and 79/09) a number of court staff is determined in accordance to the number of judges. Required number of court staff on tasks of execution and land registries is determined in accordance to number of cases pending in court.

Criteria for Basic, Higher, Commercial and Misdemeanour Court:

The number of court assistants and court interns shall be determined in a way that one judge has one assistant or one intern, for Basic, Higher and Commercial courts. For the

Misdemeanour Court, the number of court assistants and court interns shall be determined in a way that three judges have one court assistant or one court intern. Number of court reporters-typists is determined in a way that one first instance judge or investigating judge have one typist, and two second instance judges will have one typist.

Number of court staff on administrative tasks in Basic and Commercial courts is determined in a way that one judge has 0,8 executants, and in Misdemeanour Courts has 0,5 executants, and in higher instance courts there are 0,4 executants.

Criteria for Appellate court, Commercial Appellate and Higher Misdemeanour Court:

In these courts each judge has its own court assistant, two judges have one typist whilst the number of court staff engaged on administrative tasks is determined in a way that one judge have 0,4 executants in average, while in Higher Misdemeanour Court one judge will have 0,5 executants in average.

Criteria for Administrative Court:

Number of assistants in Administrative Court is determined so that one judge has its own court assistant, two judges have one typist whilst the number of court staff engaged on administrative tasks is determined in a way that one judge has 0,8 executants in average.

Criteria for Supreme Court of Cassation:

The number of court advisors in the Supreme Court of Cassation is determined in a way that each judge has one court advisor. In the preparation department of Supreme Court of Cassation, the number of court advisors is determined so that one council has two court advisors, and number of court advisors in the department of case law is determined so that each department has at least one and at most three court advisors.

The number of court staff engaged on informational and technical tasks in all courts is between 0,4 to 0,2 executants per judge.

The required number of court staff for other tasks in court (lecturer, spokesperson, librarian, court interpreter etc.) is determined in a way so that one executor is designated for these types of tasks in courts.

- Responsible for deciding about the number of the clerical staff:

The Minister of Justice in accordance with Article 117 (3) of the Law on Public Prosecutions (*Official Gazette of RS*, No. 116/08, 104/09 and 101/2010) provides measures for determining the number of staff in public prosecutions, while the number of staff, in accordance to Article 117 (2) of the same law, is determined by the public prosecutor via Rulebook on internal organisation and systematization of job positions.

The Law on Public Prosecution ("Official Gazette of the Republic of Serbia" No. 116/08, 104/09 and 101/2010) provides that the public prosecutor is a administration manager in

public prosecution office and is responsible for proper and timely work of public prosecution office in accordance with the Law and with the Rulebook on administration in public prosecutions (“Official Journal of Republic of Serbia”, No. 110/09).

Rulebook on criteria for determining the number of staff in public prosecution was provided by the Minister in charge for justice (“Official Gazette of RS” No. 72/09 and 79/09), and within measures required for determining the staff number in Basic, Higher and Appellate courts as well as in public prosecution of special jurisdiction and Republic Public Prosecution Office were provided. Staff number required for public prosecution office is determined in accordance with the number of public prosecutors and deputy public prosecutors. Number of employees is determined by the public prosecutor via Rulebook on internal organisation and sistematization of job positions, with consent of Minister for Justice, on the basis of Rulebook on criteria for determining the number of staff in public prosecution. The public prosecutor delivers the Draft of Personnel Layout to the Ministry of Justice, no later than 1st of November of current year for each calendar year. Draft layout contains preview of number for state clerks and general service employees according to the working positions and number of state clerks with open-ended working status needed in the year to which this personnel layout applies. Draft also contains the number of prosecution interns whose reception is planned and number of state clerks whose temporarily admission in employment is planned due to the possible increase of work. Thus, the public prosecutor is responsible for determining the required number of administrative staff, as well as the Minister for Justice, since he/she provides compliance on Rulebook on internal organization and systematization of job positions.

Minister of Justice in accordance with Article 57 (3) of the Law on Organization of Courts (*Official Gazette of RS*, No. 116/08, 104/09 and 101/2010) provides measures for determining the number of staff in courts, and the number of staff is determined by court president in accordance with Article 57 (2) of the same law, via Rulebook on internal organisation and systematization of job positions.

Rulebook on internal organisation and systematization of job positions (“Official Gazette of RS” No. 72/2009 and 79/2009), provides measures required for determining the staff number in Basic, Higher, Commercial and Misdemeanour Courts, as well as in Appellate courts, Commercial Appellate Court, Higher Misdemeanour Court, Administrative Court and Supreme Court of Cassation. Required number of court staff is determined on the basis of the number of judges. Required number of court staff on tasks regarding the enforcement and land registries is determined in accordance with number of cases pending in court.

b) Do they have concrete job descriptions?

The Rulebook on the internal organisation and systematisation of job positions provides descriptions for every job position, requirements for working as well as the number of executants.

Public prosecutor, on the basis of the Law on Public Prosecutin (“Official Gazette of RS” No.116/08, 104/09 and 101/2010), Law on Civil Servants (*Official Gazette of RS*, No.

(79/05, 81/05, 83/05, 64/07, 67/07, 116/08 and 104/09), Rulebook on administration in public prosecutions (*Official Gazette of RS*, No. 110/09), Regulation on job classification and criteria for civil servants job description (*Official Gazette of RS*, No. 117/08, 108/09 and 109/2010), Regulation on classification of appointee jobs (*Official Gazette of RS*, No. 5/06 and 30/06) and Rulebook on criteria for determining the number of staff in Public Prosecution office, adopts Rulebook on internal organization and systematization of job positions for each prosecution office, upon which the Minister for Justice gives consent, which clearly states exact name of the job position, description of job position, vocation for the civil servant or type of appointee for which the positions have been classified, necessary number of civil servants for every position and requirements for working at each position.

Thus, according to the Rulebook on internal organization and systematization of job positions in Public Prosecution office the job description for the assistant prosecutor is provided, which is to examine cases and prepares draft decisions on cases he/she examines and reports to deputy public prosecutor, prepares papers for professional meetings and counselling's, suggests recording of legal positions and decisions on legal matters of case-law interest, attends the consultations, keeps record from executed consultations and legal positions regarding consultation cases, participates in examining and processing of disputable legal matters, drafts sentences on legal positions at the department sessions, participates in processing of material relevant to legal matters, keep record on subjects from broader public significance, or on cases that resulted in broader public interest, participates in creating materials for bulletins, take statements of parties and enter them into the record, process the complaints of the citizens and performs other tasks upon order of the public prosecutor and division managers. The prosecution intern is introducing with cases entrusted to him by prosecutor or deputy, follows the pre- trial procedure, attends the trials together with the deputy prosecutor, and improves professionally in accordance with the training program declared by the institution in charge for training in law and by act on internal organization and job systematization in prosecution offices. Job position for personal tasks encompasses drafting of the decisions, resolutions and other acts issued by the prosecutor, performs tasks related to personal and statutory matters of bearers of public prosecution duties and personnel in the prosecution office, keeps registries and personal records, performs tasks related to disciplinary and material accountability of employees, prepares the layout of holiday seasons and decisions on holiday seasons, prepares decisions, agreements and contracts related to initiating and terminating of employment and exercising labour rights, prepares the annual work plan and analyses execution of work programs, performs other tasks upon order of the prosecutor.

The Republic Public Prosecution office holds a job position related to European integrations and international cooperation, which encompasses tasks of realizing contacts with officials from European Union, Council of Europe and other official organizations in terms of integration process of our country into European Union, follows the European Union legislation in fields of criminal, citizen and administrative law, prepares information for department sessions, performs tasks of written and oral translations for the needs of prosecution office, makes contacts with international government and non-

government organizations, participates in providing international legal assistance, prepares projects and studies significant for establishing the international position for public prosecution office, attends meetings on international level and keeps record on these meetings, participates in drafting international agreements, protocols and other acts on international cooperation, makes reports, analyses and other information for Division of international cooperation and European integrations, performs other tasks upon order of Republic prosecutor and division manager. Also, there is a position of a prosecution spokesperson, consisting of following tasks: to provide media with oral or written answers regarding cases or other matters of increased public significance, to prepare notifications to the general public, handles protocol duties of public prosecutor, prepares meetings held by public prosecutor, keeps record on daily duties of a public prosecutor, follows with daily press and other means of media and information of significant public interest and forwards it to the public prosecutor, and performs other tasks upon order of public prosecutor. Under the Rulebook on internal organization and systematization of job positions, the job position of recorder comprises of following tasks: forms the lists of cases, lists all received appendix and handles their attaching, files cases through appropriate registries, manages proper books and auxiliary books, processes resolved cases and forwards them for expedition, files received scripts, submissions and delivery notes into the cases, attaches and files them, performs overview and registration of completed cases and forwards them to deputy public prosecutor who acts in the case, processes resolved cases for the archives and follows the expiration periods of archived cases and upon expiration of time for storage informs the registry manager, delivers decisions for expedition, keeps record on case movement, bring out the case from the expiration periods, transmits resolved cases and perform other tasks upon order of registry manager. Job position of a registry manager consists of following tasks: manages the performance and is responsible for proper, efficient and prompt performance of registry, handles the reception of mail and submissions in accordance with the registry type, handles timely case forwarding for further processing, keeps record on promptness of a deputy prosecutor and advisor which operate on the case processing, prepares cases for delivering to the central archive and supervises the destruction of archive items in central archive, issues archived cases upon request of authorized persons and keeps record thereto, keeps record on achieved work performance, presence at work, holidays of employees in the registry and delivers that information to the employee in charge of personal tasks, completes monthly, periodic and annual reports on deputy prosecutor performance on matters of cases that he/she is registering, provides clients information on case status, coordinates and controls the work of employees in registry, and performs other tasks upon order of prosecutor. Job positions of administrative technical secretary, managers of general duty services, independent accountant, employees from IT department etc are similarly described. Also, Rulebook on the internal organisation and systematisation of job positions provides descriptions for the job position of general service employees, such as typists, librarians, drivers and couriers.

Concerning court assistants and intern, the Law on Organisation of Courts (*Official Gazette of RS* No. 116/2008, 104/2009 and 101/2010) and Court Rules of Procedure (*“Official Gazette of RS”* No. 110/2010) provides the job description, whilst for civil

servants and general service employees (like typists, administrative employees, IT and technical employees, employees in charge of enforcement and land registries, judicial guard etc.) the Rulebook on internal organization and systematization of job positions determines descriptions of job positions very precisely. Therefore, court staff has the concrete descriptions of jobs which are being executed in accordance with the law, Court Rules of Procedure and Rulebook on internal organization and systematization of job positions in court.

The Secretary of the court performs tasks of court administration in accordance with the Court Rules of Procedure and Annual work schedule, especially: (1) assists the Court president in performing confidential and other tasks of court administration; (2) preparatory receives all clients who addresses the court administration, provides the information and determines the times for reception at the office of president of the Court and deputy Court president; (3) gathers cases from the Registry or council, which are to be revised by the president of the Court, and after insight returns them to the Registry or council; (4) prepares for reporting, reports and prepares draft decisions in cases of delay of execution of sentences, prepares draft of acts adopted by the Court president; (5) gathers scripts, examines them, reports on condition in the scripts and prepares reports in cases when competent authorities require written statements on client's complaints; (6) handles mail, with the consent of Court president; (7) performs other tasks upon order of the Court president. Requirements: Law degree, passed bar examination, working experience of at least five years in judicial practice, computer fluency.

Court assistant examines cases appointed to him by the judge and prepares them for trials, performs tasks in preparatory division, makes registry at the meetings, sessions of the councils and divisions, prepares the professional reports, analyses and notifications upon judge's order, takes the statements from the parties and enters them into the record, processes the citizens' complaints and performs other tasks determined by the annual schedule of works and by the act on internal organization and systematization of job positions in court. Court assistant may be entrusted with performing other tasks under the supervision of the judge, such as: making draft decisions which refer to examination of procedural presumptions for procedures, drafting court decisions, drafting decisions on judicial remedy approval, preparing papers for rapporteur judge, determining the amount of court taxes, assortment of cases etc. Court assistants participate in sessions of all judges unless determined otherwise by the president, and can also provide legal assistance.

The prosecution intern is introduced with cases entrusted to him by the judge, attends trials, and improves professionally in accordance with the training program set by the institution in charge for training in judiciary and by the act on internal organization and systematisation of job positions in court.

Judicial guard is armed and uniformed service which handles the security of people and assets, peace and order and ensures continuous conduct of official procedures in the buildings of judicial authorities (Article 77 of the Law on Organization of Courts).

c) Which equipment (computers, e-mail, fax etc.) does a clerical staff have at their disposal to perform their functions? Describe how archives are organised and to what extent the management of the archives is IT-supported. Is there sufficient and direct access to legal databases?

- Equipment:

Clerical staff utilise computers, printers and scanners in their operations. To the most extent, they use e-mail and the number of users is increased due to intensive trainings (especially conducted in previous years during implementation of ACM project – project of automated case management). Fax machines and scanners are in use.

Public prosecutions office that uses information-communication technologies in their operations can form special division for IT and analytics. IT division handles tasks for public prosecution related to the use of information-communication technologies in the work of public prosecution for electronic processing, storing and transfer of information, and especially: administration and maintenance of IT technologies, equipment in public prosecution office, maintenance and protection of system business software and public prosecution database, conducting the trainings for employees, maintenance of public prosecution web presentation, internet access administration and e-mail administration in public prosecution office, administration and storage of project-technical documentation from the field of IT technologies, creation and storing of safety copies of databases, electronic documents databases and other electronic records with simultaneous recording of all created copies, as well as managing records of all IT resources in the prosecution office. Each prosecution office possesses a certain number of computers and base stations, as well as fax machines for handling mentioned tasks.

As a rule, courts in their work use ICT for text processing, handling all sorts of records (registries, auxiliary books etc.), gathering and processing of statistical data, electronic exchange of information, printing (script covers, delivery notes etc.), accounting tasks, following regulations and case-law, as well as in court administration and registry. Registries and auxiliary books are not kept in written form, but the whole procedure is recorded in electronic form. In working with ICT, special regulations and provisions of Court Rules of Procedure are applied accordingly (*Official Gazette of RS*, No. 110/2009). In courts which possess scanners, documents are scanned (submissions of parties with appendixes, delivery notes about mandatory personal delivery, court decisions, written evidences etc.). In its work, the court may use internal computer network or perform exchange of data within Judicial information system with other judicial authorities by using ICT, exchange data with other state authorities, receive data from prosecutors who have large number of complaints, as well as receive proposals for enforcement, taking into account protection and secrecy of data. The court may provide information to the clients and other state authorities in the same way.

- Archives

Rulebook on administration in public prosecutions (*Official Gazette of RS* No. 110/2009 and 87/2010) adopted by the Minister for Justice, provides procedure for archive

materials in prosecutions. Therefore, it is provided that archival records and registry materials are kept in public prosecution in accordance to provisions governing storing. Storage periods for storing archival records and registry materials are determined by special List of categories for registry materials with storage periods upon which worthless registry materials are excluded. List of categories of registry materials with storage periods was adopted by Republic public prosecutor in 2007 with consent of Serbian Archive given in 2008, based on Cultural Property Law ("Official Gazette of RS", No. 71/94). Upon expiration of storage periods, objects, or worthless registry materials are selected from archive and listed for exclusion. Separated worthless registry material may be destroyed only upon written approval from authorized archive. Selecting of archival records and excluding of worthless archival material is done one year after the day of storage period expiration date, based on public prosecutor's act which contains: appointment of commission, indicating the periods for excluding the worthless material, commission deadlines for creating inventories of worthless registry material being proposed for exclusion in relation to every individual register from which the material is being excluded and delivery of notifications and lists to the authorized archive for obtaining written approvals for destruction, deadlines for performing the destruction upon receiving approvals for destruction, manners of destruction, deadlines for presenting the public prosecutor with records on destruction with inventories of destructed worthless material upon obtaining written approval from authorized archive. The destruction is done by cutting, burning or some other manner that completely excludes the possibility that contents of selected materials for destruction can be available to unauthorized persons. Exclusion of items assigned for destruction is carried out by the commission consisting of 3 members, determined by public prosecutor. The commission for destruction makes insight into every record managed in public prosecution and based upon it excludes every item with expired storage period. In the case of dilemma on storage periods based on data from the record, the commission is obliged to take insight into disputable case, after which it shall decide whether it is object that may be excluded or not. For every excluded item after obtaining written approval from authorized archive, the mark "excluded" is put in the box "notes" with stamp or pencil under which the number and the date of order and mark is put, or signature of the commission member who determined the item for exclusion, or destruction. Archival material, or documentation determined to be kept permanently by the List of registry material, is presented to the authorized archive 30 years after the date of creation. Decision on presenting the archival material to the authorized archive is adopted by public prosecutor with previous consent of authorized archive. Procedure on transfer of the archival material to the authorized archive is conducted in accordance with legal and other provisions. After delivery of the archival material, the commission makes the report and attaches the lists of stored archival material to it. Automated managing of archives in public prosecutions is not sufficiently implemented.

Judges and prosecutors have access to CMS databases, on web portal of Serbian courts, on the address www.portal.sud.rs, as well as in courts to a total of 5 million resolved and pending cases from the jurisdiction of basic, higher and commercial courts. The vast majority of these cases were resolved and archived, and bearing in mind that the CMS in 34 basic courts (and 15 court units) and 26 higher instance courts was introduced during

2010, this database on cases will be even more filled with new cases or resolved and archived cases in 2011 and beyond.

According to the regulations of the Court Rules, legally binding cases are archived and stored based on written decision of the judge, who with its signature on a stamp determines the case for archiving. Archives are located within registries, by rule in a separate room. Completed cases can be stored in a registry (handy archives) up to two years, and after this period together with adequate registers and other auxiliary books are handed for storage to the archives. Cases must be protected from damp and fire, and secured from damage, destruction or theft. Archives may be kept in electronic form or in any other appropriate way in accordance to the law. Archived cases, registries, directories and other auxiliary books are kept and separated in accordance to regulations on cultural property and provisions of these rules of procedure. The data from the archived cases, registries, directories and other records that are stored in electronic form, as well as all electronic documents are kept in accordance to regulations governing electronic commerce.

Commercial courts possess electronic archives of scanned cases, created years ago during the realization of the CMS project. Having in mind that the creation of electronic archives of scanned cases in all headquarters of basic and supreme courts during CMS project began in 2010, it is expected that this archive will increase during 2011. At the same time, the Ministry of Justice plans to network the court units with court headquarters in 2011, to proceed with storing the scanned documents in court headquarters (due to rationalization of assets), and formation of electronic archives of scanned documents in Supreme Court of Cassation, Administrative court and Appeal courts initiated during the IPA 2007 project which is in progress, or in project in cooperation with USAID from the beginning of 2011 and for Misdemeanour Courts. Simultaneously, courts have manual archives, which are almost entirely in use in courts that do not have program for automated case handling implemented yet. Archives are well managed. Archives are neat and articulated. The CMS (which is implemented into majority of all courts) keeps record on any action from initializing the procedure in court until the conclusion of the procedure, including validity or archiving the case. Cases are filed in archives after completion of the procedure, kept for a certain period which is defined by the Court Rules. Archives are organized in paper form (beside the cases being scanned in CMS). Upon completion of the storing period, records are destroyed in a presence of commission, and some types of cases (family and marital status etc.) are kept permanently. Data in which the property rights are acquired are kept for 30 years. The plan is to further expand archive automation in 2011 during the above described projects.

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Access to legal databases

Access to legal databases is organized by each court. The aim of the Ministry of Justice is to enable all employees in courts during 2011 to apply this standardized database of regulations and case law. Adequate and direct access to legal databases of case-law, academic practice and legislation, that are adequate, because those are application packages of specialized companies.

Judicial reform:

35. How will the shortcomings in the recent reform of the judiciary be addressed? Please outline your strategy and further plans for reform. Who is or will be responsible for the implementation, coordination and monitoring of the further steps?

In terms of indicated shortcomings in reforms of judiciary, Ministry of Justice in cooperation with European Commission and Venice Commission prepared amendments of the Law on High Judicial Council, Law on State Prosecutorial Council, Law on Judges and Law on Public Prosecutions adopted by the National Assembly on 29th of December 2010 (“Official Gazette of RS No. 101/10”) and which enable:

- a) the procedure of general choice to be reinvestigated – that the reached decisions are reinvestigated in cases of non-chosen, first time chosen and chosen for permanent judicial function,
- b) the procedure of reinvestigation to be conducted by permanent compositions High Judicial Council and State Prosecutorial Council,
- c) the procedure of choosing the selection members from the lines of judges, public prosecutors and deputy public prosecutors, High Judicial Council and State Prosecutorial Council to be conducted in accordance with highest standards and criteria of Venice Commission and best practice of European Union,
- d) that the criteria and measures for selection and reinvestigating selection of judicial function holder to be delivered once again to the Venice Commission, and to the experts of European Commission for amendment aiming to improve the procedure, appliance of measures and criteria and transparency of procedure, that selection members of High Judicial Council and State Prosecutorial Council conduct reinvestigation of decisions adopted in procedure of general selection using advanced measures and criteria.

Aims of fulfilling mentioned actions, as well as conducting the process of reinvestigation are removing of any doubts in procedure of High Council and State Council in process of general choice as well as improvement of further work and procedure of competent authorities.

In order to ensure better coordination, label competent institutions and define timetables, Ministry of Justice, High Judicial Council and State Prosecutorial Council have made

Action Plan of High Judicial Council and Action Plan of State Prosecutorial Council, which clearly indicate and elaborate on procedure and dynamics of the process of removing shortcomings in judiciary reforms.

Jurisdiction for conducting these procedures is divided between High Judicial Council, State Prosecutorial Council and Ministry of Justice. Each of these institutions within area of its competency is responsible for conducting of planned actions in clearly defined timetables and for results of conducted activities. Competent authorities and representatives of European Commission and Council of Europe shall be supervising planned actions. Ministry of Justice shall perform the coordination of activities and coordination of timely reporting on fulfilment of planned liabilities.

36. Are there any areas where corruption is more prominent? If so, how are these areas identified and what measures are taken?

Public perception, essentially comprised of public opinion (reflected also in political party priorities) and research studies by Serbian and international organisations, indicates that corruption is present in all segments of society, and is therefore a serious social problem. The scale of actual corruption and its consequences are being established, and our citizens consider addressing this problem the fifth most important priority, right after unemployment, poverty, low salaries, and lack of opportunities for youth.¹

A research into the Serbian citizens' perception of corruption in society has indicated that corruption was the most frequent in the following areas:² health sector, police, public administration, and education. These problem areas have been identified based on citizen complaints presented in direct meetings, and in cooperation with state authorities on finding ways to address them. The analysis of complaints received by the Anti-Corruption Agency in 2010, has shown that the applicants had complained most frequently about corruption in privatisations of State-owned companies, judiciary, construction permit application procedures, and operation of inspection authorities.

The mechanisms at disposal for the prevention and suppression of corruption are primarily those included in the 2005 National Anti-Corruption Strategy and the 2006 Action Plan. The National Strategy gives recommendations relevant for all systems and areas of society: political system, justice system and the police, public administration system, territorial autonomies, local self-government and public services, public finance system, economy, media, and citizens' involvement in the fight against corruption.

Perhaps the strongest anti-corruption mechanisms seem to be the integrity plans (already being drafted by the Agency) which have become mandatory for all state authorities since the adoption of the law. The integrity plans effectively represent procedure

¹ Public opinion research on corruption in Serbia, Medium GALLUP Report, October 2010.

²Public opinion research on corruption in Serbia, Medium GALLUP Report, October 2010.³ The Committee of the Republic for the prevention of conflict of interest was established pursuant to the Law on the Prevention of Conflict of Interest in the Discharge of Public Offices, Official Gazette of the RS, No 43/04.

standardisation and a corruption risk assessment in procedures conducted by the state authorities.. Measures undertaken include addressing conflict of interest based on precise legal provisions, coupled with education, various seminars and public campaigns.

37. What specialized anti-corruption bodies exist? Please describe them, indicating their legal and institutional status, composition, functions, powers and resources (i.e. public and private sector corruption). How are the independence and appropriate level of expertise and resources for these bodies ensured?

Anti-corruption Agency is independent government body, established in accordance with the Law on the Anti-corruption Agency (*Official Gazette of the RS* No. 97/08, 53/10). This law regulates issues of establishment, legal status, competence, organization and operation of the Agency, and rules regarding the prevention of conflicts of interests while performing public functions and reporting the assets of persons executing public functions, procedures in cases of violations of the said law, introduction of integrity plans and other issues of importance for the Agency. The Agency shall have status of a legal entity.

For conducting activities within its competences, the Agency is accountable to the National Assembly, to which it is required to file annual work report that shall include a report on the implementation of the Strategy, Action Plan and Sector action plans.

The bodies of the Agency are the Board (which has nine members) and Director. The Board shall appoint and dismiss the Director of the Agency, decide on appeals against Director's decisions imposing the measures in accordance with this law, adopt the annual work report of the Agency and submit it to the National Assembly, supervise the work and property of the Director, propose the budget for the Agency, adopt rules of procedure for its work and perform other tasks stipulated by this law. The Board may, upon the proposal of the Director, establish advisory or working bodies of the Agency. Term of office of a Board member shall be four years, and same person may be a member only twice.

The Director shall represent the Agency, manage the work, organise and ensure legal and efficient performance of the Agency, make decisions on violations of this law and impose measures, prepare an annual report of the Agency's work, prepare draft budget for the Agency, adopt general and individual acts, decide on rights, duties and responsibilities of the employees in the Agency, carry out decisions of the Board and perform other duties specified by the law. Director's term of office shall be five years, and same person may be a director only twice.

The Agency has professional services managed by the Director of the Agency. Those are the Sector for Prevention, Sector for Analytical Operations, Department for International Cooperation, Department for Public Relations and Sector for General Affairs.

Competences of the Anti-corruption Agency:

- supervises implementation of the National Strategy for Combating Corruption, Action

Plan for the Implementation of National Strategy for Combating Corruption, and sectoral action plans;

- initiates proceedings and imposes measures for violations of the Law on the Anti-corruption Agency;
- resolves conflicts of interests;
- carries out duties in compliance with the law governing funding of political parties;
- provides opinions and directions for the implementation of this Law;
- provides initiatives for amendments and adoption of regulations governing fight against corruption;
- provides opinions regarding implementation of the Strategy, Action Plan and sectoral action plans;
- supervises and carries out tasks related to organizing the work coordination of state authorities in fight against corruption;
- keeps a register of officials;
- keeps a register of assets and incomes of officials;
- provides expertise in the field of fight against the corruption;
- cooperates with other state authorities in drafting regulation in the field of fight against corruption;
- provides guidance for developing integrity plans in public and private sector;
- introduces and implements training programs on corruption, in accordance with the law;
- keeps special records, in accordance with the law;
- acts upon complaints of legal entities and individuals;
- conducts research, monitoring and analysing of statistical and other data on corruption;
- in cooperation with competent state authorities monitors international cooperation in the field of fight against corruption;
- performs other duties prescribed by the Law.

Resources for work of the Agency are allocated from the budget of the Republic of Serbia, as well as from other sources. Agency independently disposes with mentioned means, in accordance with the Law.

Ministry of Justice, in order to strengthen the capacities of the Agency, applied, in cooperation with the Council of Europe in Belgrade, for the funding of the IPA project in 2011. The name of the project is *Enhancing capacity to investigate and process corruption in the RS*. Objective of the project is to contribute to the democracy and the

rule of law in the RS in the fight against corruption and strengthening good governance. Total value of the project is €2 million. Project deployment is expected from 2011 to 2014. Implementation of this project will intensify applying policies and measures in fight against corruption. Law on Amendments and Additions to the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime

On the basis of line 24 of Article 2 of the Law on Organisation and Jurisdiction of the Government Authorities in Suppression of Organized Crime (*Official Gazette of the RS*, No 72/05 from 3 September 2005) it is provided that this prosecution office is competent for criminal offences against official duty (Articles 359, 366, 367, 368 of CC) when the defendant who is being bribed is official/responsible person holding a public function by election, appointment or nomination by the National Assembly, Government, High Judicial Council or State Prosecutorial Council as well as for criminal offence of abuse of office when the value of material gain exceeds 200.000.000,00 RSD.

Within Republic public prosecution upon Plan and Program of the prosecution work, a Special division for combating corruption is formed, as well as in Appellate public prosecutions (Belgrade, Kragujevac, Novi Sad and Niš), Higher public prosecutions (Belgrade, Kragujevac, Novi Sad and Niš). Special division for combating corruption in the Republic Public prosecution Office consists of three deputy Republic prosecutors and one advisor. Program of the division includes activities and tasks that this prosecution office should perform within its constitutional and legal jurisdiction, to ensure legal and efficient exercise of a Public prosecutor's function in combating corruption, especially by implementing Mandatory instruction A-194/10 which provides that the division follows the decisions of lower prosecutions that dismiss criminal charges and abandon from prosecution after conducting investigation or at main preparation for the trial, and also performs the control of rejected applications or cancellations of further prosecution at all stages of procedure. Also, this division performs annual controls of lower prosecutions in terms of working with criminal offences with corruption elements. Funding independence of divisions for combating corruption is implemented through Law on Budget of RS (*Official Gazette of RS*, No. 107/09, 91/10).

Prosecution for organized crime is one of the competent bodies for combating corruption. Legal framework for activity of Prosecution for organized crime is in the Law on Organisation and Jurisdiction of the Government Authorities in Suppression of Organized Crime (*Official Gazette of the RS*, No 42/02, 27/03, 39/03, 67/03, 29/04, 58/04 – other law 45/05, 61/05, 72/09), Law on Criminal Procedure (*Official Journal of FRY*, No. 70/01, 68/02, ,*Official Gazette of RS* No. 58/04, 85/05 – other law, 85/05, 115/05, 49/07, 20/09 – other law 72/09, 76/10), Law on the Seizure and Confiscation of the Proceeds from Crime and Law on Public Prosecutions (*Official Gazette of RS*, No. 116/08 and 101/2010).

Prosecution for organised crime is defined as a prosecution office of special jurisdiction. Prosecutor for organized crime manages the work of Prosecution Office, and function of public prosecution in the Prosecution exercise 14 deputy Prosecutors. Prosecutor for organised crime is appointed by the National Assembly for a period of 6 years, and replaced by State Prosecutorial Council.

On the basis of the Law on Amendments and Additions to the Law on Organisation and Jurisdiction of the Government Authorities in Suppression of Organized Crime (*Official Gazette of the RS*, No 72/09 applicable from 1st January 2010), the Prosecution for organized crime has the jurisdiction in following criminal offences (Article 2):

11. criminal offences of organized crime,
12. criminal offences against constitutional order and security of the Republic of Serbia,
13. Criminal offences against official duty when the defendant, or the person who is being bribed is official/responsible person holding a public function by election, appointment or nomination by the National Assembly, Government, High Judicial Council or State Prosecutorial Council.
14. criminal offences of abuse of office when the amount of gained material wealth exceeds 200,000,000 RSD,
15. criminal offences of international terrorism and criminal offences of financing terrorism,
16. criminal offences of money laundering, if assets subject to money laundering derive from criminal offences from paragraphs 1), 3), 4) and 5)
17. criminal offences against state authorities and criminal offences against judiciary, if committed in respect to offences from paragraphs 1) to 6).

This law expands the jurisdictions of the Prosecution for organized crime and criminal offences of corruption, when the defendant, or the person who is being bribed is official/responsible person is holding a public function by election, appointment or nomination by the National Assembly, Government, High Judicial Council or State Prosecutorial Council.

Law on Public Prosecutions (Art. 5), regarding independence in work stipulates that the public prosecutor and deputy public prosecutor are independent in exercising their jurisdictions. It is prohibited to influence their work and the handling of cases by the executive and legislative authorities, by using the public authority, media or any other manner that may jeopardise independence of public prosecutions.

Resources of Prosecution for organized crime shall be provided from the budget of the Republic of Serbia.

38. Do specialised departments to tackle corruption exist within the law enforcement authorities and the judiciary? If so, please describe them, indicating their legal and institutional status, composition, functions, powers and resources.

In the Criminal Police Directorate, in the Office for Combating Organised Crime, there is the Division for Combating Financial Crime that includes a specialised Section for Combating Corruption. In addition to that, police officers dealing with white-collar crime in the Office for Combating Crime of the Criminal Police Directorate within the MoI head office, also deal with detecting and combating corruption crimes.

All Police Directorates on the territory of the Republic of Serbia have Sections for Combating Corruption. Their activity is regulated by the Law on Police ("Official Gazette of RS" No. 101/05) and the Criminal Code ("OG of RS", No. 85/2005, 88/2005 - corrigendum, 107/2005 - corrigendum, 72/2009 and 111/2009), Criminal Procedure Code ("OJ of SRY" No. 70/2001. and 68/2002 and "OG of RS" No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010), and if these are criminal offences in the area of organised crime also by the Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime("Official Gazette of RS", No. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04, 45/05, 61/05 and 72/09); The Internal Control Sector of MoI, as an independent organisational unit of the Ministry of Interior that controls the legality of the work of the police, especially in terms of respect and protection of human rights in performing police tasks and execution of police powers, deals, among other things, with the activities of detecting corruption within the Ministry of Interior.

The Organised Crime Prosecutor's Office is defined as a prosecutor's office of special jurisdiction and presents one of the competent authorities for fight against corruption.

The legal framework for activities of the Organised Crime Prosecutor's Office includes: the Law on Organisation and Competence of the State Authorities in Suppressing Organised Crime, Criminal Procedure Code, Law on seizure and confiscation of the proceeds from crime ("OG of the RS", No 97/2008) and the Law on Public Prosecution ("Official Gazette of RS" No. 116/08, 104/09, 101/2010). The work of the Organised Crime Prosecutor's Office is lead by the Organised Crime Prosecutor whilst prosecutorial office is held by 14 Deputy Prosecutors. The Organised Crime Prosecutor is elected by the National Assembly for 6-year period, whilst the Deputies are elected by the State Prosecutorial Council.

Pursuant to the Law on Organisation and Competence of the State Authorities in Suppressing Organised Crime that has been implemented from January 1, 2010, the Organised Crime Prosecutor's Office has jurisdiction in acting on the following criminal offences (Article 2):

- 1) criminal offences of organised crime
- 2) criminal offences against constitutional order and security of the Republic of Serbia
- 3) criminal offences against official duty when the defendant, that is, a person receiving bribe, is an official or a responsible person holding public office based on the election, assignment, or appointment by the National Assembly, the Government, the High Judicial Council, or the State Prosecutorial Council
- 4) criminal offence of the abuse of office when the value of the acquired financial gain exceeds the amount of RSD200,000,000,
- 5) criminal offence of international terrorism and criminal offence of financing terrorism
- 6) criminal offence of money laundering if the assets which are subject of money laundering originate from the criminal offences from points 1), 3), 4) and 5), and
- 7) criminal offences against public authorities and criminal offences against judiciary if they are committed in relation to criminal offences from points 1) to 6).

This Law expanded the jurisdiction of the Organised Crime Prosecutor's Office to corruption criminal offences when the defendant, that is, the person receiving bribe, is an official or a responsible person holding public office based on the election, assignment, or appointment by the National Assembly, the Government, the High Judicial Council, or the State Prosecutorial Council.

The Law on Public Prosecution (Article 5) in terms of independent work provides for the following: "Public prosecutor and deputy public prosecutor shall be independent in executing their powers. Any influence on the work of a public prosecutor's office and on actions in cases by the executive and the legislative power by use of public office, public media and in any other way that may jeopardize the independence of the work of a public prosecutor's office, is prohibited."

The funding for the work of the Organised Crime Prosecutor's office is provided in the budget of the Republic of Serbia.

The Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime, Corruption and Other Particularly Serious Criminal Offences provides for the jurisdiction of the Higher Court in Belgrade, as a first instance court, and the Appellate Court in Belgrade, for second instance decisions, in acting in cases of organised crime. Therefore, Special Departments run by Heads of Departments, have been established in these courts.

There are at the moment 15 judges assigned to the Special (Organised Crime) Department of the Higher Court in Belgrade, where 12 judges and the acting President of the Court constitute four judge panels, whilst two judges act on cases in investigation stages. Pursuant to provisions of the Criminal Procedure Code, judge panels in organised crime cases are composed of three professional judges. In addition to the assigned judges, there is the total of 125 employees, including 23 judicial assistants. In terms of judges, please note that judges are seconded to this Division from all the courts on the territory of the Republic of Serbia with special consideration that judges who distinguished themselves by competent and quality work are assigned to this Department. Furthermore, in terms of other personnel in this Department it is taken into account that they have considerable working experience and it is a requirement that they previously demonstrated high quality and competence in their work. Considerable funds are allocated for this Department and if shown in percentages, salaries of employee at the Special Department constitute 47% of the total salaries paid at the level of the Higher Court in Belgrade, utility costs for maintenance of the building where the Special Department is located constitute 48% of the total utility costs of the Higher Court in Belgrade, whilst costs for professional services provided to the Special Department make 42% of the total costs of the Higher Court in Belgrade. In addition, this Department is provided with the state-of-the-art computers, voice modulation equipment was provided for testimonies of protected witnesses or other persons in the proceedings, technical support for enabling video conference links, and the best quality equipment for trial monitoring and recording was provided, everything in order to enable uninterrupted trial. As this Department handles a large number of cases, trials are organised in two shifts

during the day so that assigned judges may complete the proceedings in very demanding cases handled by this department in the most efficient way. As previously stated, the best quality judges and the best quality personnel are assigned to this Department and they are provided with continuous training within the Special Department. In addition, judges and other personnel with Law School degrees are regular participants in numerous seminars organised on these issues both in the country and abroad no matter whether these are organised by state authorities (Ministry of Justice, MoI, etc.) or other organisations such as OSCE, etc.

39. To what extent and from which sources are statistical data available on corruption cases (investigations, cases in court, convictions and sanction level), international co-operation in corruption cases, the link between corruption and organised crime and the link between corruption and money laundering?

Statistical data on corruption cases which are collected, processed and publicised by the Ministry of Interior of the Republic of Serbia, pertain to the activities and the results of the activity of this Ministry in pre-criminal proceedings, that is, prior to the filing criminal charges (including the data from criminal charges) to the relevant Public Prosecutors' Office and additional (new) findings on the criminal offence and the perpetrator which are submitted to the Public Prosecutor' Office by means of the amended criminal charge.

Ministry of Interior systematically collects information on the security-related events occurring in the whole territory of the Republic of Serbia, criminal and other illegal activities and takes measures to ensure security accordingly.

The Unified Information System of the Ministry of Interior of the Republic of Serbia contains centralised databases for different areas of public security. One of these is the database titled "Criminal Offences and Perpetrators" used for entering data from criminal charges filed by the Ministry of Interior (MOI) based on the grounded suspicion that a person has committed a criminal offence which is prosecuted ex officio, including criminal offences with the elements of corruption. This is a national base, and it is centralised as it contains the data on filed criminal charges in the whole territory of the Republic of Serbia dating back to 1991. The manner of collecting, entering, updating and using the data in this database is regulated by a special methodology – the methodology of collection, filing, processing and using data in the area of crime through the application of information technology. The integral part of this Methodology is the Manual on using the application system Criminal Offences and Perpetrators, a list of features and the overview of regular and periodic statistical reports.

The organisational units, i.e. the authorised police officer of the Criminal Police Directorate filing the criminal charges is the one who enters the data into the existing database within the Unified Information System (UIS). The data on the criminal offences related to accepting and offering bribe and other offences with the elements of corruption entered into the UIS are automatically statistically processed – specified queries return different statistical data (including all features/parameters that are

recorded concerning a criminal offence and perpetrators). The definition of ‘crimes with the elements of corruption’ has been taken from the National Strategy for Combating Corruption (which defines corruption in a much wider sense extending the criminalisation of accepting and offering bribe). As corruption is defined as a relationship based on the abuse of authority in public or private sector with the purpose of gaining benefit for oneself or others, apart from criminal offences of accepting and offering bribe, corruption implies many other criminal offences. These statistical reports are used for day-to-day operation and the planning of police activities, as well as for analytic monitoring and comprehending this issue in its entirety (territorial spread, frequency, trends, the areas in which corruption is most prominent, profiles – the most vulnerable professions, etc.) Statistical data are processed in the UIS and they are published on a monthly and cumulative basis by applying the territorial principle (starting from the basic territorial organisational units of the MOI – police station, through police directorates to MOI in its entirety). As all criminal charges are entered into this base, including those related to organised crime and terrorism, it is possible to make a variety of searches for each of the entered parameters individually or by combining them – linking available data and compiling all data on certain persons recorded in the base.

Public Prosecution for Organised Crime maintains annual statistics under the following categories in electronic registry:

- number of persons
- number of cases – a total number and the number per each crime category
- number of criminal charges
- number of requests for conducting an investigation
- number of resolved investigations – as a result of suspension, termination or indictment
- number of unresolved investigations
- number of indictments
- number of judgements delivered by first-instance courts
- number of persons who have not been sentenced by first instance courts
- number of convictions
 - imprisonment
 - fines
 - caution measures – suspended sentence
 - security measures
- The number of appeals made by the Public Prosecutor – according to the type
- number of successful appeals
- number of unsuccessful appeals
- number of persons held in detention for over 3 days
- number of unresolved charges from previous years
- number of unresolved investigations at the end of the report period
- number of suspended cases following the indictment
- number of indictments transferred to the jurisdiction of other Public Prosecutor’s Office

- number of indicted persons who have not been sentenced by first-instant courts in the previous year

In addition, a separate registry is kept of seized and confiscated property gained through committing criminal offences for the following categories:

- number of persons and their capacity
- value of property
- number of orders for conducting financial investigation
- number of requests for seizure of property
- number of orders on prohibiting the disposition of property
- number of accepted or declined requests for seizure of property
- number of successful and unsuccessful appeals against seizure of property
- number of requests for confiscation of property
- number of accepted or declined requests for seizure of property
- number of successful and unsuccessful appeals against confiscation of property
- final property value.

As a part of these statistics the Public Prosecution for Organised Crime also keeps separate statistics on criminal offences related to corruption.

Special Department of The Higher Court in Belgrade uses the data obtained from the Police and the Public Prosecution for Organised Crime, which pertain to the committed criminal offence and the perpetrator. After the court decision is final, all data on the convicted person and the criminal offence on account of which the proceedings were conducted, are submitted to the Republic Statistical Office which keeps records and is in possession of all the necessary statistical data. The Republic Statistical Office is forwarded with the data they request in the prescribed form sheet, which includes the general information on the convicted person, the criminal offence for which they have been convicted, previous convictions for the same criminal offence, the previous penalty, etc.

Special Department of the Higher Court in Belgrade keeps records that enable the preparation of reports according to the type of criminal offence, persons and the report on the penal policy.

Records on seized and confiscated property are kept in electronic form, by recording data on persons, criminal offences and the seized and confiscated property.

40. Is there any specific training on combating corruption or training on ethics for public officials, the judiciary and the law enforcement?

There is indeed specific training in combating corruption (measures aimed at combating corruption) within the scope of regular criminal law syllabus of the Judicial Training Centre.

a) How and by whom is relevant staff trained?

Judges and prosecutors are trained in the form of two-day and three-day seminars. In the beginning, lecturers were most often foreign experts, prosecutors and police officers from the USA, experts from the OSCE, and later on, a substantial number of national experts completed training, including judges of the Serbia's Supreme Court of Cassation, deputies from the Public Prosecutor's Office of the Republic and from the Prosecutor's Office for Organized Crime, who are now successfully providing their colleagues with training within the scope of the syllabus of the Judicial Training Centre.

In addition to these seminars, the Judicial Training Centre, in cooperation with Prosecutors' Association and Transparency Serbia, organised 11 one-day training events for prosecutors, deputy prosecutors, associate experts and interns in the field of combating corruption in 2010. These training events were attended by 350 attendants.

Within the total number of seminars on criminal law conducted at the Judicial Training Centre in the period 2006 – 2010, the number of seminars concerning the field of combating corruption constitute 20% of the total number of seminars. **(Please refer to the graph 2)**

b) Which accompanying offences (e.g. fraud, tax offences and money laundering) are covered by the training?

The training covers criminal offences of money laundering, as well as special investigative activities, financial enquiries and confiscation of proceeds obtained through criminal conduct. During the training for the misdemeanour judges / magistrates, an emphasis is put in particular on tax and customs proceedings, taking into consideration that as from 2010 this matter has come under their jurisdiction.

Details concerning training given in the field of money laundering, tax proceedings, special investigative techniques are contained in our answer to question number 148, Section 24.

SUBJECT (CRIMINAL LAW)	SEMINARS 2006-2010
War crimes	4
Organized crime	18
Terrorism	16
Money laundering	17
Corruption	19

Human trafficking	15
High technological crime	6

41. Public offices: is equal access guaranteed to all citizens? Do regulations exist which are objective and founded on merit-based criteria (in terms of adequate salaries, social rights, rotation in sensitive posts, financial disclosure obligations during office, rules on conflict of interest)?

The Constitution of the Republic of Serbia (*Official Gazette of the RS*, No 98/06) guarantees the rights to work and the freedom to choose occupation. Everyone has equal access to all work places under the same conditions. Everyone has the right to their personal dignity at work, safe and healthy working conditions, the required protection at work, limited working hours, daily and weekly rest, paid annual holiday, fair remuneration for work and legal protection in case of termination of the employment contract. No one can waive these rights.

According to the Law on Civil Servants (*Official Gazette of the RS*, Nos 79/05, 81/05-*corrigendum*, 83/05-*corrigendum*, 64/07, 67/07-*corrigendum*, 116/08 and 104/09) a civil servant is required to act according to the Constitution, law and other legislation, according to the rules of profession, in an impartial and politically neutral manner, and should not express or advocate their political beliefs. In addition, all candidates for employment at any State authority have equal access to all work positions under the same conditions. This ensures independence and impartiality of the civil service.

The Law on Civil Servants defines a group of persons that are not civil servants, but officials. The following are not civil servants: members of parliament, president of the Republic, justices of the Constitutional Court, members of government, judges, public prosecutors, deputy public prosecutors, and other persons elected to their offices by the National Assembly or appointed by the Government, as well as persons having the status of official according to special regulations.

The Law on Civil Servants classifies civil service work places into appointed civil servants and executive civil service staff - executive. This classification is based on the level of complexity of specific tasks, responsibilities involved in working for a specific State authority, and performance of their tasks and scope of powers. An *appointed* position gives a civil servant the powers and responsibilities to manage, coordinate, and organise the operation of a State authority.

Those appointed by the Government and those having the managerial positions at ministries, special organisations, and Government services are also in *appointed* positions, and they include assistant ministers, secretaries of ministries, or directors of administrative authorities under the ministries. An additional quality has now been added

to their *appointed* posts, namely that of professionalism and expertise, which means that their positions will no longer depend on any change of government.

The post of an appointed civil servant is the highest-ranking job that a civil servant in such a capacity can attain, and it is there that a civil servant's advancement ends. The following positions at State administration bodies are *appointed*: assistant minister, secretary of a ministry, director of an administrative body within a ministry, assistant director of an administrative body within a ministry, director of a special organisation, deputy and assistant director of special organisation, and head of administrative district. The Law defines as *appointed* positions also the positions of the director of a Government's service, deputy and assistant director of a Government's service, deputy and assistant of the Government's Secretary-General, Public Prosecutor of the Republic and her or his deputies. The procedure to fill a vacancy depends on whether this is an *executorial* or *appointed* position. According to the Law on Civil Servants an *appointed* position is always filled by either transferring a civil servant from the same or from a different State authority, or by recruiting a person that does not have the status of civil servant. *Appointed* positions at the state administration authorities, Government services and administrative districts are always filled in by the Government's appointment.

When all requirements have been met for filling a vacancy for an *executive* position, the head of the State authority decides whether the vacancy will be filled by transferring a civil servant from the State authority he or she manages, or by transferring a civil servant from another authority according to a *transfer agreement*; by conducting an internal competition or through a public competition. A State authority or Government service wishing to fill a vacancy is required to pass a decision for filling of a vacancy and, together with the proof that requirements have been met to fill a vacancy and manager's statement on how the vacancy should be filled, this decision is sent to the Human Resource Management Service that is responsible to ascertain that all requirements for recruitment have been met.

An internal competition procedure is prepared and published by the Human Resource Management Service on its website, on its announcement board and at the premises of the State authority where the vacancy is being filled. A public competition is announced by the recruiting state authority in a daily newspaper and in the *Official Gazette of the Republic of Serbia*, whilst the Human Resource Management Service publishes it on its website.

The announcement of the internal/public competition contains information about the recruiting state administration authority, description of the vacant work position, professional requirements for the job, place of work, professional qualifications, competences and skills to be assessed in the selection procedure, assessment procedure, application deadline, date of the beginning of the selection procedure, supporting documents to be attached to the application, person responsible to provide additional information, etc. The application deadline for the internal/public competition can not be shorter than eight days from the date of announcement. The announcement of the internal

competition also contains data on the eligible civil servant, and the announcement of the public competition contains data relative to the probation period.

Rules for a public competition also apply to the conducting of the internal competition. This means that the rules defined for the public competition, concerning the selection procedure conducted by the competition panel and the duty of the manager of the state administration authority to choose one of the candidates from the selection list, apply also to internal competition.

Article 79, para 1, item 4) of the Law on Labour (*Official Gazette of the RS*, Nos 24/05, 61/05 and 54/09) provides for dormancy of employee's rights and obligations acquired in employment and based on employment, except if the laws, general act, or employment contract stipulates otherwise for such rights and obligations. The rights and obligations are dormant if the employee is absent from work for the purpose of election, or appointment to an office at a State authority, trade union, political organisation or any other public office that requires that the employee should temporarily discontinue working for the employer. The Law on Labour does not specify what is considered a public office.

The Law on Labour is a *lex generalis*, i.e. a systemic piece of legislation regulating the rights, obligations, and responsibilities stemming from the labour relationship. Special legislation is applied to the rights, obligations, and responsibilities of elected and appointed persons, as well as the employees of State authorities and organisations, bodies and organisations of the units of territorial-autonomy and local self-government, and public services, whilst the Law on Labour has a subsidiary application only, if a special piece of legislation does not provide otherwise.

The Law on Labour prohibits direct and indirect discrimination against both job seekers and employed persons, irrespective of their sex, origin, language, race, skin colour, age, pregnancy, health status, or disability, ethnicity, religion, marital status, family obligations, sexual orientation, political or other belief, social origin, property status, membership in political organisations, trade unions or any other personal quality, which guarantees equal access to all citizens.

Article 104, Para 2, of the Law on Labour guarantees the right of employees to equal earnings for the same work or work of equivalent value performed for the employer. Work of equivalent value means the work that requires the same level of professional education, same work ability, responsibility, and physical and intellectual work.

With respect to public declaration of property and/or income for the above mentioned officials, the applicable Law on the Anti-Corruption Agency (*Official Gazette of the RS*, No 97/08, 53/10) contains detailed provisions on property declaration, register of officials, and which data are accessible to the wider public. The law specifies in detail what property should be declared (salaries and other income, savings deposits in Serbia and abroad, excluding the bank and bank account number details, title to real estate property in Serbia and abroad, excluding the details on the address of the real estate, property right on a vehicle that is subject to registration (car, motor, ship, airplane), valuables, shares, bank credit and mortgage, official perks and benefits such as the right

to use apartment for official purposes, official vehicle with or without a driver, official mobile telephone, etc). The official is required to declare his or her property, property of his or her marital or extra-marital partner and minor child living with him or her at the same household.

The law at the same time requires from the Anti-Corruption Agency to ensure transparency of the data taking into account the right to privacy. Data on the property of an official, which is public based on other regulations, is also considered public, as well as other data which the official, i.e. spouse or extra-marital partner, gives his or her consent to be made public.

The Anti-Corruption Agency maintains a property register, taking into account security measures and protection of the right to privacy, and the register of officials (containing public offices at all institutional levels in Serbia with the titles of the offices), list of legal persons in which the official owns more than 20% of interest or shares, as well as the list of gifts. The Law stipulates that this data should be published at the Agency's website.

The Agency established a Register of Property given that officials are required, within 30 days of the date of election, appointment or nomination, to submit to the Agency a report on his or her property and income, the right to use an apartment for official purposes, data about the property and income belonging to the spouse or extra-marital partner, and to the minor children if they live in the same family household, data on the date of election, appointment, or nomination. To date, the Agency has received around 16,500 reports.

In the discharge of their public offices, public officials are subject to the procedures and measures for the prevention of conflict of interest which are specified in the Law on the Anti-Corruption Agency. Before the establishment of the Agency, the institution responsible for the prevention of conflict of interest in the discharge of public offices had been the Committee for the Prevention of Conflict of Interest.³ In its five-year term it passed more than 1700 decisions relevant to this area. In its one-year-long operation, the Agency passed at least 120 decisions on conflict of interest it had found, 20 decisions on violations of the Law on the Anti-Corruption Agency, and 11 pronouncing measures of caution as sanctions. As of June 2010, these reports are publicly available at the Agency's website.

Based on Article 82 of the Law, the Agency has passed 516 decisions dismissing the request by public officials holding more than one public office at the time of entering into force of the Law for consent to continue discharging the public office, and ordering them to choose, within the set timeframe, which office they will continue discharging.

Article 43 requires from the authority in which the public official holds his or her public function to inform the Agency about the public official's taking or termination of office, no later than seven days from the date of taking of office, or termination of office. The

³ The Committee of the Republic for the prevention of conflict of interest was established pursuant to the Law on the Prevention of Conflict of Interest in the Discharge of Public Offices, Official Gazette of the RS, No 43/04.

Agency has received, through the Register of Officials which is updated daily, at least about 5,500 reports about the taking or termination of public offices.

42. Do you take any measures to protect whistleblowers in the fight against corruption?

Partial protection of whistleblowers is provided for by one of the articles of the Law on Free Access to Information of Public Importance. The Ombudsman invoked this Article once in practice, protecting a citizen who filed a reasonable complaint. However, the protection is not comprehensive, since it does not encompass every situation in which it is justified to provide protection for a whistleblower, nor does it provide for clear mechanisms and sanctions for its implementation or violation. In 2009, the Ombudsman, in cooperation with the Commissioner for Information of Public Importance and the non-governmental sector, prepared and proposed to the National Assembly an amendment to the Law which would provide for a more comprehensive protection. This amendment was rejected, and the current decision was adopted instead, which is a modified and softened version of the amendment proposed by the Ombudsman.

The Law on Amendments and Additions to the Law on the Anti-Corruption Agency, adopted in August 2010 (*Official Gazette of RS*, No. 97/08 and 53/10) aiming to further provide for the protection of whistleblowers in the fight against corruption, stipulates that the person whose report was used to initiate proceedings, or another person who gives a statement in the procedure establishing whether there has been a violation of this Law, may not suffer harmful consequences. Besides, this protection also applies to a state official, i.e. a person employed in bodies of the Republic of Serbia, autonomous province, local self-government units and bodies of public enterprises, institutions and other organisations founded by the RS, the autonomous province or local self-government units, who in good faith submits a report to the Agency reasonably believing that there is corruption in the body he/she works in (Article 56 (2)). For the purpose of protection of these persons, the Agency provides them with the essential assistance and protects the anonymity of the persons. A regulation stipulating in more detail the procedure of providing assistance to the person who warns about the irregularity regarding the fight against corruption is adopted by the Director (Article 56 (5)). The Agency is in the course of drafting a Rulebook on the Protection of Whistleblowers which shall also provide for practical protection of whistleblowers.

43. Is integrity, accountability and transparency of public administration assured, e.g. by means of quality management tools, auditing and monitoring of standards, such as the Common Assessment Framework of EU Heads of Public Administration?

The State administration Act (*Official Gazette of the RS*, Nos 79/05, 101/07 and 95/10) has fully established the state administration system in the Republic of Serbia and established the principles of operation of the state administration bodies, including the principle of independence and legality, which means that state authorities are independent in the discharge of their responsibilities and that they operate within and based on the

Constitution, laws, and other regulations and general acts; principle of professionalism, impartiality, and political neutrality, which means that state authorities act according to professional rules, impartially and in a politically neutral manner; requirement to ensure equal legal protection to everyone in exercising their rights, obligations and legal interest; principle of effectiveness in the exercise of rights of parties that requires from the state authorities to ensure that the clients exercise their rights and legal interests in an efficient and effective manner; principle of proportionality and respect of clients which requires from state authorities, when they make decisions in administrative procedures and pass administrative acts, to respect the person and dignity of clients; principle of transparency which means that the operation of state authorities is public, i.e. that state authorities are required to ensure public access to their work according to the law governing the free access to information of public importance.

The Law regulated the relations between the state administration and citizens in a systemic manner by establishing instruments and procedures ensuring legality, public access, transparency, and liability of state authorities, on the one hand, and their role, on the other hand, as a service to citizens in exercising their rights, meeting their obligations or protection of their interests, as well as public interest, which includes the interest of all individuals.

State authorities are required to inform the public about their work through public information media and in other appropriate manner; to organise public discussion in the drafting process of legislation that substantially modifies the legal system in an area or which regulates the issues of special public concern; to inform clients, in an appropriate manner, about their rights, obligations, ways to exercise their rights and obligations; their remit of competence; the administrative authority that supervises their work and ways to contact it, as well as any other details relevant for transparency and relations with clients; to give opinions, at the request by natural or legal persons, on the implementation of specific provisions of laws and other general acts; as well as to ensure that there is an appropriate procedure for filing complaints on their work and inappropriate conduct of their employees.

State authority management and responsibility are organised in such a way that the Principal of the state authority and its managerial staff are accountable for their own work and the operation of the state authority to the state authority responsible for making proposals, and to the authority responsible to elect, nominate, or appoint to a certain public office, or to a post or position within the hierarchical structure. The minister is responsible to the Government and the National Assembly for the operation of the ministry and the situation in all areas from the ministry's remit. A ministry can have one or more state secretaries appointed and discharged by the Government at the minister's request. They are responsible for their work to the minister and the Government. A ministry can also have assistant ministers and a secretary of the ministry appointed by the Government at the minister's request. They are accountable for their work to the minister.

A administrative authority within a ministry is managed by a director appointed by the Government at the proposal of the minister. The director is responsible for his work to the

minister. A director of a state authority within a ministry can have one or more assistants appointed by Government at the minister's request. Assistant directors are responsible for their work to the director and the minister.

A special administrative organisation is managed by a director appointed by Government to a five-year term at the proposal of the Prime Minister, and he is responsible for his work to the Government. A special organisation can have a deputy director and one or more assistants appointed by Government at the director's proposal. They are responsible for their work to the director.

Integrity, responsibility, and transparency of the state administration are ensured also through the Law on Civil Servants (*Official Gazette of the RS*, Nos 79/05, 81/05-*corrigendum*, 83/05-*corrigendum*, 64/07, 67/07-*corrigendum*, 116/08 and 104/09). This Law constitutes the foundation of the civil servant system in the Republic of Serbia. Employees working at state authorities are divided into civil servants and general service employees. This classification is founded on a difference between the civil servants' responsibilities (customised for state authorities' core functions, thus depending on the scope of competences of the specific state authority) and the responsibilities of general service employees (including general supporting services which can be found in the private sector too).

The basic principles of operation of civil servants are as follows: principle of legality, impartiality and political neutrality, which is also a Constitutional principle demanding that the responsibilities are discharged on the basis and within the Constitution, law, and other regulations, according to professional rules, impartially and politically neutral, without expressing or advocating one's own political attitudes at work; principle of responsibility for work, which ensures that civil servants are obliged to discharge their duties in a professional and effective manner, as civil servants are responsible to ensure that they act in a lawful, professional and effective manner; principle of prohibition of favouring or discriminating against a civil servants in their rights or responsibilities, particularly because of their racial, religious, sexual, ethnic, or political affiliation, or any other personal quality; principle of access to information about the work of civil servants, according to the law regulating free access to information of public importance; principle of equal access to jobs, ensuring that the candidates can have access to all public administration vacancies under equal conditions, and the selection of candidates is based on their professional competence, knowledge and skills; principle of promotion and professional improvement which ensures that the advancement of a civil servant depends on his or her competence, work results and needs of the specific state authority, whilst professional improvement is not only the right but also a duty of the civil servant in accordance with the needs of the state authority; and the principle of equal opportunities, ensuring that all civil servants are equal when decisions are being made regarding their promotion, rewarding and legal protection.

The Law on Civil Servants contains provisions about the responsibility of civil servants. Civil servants are subject to disciplinary responsibility for violations of duties stemming from the employment relationship. The law divides them in minor and severe violations

and enumerates them. For a minor violation of duty a civil servant may be fined, whilst for severe violations, in addition to the fine, a civil servant may be prohibited from advancing in service for four years; he or she can be degraded into the immediately lower salary class; transferred to the immediately lower-ranking position; or discharged from civil service.

In addition, a civil servant's employment relationship terminates if his/her work is marked as “unsatisfactory” in the annual evaluation and if the same mark “unsatisfactory” is confirmed again in an additional assessment.

The integrity and professionalism of the civil servant is a precondition for a full integrity of a state authority, and it is guaranteed in the provision of the Law on Civil Servants which gives the civil servant an option to refuse to discharge a written or oral order if such an order would constitute a punishable offence.

The Law on General Administrative Procedure (*Official Gazette of the FRY*, Nos 33/97, 31/01 and *Official Gazette of the RS*, No 30/10) defines the rights, obligations, powers and responsibilities of civil servants which ensure a professional, independent and impartial relationship and position, i.e. their integrity while conducting administrative proceedings and in deciding about the rights, obligations and legal interests of parties in administrative proceedings. The following principles are particularly important: principle of a free appraisal of proof, which gives the official person conducting the proceedings or performing certain acts in the proceedings power to decide, based on his or her own reasonable and careful assessment of every piece of evidence and all evidence together, as well as on the basis of the outcome of the entire proceedings, which facts he or she will take as proven; principle of protection of the rights of the individual and of the public interest ensures that the state authorities take into account, in conducting the proceedings, that the rights of the individual and the public interest are not violated, as well as ensure that individuals and other parties protect, as efficiently as possible, their rights taking into account that the exercise of their rights does not conflict a public interest or prejudice the rights of other individuals; principle of provision of assistance to an uneducated lay party requires from the state authority conducting the proceedings to ensure while conducting the proceedings that ignorance and lack of education of a party or other parties in the proceedings do not prejudice the rights that they are entitled to according to the law; that they remind the party of its rights and points to the legal consequences of its actions or omissions in the proceedings, but also that they instruct the party about its rights stemming from a specific substantive legislation; and instructing of the party about the recourse to legal remedies (appeal, grievance, and other legal remedies). There are also other mechanisms in place that ensure the lawfulness of the acts and operation of state authorities in conducting administrative proceedings: they include inspectorates, particularly the administrative inspectorate, second-instance authority, or the authority with supervisory powers, Administrative Court, Constitutional Court, and the institutes of the ombudsman (*protector of citizens*), auditor, and access to information of public importance which were specified in separate laws: Law on Free Access to Information of Public Importance (*Official Gazette of the RS*, No 120/04, 54/07 and 104/09), Law on the

Protector of Citizens) (*Official Gazette of the RS*, No 79/05 and 54/07) and the Law on the Institution of the State Auditor (*Official Gazette of the RS*, No 101/05 and 54/07).

44. Which measures are taken to raise awareness of corruption as a serious criminal offence (e.g. campaigns, media and training)? Who is responsible for awareness raising?

Based on the National Anti-corruption Strategy, all state authorities and civil society organisations, and the Anti-corruption Agency are required to raise public awareness of the fight against corruption.

The Anti-corruption Agency (i.e. Group for Training Programmes within the Sector for Prevention) has powers and competence to prepare and implement training programmes for various target groups regarding the prevention of corruption, as well as to take part in the development of training programmes by other institutions and legal persons. A series of trainings were held in 2009 and 2010 for the employees of the Agency, state authorities and organisations, territorial autonomies and local self-governments, public services and other legal persons, journalists, primary and secondary school students, and university students.

In addition to delivering the trainings itself, the Agency also monitors the activities of other institutions designated in the Action Plan for the implementation of the National Anti-corruption Strategy with respect to training, and offers assistance through cooperation. The Group offers professional programmes to the NGOs dealing with corruption issues, as a form of cooperation and assistance for their activities. The Agency also participates in training programmes for the prevention of corruption through the media. In cooperation with the Ministry of Education, the Group has participated in the analysis of the school curricula and in the incorporation of the topic of prevention of corruption in the official school curricula.

In its preventive activities, the Agency also took part in designing a public awareness raising campaign on corruption. For instance, a competition was organised for primary and secondary schools in Serbia in which the students, using their creativity and through different arts, showed and expressed their view of corruption in Serbian society. Awareness about the detrimental consequences of corruption to the society and the country is raised through an internship programme at the Agency. Namely, since 2010, students from various faculties have had an opportunity to learn more about the ways to prevent corruption and about the work of the Agency as the leading anti-corruption institution in Serbia.

Within the public campaign, Serbian public was warned that the crime of corruption is a serious criminal offence subject to sanctioning.

The media, as a key social factor in the fight against corruption, were involved in the public campaign through a seminar designed for journalists organised by the Agency in 2010. Through this training, the journalists learned how to report on corruption more

professionally, and to change the focus of reporting from sensationalist to educational and preventive.

Judicial Training Academy organises special ongoing training programmes about the fight against corruption, ethics in the judiciary, and training programmes for the improvement of performance of the staff in preventing possible corruption. Anti-corruption training programmes also cover the members of the police, in addition to the judges, prosecutors, and court employees. In 2010, the Judicial Training Academy held around 40 trainings and seminars on the liability of legal persons, confiscation of proceeds from crime, investigations and investigative techniques in the fight against corruption, implementation of reform laws for prosecutors and judges. Measures against corruption, international standards and Serbia's obligations against corruption were among the topics of the seminars. Some of the training events were implemented in cooperation with the US Embassy in Belgrade, OSCE Mission in Serbia, and the Anti-corruption Agency.

45. Do effective codes of conduct, and other measures enhancing corporate social responsibility, exist for the private sector to prevent corrupt practices? How are these codes of conduct enforced?

In 2006, the Chamber of Commerce of Serbia adopted the Code of Business Ethics and the Code of Corporate Management which were published in the *Official Gazette of RS*, No. 1/2006.

The Code of Business Ethics establishes the principles and rules of business ethics that are binding upon business entities, members of the Chamber of Commerce, employees, members of bodies and persons engaged under contracts in any business entity.

The Code of Business Ethics also incorporates the principle of prohibition of discrimination which implies that when contracts of employment are signed and while such contracts are in effect, persons to which provisions of this Code apply enjoy equal rights and may not be limited in exercising their rights regardless of their sex, race, skin colour, language, religion, ethnic and/or social origin, their ties with a certain ethnic minority, membership in any political and/or trade union organization, economic status, birth or some other condition.

The Code of Corporate Management establishes the rules concerning management and how it is monitored in profit making companies. This Code represents an amendment to current legislation so that no provisions contained therein may abrogate the rule of law which governs the same matter in a different manner. The principal objective of the Code is to establish good business practices in the field of corporate management which should create the balance of power and influence between authorities in the company, build a permanent and solid system of control over the work of administration and protection of investors' rights, which would in the long run bring economic breakthrough to the company thus fostering economic development of the society as a whole.

The Code of Corporate Management also includes a segment made up of rules concerning monitoring and control which direct companies towards adopting and perfecting a publicly available, clear and efficient system of internal control which allows for control over the work of members of management and supervisory committees, their specialized commissions and independent auditors of the company, with the ultimate aim of protecting the rights of shareholders, companies' assets as well as of enforcing the observance of the law and the Code. The Code also promotes the principle of transparency, the adherence to which should increase the responsibility for managing the company and transparency in its management and administering of its affairs. For those reasons the Code represents an amendment to the legal framework for strengthening corporate social responsibility and preventing of corruption.

In cooperation with the IFC, the Chamber of Commerce of Serbia is carrying out a project aimed at fostering corporate management in order to promote the good practice of corporate management and assist companies in fostering their corporate management.

The Chamber of Commerce of Serbia has been a participant in the United Nations Global Compact in Serbia ever since the Network was established and since 2008 it has been undertaking its organized activities, primarily in the area of fighting corruption in companies. The United Nations Global Compact Network is the largest voluntary association of companies dedicated to harmonising their business activities with the ten universal principles of socially responsible business in the areas of human rights, labour rights, environmental protection and fighting corruption. The Global Compact is not a regulatory instrument nor is it a binding standard for socially responsible business since it is not binding on any company taking part in the initiative. The Chamber of Commerce of Serbia leads a working group for fighting corruption which has already adopted the following documents: *Importance of a Code of Business Ethics in Companies*, *The Role of Professional Associations in Combating Corruption* and *Preventing Corruption during the Transition from the Public into the Private Sector*. In addition, a proposal for an Agreement on Integrity is being outlined in cooperation with the Public Procurement Office of the Republic of Serbia.

The working group had formulated a proposal for a Declaration on Combating Corruption, which was adopted by the Global Compact Assembly on 2 December 2010 and which should be signed by all the participants in the Global Compact within the next year, while at the same time it has been working on increasing its internal capacities with regard to combating corruption. First reports on how the Declaration is being implemented are to be expected within a year and it represents an extremely important document whereby its signatories are bound to strictly observe measures against corruption and increase their capacities in the field of anti-corruption, including regular reporting. Through its representative in the Working group for fighting corruption, the Chamber of Commerce of Serbia has addressed the need for introducing integrity plans as a preventive measure aimed at combating corruption in undertakings. Fundamental elements contained in the integrity plans are:

- evaluation of an institution's level of exposure to corruption,

- description of work process, decision-making procedure and establishing which jobs are prone to corruption, i.e. determining which activities are considered risk-prone,
- preventive measures for the reduction of corruption,
- information about the person responsible for formulating and implementing the integrity plan.

Furthermore, the PKS /Chamber of Commerce of Serbia/ is a duty-holder of duties set out in the Action Plan for Implementation of the National Strategy for Combating Corruption and its duties are defined in the chapter entitled Economic System, based on which it delivers, at the request of the Anti-corruption Agency, a Report about measures it has taken and activities it has undertaken.

46. What are the measures, approaches, strategies etc. targeting prevention of corruption? What is the practical experience with their implementation?

The National Anti-corruption Agency covers three key elements, one of which is prevention, i.e. eliminating the possibilities for occurrence of corruption. The part of the Strategy referring to its aims has a special reference to a permanent elimination of conditions for the occurrence and spreading of corruption and to establishing a legal and institutional framework for prevention and suppression of corruption.

The chapter on *Systems and Fields* envisages the introduction of integrity plans as a special form of guidelines for the political system, including the judiciary and police, state administration, territorial autonomy, local self-government, public services, public finance and economy of the highest structures of government, administrative authorities and public services, courts and prosecutors' offices, as well as in business entities. The Law on the Anti-corruption Agency⁴ (*Official Gazette of the RS*, Nos 97/08, 53/10) provides for the obligation to pass integrity plans that applies to all highest state authorities, National Assembly, ministries and the highest justice bodies. They are required to pass their integrity plans based on the guidelines and within the timeframes defined by the Anti-corruption Agency⁵ which is responsible for ensuring that integrity plans are passed and implemented.

Drafting of plans for various sectors should cover a precise plan of activities, timeframes, and persons in the authorities and bodies responsible for the implementation of activities

⁴ Article 58 of the Law of the Anti-corruption Agency stipulates that an integrity plan must contain legal and practical measures for the prevention and elimination of possibilities for the emergence and development of corruption. The most frequent measures include the appraisal of the exposure of the institution to corruption, details of the person responsible for the integrity plan, description of work processes, decision-making, and identification of tasks that are particularly susceptible to corruption, as well as preventive measures for the reduction of corruption.

⁵ The Anti-corruption Agency has published Guidelines for the Development and Implementation of Integrity Plans, *Official Gazette of the RS*, No 80/10.

designed for the prevention of corruption for all authorities, institutions and organisations under their competence. To date, sector-wide plans were developed by the Ministry of the Interior, Ministry of Sport, and Ministry of Health.

- Practical experience

Since January 2010, the Anti-corruption Agency has run a public campaign with the aim of raising public awareness of the importance of fighting corruption. Within the campaign, a great number of round tables and direct consultations were organised about the property disclosure reports by public officials and the prevention of the conflict of interest. Around 3,000 public officials attended.

On the occasion of the International Anti-corruption Day, 9 December, the Agency organised a conference and a media campaign which included the development and broadcasting of appropriate video footages. The video footages had been broadcast seven days before 9 December on two TV stations with frequencies covering the whole territory of Serbia. In addition, 150,000 flyers were printed and distributed in the daily newspapers on 9th December.

A number of state authorities have also organised individual training on the fight against corruption, including the Human Resource Management Service that organised a series of trainings on corruption in 2009 and 2010 for state administration employees. In 2010, the Anti-corruption Agency took an active part in the designing of this training programme. In addition, the Agency's staff participated as lecturers in these trainings.

As one of the methods for the prevention of corruption, a special procedure is applied to eliminate the conflict of interest in the discharge of public offices. The Law on the Anti-corruption Agency contains separate provisions about the prevention of conflict of interest in discharging public offices, procedure conducted by the Agency in the event of the conflict of interest, and the measures taken by the Agency in order to eliminate the conflict of interest.⁶ Before the establishment of the Anti-corruption Agency, the Committee of the Republic for the Prevention of the Conflict of Interest in the Discharge of Public Offices⁷ was the responsible institution. In its five-year mandate it passed over 1,700 decisions in this area. In its one-year long operation in the area of prevention of the conflict of interest the Agency has achieved the following:

At least 120 decisions (detecting the conflict of interest and setting the deadline to discontinue discharging the incompatible public offices), 20 decisions detecting the violation of the Law on the Anti-corruption Agency and noting the discontinuation of the incompatible public function by the force of law, 11 decisions pronouncing the measure

⁶ Chapter III *Conflict of interest* and Chapter VI *Action and decision-making in the event of violation of the Law* of the Law on the Anti-corruption Agency.

⁷ The Committee of the Republic for the prevention of conflict of interest was established pursuant to the Law on the Prevention of Conflict of Interest in the Discharge of Public Offices, *Official Gazette of the RS*, No 43/04.

of caution, and in one case 1 decision was passed to publish a proposal for discharge from public office.

In 2010, the Agency received 16,500 reports on the property of public officials which constitutes 95% of all public officials in Serbia required to report according to the Law on the Anti-corruption Agency. Since June 2010, these reports have been publicly available at the Agency's website.

In order to improve transparency of state authorities' operation, a provision was made in the Law on Free Access to Information of Public Importance (*Official Gazette of the RS*, Nos 120/04, 54/07, 104/09 and 36/10) to ensure the right of access to information of public importance held by public authorities. In order to exercise these rights, the Commissioner for Information of Public Importance was established as an independent state authority. According to this Law, the Commissioner is authorised to decide upon complaints filed by the persons that have requested access to information of public importance but were denied this right by the state authority (Article 24). The Commissioner's decisions are final, enforceable, and binding (Article 28). In addition, this Law obliges the state authorities to send to the Commissioner their annual work reports (Article 43), and to make Information Booklets on their work available on their websites and in other appropriate manner (Article 39)

Since the adoption of the Law on Free Access to Information of Public Importance in 2004, the Commissioner has addressed 6355 complaints filed by citizens, journalists and other applicants, 5686 (89,5%) of which were admissible, 377 (5,9%) were found inadmissible, whilst 292 (4,6%) of the complaints were dismissed for formal deficiencies. In processing the admissible complaints, the Commissioner passed 2,240 decisions ordering the authorities to allow access, in 3,373 cases the procedure was terminated because the authority allowed access following the applicant's complaint to the Commissioner and the Commissioner's subsequent intervention. In 73 cases, the Commissioner cancelled the decision of the state authority and returned the case to a repeated procedure and decision. The state authorities failed to respond to 398 (17.7 %) of all Commissioner's decisions, which is 6.9% in relation to the total number of admissible complaints.

As on November 2010, the Commissioner received 106 motions for enforcement in 2010. He made a decision in 80 cases. He ordered 29 fines as coercive measures for the enforcement of his decisions. Procedures were terminated in 40 cases as the applications were acted upon subsequently, after the decision to permit the enforcement was made, whilst in the remaining cases the procedures are pending.

According to the 2009 Report on the implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection (*Official Gazette of the RS*, No 97/2008 and 104/2009 – additional law) out of over 3000 state authorities subject to the reporting requirement 620 (around 20%) sent their 2009 annual

reports to the Commissioner.⁸ In addition, the statutory reporting requirement to publish an Information Booklet was fully met by 222 state authorities, by publishing an Information Booklet on their websites, whilst another 191 state authorities partially met this requirement, by publishing the Information Booklet on their work in a printed form.⁹

47. Please provide succinct information on legislation or other rules governing this area.

Pursuant to National Strategy and the harmonisation of domestic legislation with international standards, the Republic of Serbia ratified:

- United Nations Convention against Corruption,¹⁰
- United Nations Convention against Transnational Organized Crime and complementary protocols, ¹¹ Council of Europe Criminal Law Convention on Corruption,¹²
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime,¹³

and signed:

- Council of Europe Civil Law Convention on Corruption,¹⁴
- Additional Protocol to the Council of Europe Criminal Law Convention on Corruption,¹⁵

Aiming to improve and harmonise legal and institutional frameworks in combating corruption, the following laws were adopted:

18. The Law on the Anti-corruption Agency (*Official Gazette of the RS* No. 97/08, 53/10), that established the Agency as an independent state authority which is responsible to the National Assembly for conducting activities within its jurisdictions. The Agency was awarded with several regulatory functions, including the implementation of the National Strategy for Combating Corruption, supervision and tasks related to preventing the conflicts of interest, procedure of reporting the assets of officials, implementing the

⁸ The 2009 Report on the implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data, page 40.

⁹ The 2009 Report on the implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data, page 42.

¹⁰ The Law on Ratification of the United Nations Convention against Corruption (*Official Journal of SCG* – International Treaties No. 12/05)

¹¹ The Law on Ratification of the United Nations Convention against Transnational Organized Crime and complementary protocols (*Official Journal of FRY* – International Treaties No. 6/01).

¹² The Law on Ratification of the Criminal Law Convention on Corruption (*Official Journal of FRY* – International Treaties No. 2/02 and *Official Journal of SCG* – International Treaties No. 18/05).

¹³ The Law on Ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (*Official Journal of RS*, No. 19/09).

¹⁴ The Law on Ratification of the Civil Law Convention on Corruption (*Official Gazette of RS*, No. 102/07).

¹⁵ The Law on Ratification of the Additional Protocol to the Criminal Law Convention on Corruption (*Official Gazette of RS*, No. 102/07).

integrity plans, supervision on funding of political parties, as well as coordination of international cooperation in the field of combating corruption;

19. The Law on Financing of Political Parties (*Official Gazette of RS*, No. 72/2003, 75/2003 – corr., 60/2009 - decision of CC and 97/2008) which stipulates that the Agency shall take over all duties and jurisdictions of the Republic Electoral Commission, Parliamentary Committee for Finance and Ministry of Finance in the purpose of maintaining unique form of financial reports of political parties and effective implementation of the Law. Pursuant to its jurisdictions the Agency has developed standards, i.e. criteria for transparent reporting on financial operations of political parties;

20. The Law on Amendments and Additions to the Law on Organisation and Jurisdiction of the Government Authorities in Suppression of Organised Crime (*Official Gazette of the RS*, No 72/09), stipulates more efficient detection, criminal prosecution and trial for certain severe criminal offences, which have no features of organised crime. Namely, the application of this law has been extended to corruption and other especially severe criminal offences, which enabled the implementation of provisions from Chapter XXIXa of the Law on Criminal Procedure to procedures for these offences.

21. The Law on Seizure and Confiscation of the Proceeds from Crime (*Official Gazette of the RS*, no. 97/08) which introduced multidisciplinary work in all relevant investigations of criminal offences with elements of corruption and detailed regulation of manner of disposal and the division of property resulted from criminal offences, and stipulated the establishment of special organisation responsible for managing seized and frozen assets;

22. The Law on Amendments and Additions to the Criminal Code (*Official Gazette of the RS*, no. 85/05, 88/05 - corrigendum, 107/05 – corrigendum and 111/09), for harmonization of the criminal offences of unlawful mediation, giving and receiving bribe and changes in concepts of officials and foreign officials;

23. The Law on Criminal Procedure (*Official Journal of FRY* No. 70/2001. and 68/2002 and *Official Gazette of RS* No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010) which established measures for efficient system of implementing special investigative techniques for detection and processing of criminal offences with elements of corruption;

24. The package of judicial laws: the Law on High Judicial Council (*Official Gazette of RS* No. 116/08, and 101/2010), the Law on Organization of Courts (*Official Gazette of RS*, No. 116/08, 104/09 and 101/2010), the Law on Judges (*Official Gazette of RS*, No. 116/08 and 58/09 – decision of CC, 104/09 and 101/2010), the Law on State Prosecutorial Council (*Official Gazette of RS* No. 116/08, and 101/2010), the Law on Public Prosecution (*Official Gazette of RS*, No. 116/08, 104/09 and 101/2010), The Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Office (*Official Gazette of RS*, No. 116/08, and 101/2010), the Law on Amendments and Additions to the Law on Minor Offences (*Official Gazette of RS*, No. 101/05, 116/08 and

No. 111/09), the Law on Constitutional Court (*Official Gazette of the RS* No 109/07), which made the process of appointing and promoting judges and prosecutors more transparent in order to regain public trust of prosecutor and judge independence from political influences, as well as trust in their impartiality in the execution of functions. The mandate of the Special Prosecutor for Organized Crime and its deputies has been prolonged;

25. The Law on Personal Data Protection (*Official Gazette of RS* No. 97/08), stipulates requirements for collecting and processing personal data, personal rights and protection of personal rights of a person whose data are collected and processed, limitations of protection of personal data, procedures before the competent authority for personal data protection, data security, records, transfer of data from Republic of Serbia and supervision the execution of this law. The aim of which is to ensure that each and every natural person may exercise its rights to privacy as well as other rights and freedoms and that these are protected.

26. The Law on Liability of Legal Entities for Criminal Offences (*Official Gazette of the RS* No. 97/08), stipulates requirements for liability of legal entities for criminal offences, criminal sanctions that may be imposed to a legal entity and rules of procedure for deciding on liability of legal entity.

27. The Law on State Aid Control (*Official Gazette of RS*, No. 51/09)

28. Public Information Law (*Official Gazette of the RS* No. 43/03, 61/05 and 71/09),

29. The Law on the State Audit Institution (*Official Gazette of RS*, No. 101/05 and 54/07), which regulates the establishment and activity, legal status, competences, organisation and manner of operation of the State Audit Institution and other issues important for operation of the Institution, and rights and obligations of auditors.

30. The Law on Protection of Competition (*Official Gazette of RS* No. 51/09),

31. The Law on Amendments to the Law on Free Access to Information of Public Importance (*Official Gazette of RS*, No. 120/04, 54/07 and 104/09), which stipulates the requirements for protection of persons who report corruption from intimidation and similar pressures and a more complete realization of guaranteed rights of citizens to access information held by public authorities and organisations exercising public authority.

48. What anti-corruption laws exist? How and by which bodies are they implemented? Does the legislation contain provisions designed to prevent corruption?

The Law on the Anti-corruption Agency (*Official Gazette of the Republic of Serbia*, No 97/08, 53/10) is the main anti-corruption law establishing the Anti-corruption Agency as an independent regulatory body with responsibilities including the supervision of the

National Strategy for Combating Corruption, Action Plan for the implementation of the National Strategy for Combating Corruption, and different sector action plans.

In addition, the Agency institutes proceedings and pronounces measures in case of violation of the Law. It performs tasks stipulated in the law regulating the financing of political parties, gives opinions and guidelines for the implementation of the Law, initiates procedures to amend anti-corruption legislation, gives opinions regarding the implementation of the Strategy, Action Plan and the action plans in other sectors. The competence of the Anti-corruption Agency is also to monitor and coordinate the operation of state authorities in the fight against corruption; maintain the register of officials; maintain the register of officials' property and income; provide professional assistance in the anti-corruption area; cooperate with other state authorities in the drafting of anti-corruption legislation; and give guidelines for the development of integrity plans in the public and private sectors. The Agency introduces and implements anti-corruption training programmes in accordance with the Law, and acts upon applications filed by legal and natural persons. In addition, the Agency conducts surveys, monitors and analyses statistics and other data about corruption. In cooperation with the competent state authorities, it participates in the international cooperation in the anti-corruption area. It also performs other tasks specified in the Law.

In normative terms, the Law defines corruption as *a relation based on abuse of office, social status or influence, in the public or private sector, with the aim of acquiring personal benefits for oneself or for another.*

The Law contains provisions introducing preventive measures and control mechanisms for the prevention of conflict of interest. The Law defines the terms *official*, *public office*, *private interest*, and *conflict of interest*. The Agency is responsible for addressing the conflict of interest, instituting proceedings and pronouncing measures in case of a violation of the Law, and for the improvement of the existing legislation.

The Law specified the provisions governing the conflict of interest in discharging the public office as follows: prohibition of holding another public office, holding an office in a political party, engaging in other job or activity, engaging in other job or activity at the time of taking of public office, obligation to report conflict of interest, prohibition of establishment of a company or public service for the duration of a public office, membership in an association or association bodies, transfer of company voting rights for the duration of the public office, requirement of reporting to the Agency in the public procurement process, undue influence on an official, prohibition of employment or entering into business cooperation upon the termination of public office.

The Law provides for a general prohibition and rules concerning the gifts received by the official whilst holding a public office. Officials may not accept any other gift related to the discharge of their public office, other than the occasional or other appropriate gift, and only if such gifts are in a form other than money or securities; procedure for reporting property by officials and persons related to the officials; and monitoring of the financial status of officials; as well as action and decision-making by the Agency in case of a violation of the Law.

According to its competences, the Agency ensures the compliance of legislation and its consistency from the point of view of fight against corruption.

49. How is the link between domestic legislation and international conventions ensured?

The Constitution of the RS (*Official Gazette of the RS*, No 98/2006) took a very affirmative approach *vis-à-vis* international law and its incorporation in the domestic legal order. Article 16 of the Constitution of the Republic of Serbia regulates international relations and stipulates that the RS foreign policy rests on generally recognised principles and rules of international law which, together with the ratified international treaties, form an integral part of the legal order of the Republic of Serbia. As such, they are directly applicable. Given the principle of constitutionality, the ratified international agreements must be in line with the RS Constitution.

The hierarchy of domestic and international general legal acts is specified in Article 194 according to which all laws and other general legal acts promulgated in the Republic of Serbia must be compliant with the Constitution and may not contradict the ratified international treaties and generally recognised rules of international law. The ratified international treaties have precedence in relation to domestic legislation, and only Constitution stands above them in hierarchy.

Pursuant to Article 167 (2) of the Constitution, the RS Constitutional Court decides on the compatibility of the international treaties with the Constitution.

The issue of harmonisation of domestic legislation with international conventions is addressed when appropriate by making amendments to legislation. In certain cases, given the complexity and importance of addressing a certain problem, specific areas are regulated in special laws. A good example is the adoption of the Law on the Anti-Corruption Agency (*Official Gazette of the RS*, Nos 97/08, 53/10), Law on the Organisation and Competences of State Bodies in the Fight Against Organised Crime, Corruption, and other Particularly Serious Criminal Offences (*Official Gazette of the RS*, Nos 42/2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004-additional law, 45/2005, 61/2005 and 72/2009), Law on the Prevention of Money Laundering and Terrorism Financing (*Official Gazette of the RS*, Nos 20/09 and 72/09, integral text) and the Law on /Confiscation of Proceeds from Crime (*Official Gazette of the RS*, No 97/08).

50. Is corruption defined as a criminal offence in line with the Council of Europe Criminal and Civil Law Convention? Which type of conduct can be sanctioned as corruption? Is active and/or passive bribery sanctioned? In the public and/or private sector? Trading in influence? Corruption of foreign and international public officials? What kind of sanctions exist (e.g. possibility of confiscation of proceeds, disqualification measures)?

The Council of Europe's Group of States against Corruption (GRECO) has adopted a report on the compliance of the criminal law of the Republic of Serbia with the Criminal Law Convention on Corruption and Additional Protocol to the Criminal Law Convention of Corruption. The above-mentioned report contains five recommendations given to the Republic of Serbia, based on which it should harmonize its Criminal Code (OJ of RS No. 85/2005, 88/2005 – corrigendum 107/2005 – corrigendum 72/2009 and 111/2009) and its Law on International Legal Assistance in Criminal Matters, (OJ of RS No. 20/2009) with the cited standards. Standards of the Civil Law Convention on Corruption have been implemented through the Law on Contracts and Torts (OJ of SFRY No. 29/78, 39/85, 45/89 – decision rendered by the Constitutional Court of Yugoslavia and 57/89, OJ of FRY No. 31/93. and *OJ of Serbia and Montenegro* No. 1/2003 – Constitutional Charter).

Criminal offences such as “accepting bribe”, “giving bribe”, “abuse of office”, “trading in influence” and “abuse of powers in economy” constitute criminal offences of corruption under criminal law of the Republic of Serbia.

Active and passive bribery are criminalized under Criminal Code, Article 367, accepting and giving bribes under Article 368. Article 112, paragraph 3 provides for a definition of an “official” and paragraph 5 of a “responsible officer” who is considered to be an owner of an enterprise or some other undertaking or a person in a company, an institution or some other entity to whom, by virtue of his office, invested funds are entrusted or who is empowered to perform a specific scope of tasks in respect of management of the assets, production or some other activity or in supervision thereof or who is in fact entrusted with discharge of particular duties. An official is considered a responsible officer as well in instances when responsible officers are designated as perpetrators of criminal offences, but the Criminal Code does not provide for such offences in Chapter on criminal offences against official duty or on criminal offences committed by officials.

Under Article 367, paragraph 6 the criminal offence of accepting bribe has been committed as well when a responsible officer in an enterprise, in an institution or in some other entity accepts bribes or under Article 368, paragraph 5 the criminal offence of bribery has been committed as well when a bribe was given, offered or promised to a responsible officer in an enterprise, in an institution or in some other entity.

Criminal offences of accepting bribe and bribery have been committed as well when the perpetrator of any such offence is a foreign official or an officer of an international organization. Article 112, paragraph 4 provides for a definition of an “foreign official” who is considered to be a person who is a member of a legislative, executive or judicial authority of some foreign state, a public official or an officer of an international organization or bodies thereof, a judge or some other official of an international tribunal. Giving bribes to and receiving bribes from a foreign official are criminalized under Article 367, paragraph 5 and Article 368, paragraph 3.

Article 366 of the Criminal Code stipulates the criminal offence of trading in influence. This criminal offence may be perpetrated in an active and in a passive manner. Paragraph 1 stipulates that whoever demands or accepts directly or via any third party a reward or

any other benefit for himself or someone else in order to use his official or social position or his actual or presumed influence to intercede for performance or failure to perform an official act shall be punished by imprisonment of six months to five years. Paragraph 2 stipulates that whoever promises, offers or gives to someone else directly or via any third party a reward or any other benefit in order for that other person to use his official or social position or his actual or presumed influence to intercede for performance or failure to perform an official act shall be punished by imprisonment of three years. Paragraph 3 stipulates that whoever uses his official or social position or his actual or presumed influence to intercede for the performance of an official act which is not allowed or for failure to perform an official act which must be performed shall be punished by imprisonment of one to eight years. Paragraph 4 stipulates that whoever promises, offers or gives to someone else directly or via any third party a reward or any other benefit in order for that other person to intercede through the use of his social position or his actual or presumed influence for the performance of an official act which is not allowed or for failure to perform an official act which must be performed shall be punished by imprisonment of six months to five years. As well, any foreign official who commits any of the above forms of the criminal offence of trading in influence shall be punished for such an offence.

In addition to the sanction of imprisonment, a security measure of prohibiting an offender from practising a profession, activity or duty may be imposed for the above-mentioned offences (Article 85 of the Criminal Code). By imposing this security measure, a court may prohibit any offender from practising a particular profession, a particular activity or all or some of the duties related to the disposition, usage, management or handling of someone else's assets or to taking care of such assets if it is reasonable to believe that his further exercise of any such activity would be dangerous. This measure may be imposed for at least one but not for more than ten years, considering that the time spent in prison shall not be credited to the term of the measure. In addition, pursuant to the General Section of the Criminal Code, any material gain obtained through criminal offence may be confiscated from any offender (Articles 91 to 93) and the institute of legal consequences of a conviction may be applied to him as well (Articles 94 to 96). The institute of legal consequences of a conviction implies that convictions for certain criminal offences or certain penalties may result in the cessation or forfeiture of particular rights or in the ban on gaining particular rights. Legal consequences of a conviction which pertain to the loss or forfeiture of particular rights are: termination of public office, termination of employment or termination of practising a particular profession or occupation or forfeiture of particular permits or licenses granted by a decision of state authorities. Legal consequences of a conviction which pertain to the ban on gaining particular rights are: prohibition of appointment to particular public offices, prohibition of acquiring particular titles, professions or occupations or promotion in service, prohibition of attaining the rank of military officer and prohibition of acquiring particular permits and licenses that are granted by a decision of state authorities. Legal consequences of a conviction that comprise the ban on gaining particular rights may be ordered for the maximum term of ten years, but the time spent serving the sentence shall not be credited to the duration of legal consequence of a conviction.

51. What are the rules guaranteeing the avoidance of conflict of interest in the performance of officials serving in the government, the administration and the judiciary? Does the legislation provide for public declarations of wealth and/or interest for the mentioned officials? How are such declarations assessed, checked and followed-up? What are the rules for members of parliament?

Regarding officials in the Government, administration and judiciary, rules which ensure preventing the conflict of interest are contained in the Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/2006), the Law on the Anti-corruption Agency (*Official Gazette of RS* No. 97/08, 53/10), with special laws and bylaws in the field of state administration and judiciary. Rules on incompatibilities referring to officials in the Government, administration and judiciary may be contained in laws and bylaws adopted in other areas.

Constitution of the Republic of Serbia as a supreme legal act, stipulates that none can exercise state function or discharge public office which is in conflict with his/her other functions, affairs or private interests, and existence of such conflict shall be resolved by Constitution (Article 6). Member of the Government cannot be a deputy in the National Assembly, member of the autonomous provincial parliament and councillor in assembly of the local self-government, nor a member of autonomous province executive council or executive body of local self-government unit, and the law stipulates which other functions, affairs or private interests are in conflict with the position of Member of Government (Article 126). Regarding judges, prosecutors and deputy public prosecutors, the Constitution stipulates prohibition of political activity, and that the law provides which other functions, affairs or private interests are inconsistent with judicial, or prosecutor function (Article 152 and 163). Court presidents cannot be electing members of High Judicial Council. (Article 153). Judge of the Constitutional court cannot discharge other public office or exercise professional function except for a professorship in a Faculty of Law in Republic of Serbia. A judge is suspended from duty if conflict of interest occurs.

The Law on the Anti-corruption Agency is a fundamental, system law that regulates the area of a conflict of interest in more detail. The law stipulates a broader definition of an official (official is any elected, appointed or nominated person to the organs of the Republic of Serbia, autonomous provinces, self-government units, organs of public enterprises, institutions and other organisations founded by the Republic of Serbia, the province or local self-government). This manner covered a broader range of persons executing public functions, from the President of the Republic, National Assembly deputies, ministers and their deputies, mayors and their deputies, public prosecutors and their deputies, judges to school principles, deans, directors of health and cultural institutions, institutions for protection of children as well as presidents and members of the management and supervisory boards in public enterprises. The law stipulates rules regarding prevention of conflict of interest while discharging public office, procedures and decision making that the Agency performs *ex officio* and sanctions in cases of law violation.

As a rule for the officials, it is set out that duties to discharge public office are done in a

way so that the public interest is not subordinated to private interest, to avoid creating dependency relationship with the person who could affect his impartiality in the discharge of public office. In a case that such a relationship cannot be avoided or already exists, the official must not use his/her public function to acquire any benefit for himself/herself or related person (Article 27). The law allows the official to discharge only one public office, unless the law or other regulations require him to discharge more public offices, and exceptionally, an official may discharge other public office based on the consent of the Agency (Article 28.).

Starting from the obligation of state authorities under Article 28 (3) of the Law on the Anti-corruption Agency to provide opinions on the possibility of an elected official to discharge two or more offices, Article 65 (1) indent 1 of Rules of Procedure of the National Assembly (*Official Gazette of RS* No. 52/10) stipulates that the Board for Administrative-Budgetary and Mandate-Immunity Issues provide opinions on the discharging of other public office by deputies of the National Assembly and officials elected by the National Assembly. It should be noted that Article 295 (2) of the Rules of Procedure of National Assembly stipulates that the tasks of the Board for Administrative-Budgetary and Mandate-Immunity issues are to be executed by the Administrative Board until the constitution of a new session of the National Assembly. Thus far, the Administrative Board received two requests of National Assembly deputies on this issue, to which the Administrative Board gave positive opinion.

The law establishes the rules regarding membership in political parties and the performance of other professions at the time of assuming or in the course of discharging public office. Membership in political party is allowed as long as it does not affect the discharge of public office. With an exception of officials who were elected in direct elections, an official shall always unequivocally clarify to the interlocutors or general public whether he/she is presenting the position of his/her political party or the body in which he/she is discharging public office. Furthermore, an official cannot use public resources for activities of his/her political party.

Officials discharging public office for which employment is required, are forbidden from performing other work or activity, except in cases where the Agency, at the request of the officials, gives consent to the official performing other tasks, or activities. If science research, educational, cultural, artistic, humanitarian and sport activities are in question, the official may practice these activities, or tasks, without the consent of the Agency if impartial performance and reputation of public office are not affected (Article 30). This Article refers to all public offices in the area of executive power, state administration and judiciary.

In relation to officials discharging public office and other job or activity for which employment is not required, obligation to inform the Agency of tasks and activities

performed additional public office has been prescribed.¹⁶ The law also stipulates the prohibition to establish a company and initiation of self-employment (entrepreneurship) during the discharge of public office, and prohibition to perform management, supervision and representation in the company or public service, except when stipulated by the law or by special regulation. The exceptions are the functions in bodies of professional associations in which the official may execute the function, with consent of the Agency, may be a member of these bodies and other associations (Article 34). One of the stipulated prohibitions refers to officials who have lost public office (except for the indirectly elected), and which cannot establish employment with legal entity, entrepreneur, international organization whose activity is related to the function performed by the official, except upon given consent from the Agency (Article 38). The official who owns more than 3% share in the company is under an obligation to transfer managing rights, within 30 days from the day of election, appointment or nomination, to a legal and natural person who is not an associated person, and to provide data to the Agency on person to whom the managing rights have been transferred as well as evidence of the transfer (Article 35). Additionally, if an official participates in privatization, public procurement or some other proceeding resulting in conclusion of contract between the legal entity he/she owns more than 20% share or interest and agencies of the Republic, territorial autonomy, local government or legal entity in which more than 20% of funds are in public ownership, he/she is obliged to inform the Agency of this within three days from taking his/her first action in the proceedings, as well as of the final outcome of the proceedings within three days from learning of the termination of the proceedings (Article 36). The law also contains provisions on unlawful influence an official may be exposed to when executing public function and his/her obligation to immediately inform the Agency. The Agency further informs competent authorities about the allegations of the official, in order to initiate disciplinary, misdemeanour and criminal proceedings, in accordance to the law (Article 37).

Beside this law, other regulations contain certain prohibitions and duties for some categories of public officials. Special laws may provide for setting stringent rules for officials to comply with or otherwise they violate not only the special regulation, but also the Law on the Anti-corruption Agency that stipulates the duty of an official to comply with regulations governing its rights and duties (Article 27).

Provisions on incompatibility of offices for officials that are members of the Government (Prime Minister and Vice Prime Minister, competent minister, minister without portfolio) are also contained in the Law on Government (*Official Gazette of RS* No. 55/05, 71/05 - corr., 101/2007 and 65/2008). According to these provisions the above mentioned officials can not execute other public function in state authority, body of an autonomous province, municipality, city, city of Belgrade, nor perform activities that are incompatible by law with the duties of a Government member, nor create a possibility of a conflict between public and private interest. The Law on Government provides imposes an obligations on these officials to comply with all regulations concerning the conflict of interest during the discharge of public office. (Article 11). The same rules on incompatibility and conflict of interest are obligatory for members of the Government

16 Law on the Anti-corruption Agency, Article 31

and State Secretaries which have the status of an official according to the Law on State Administration (*Official Gazette of RS* No. 79/05 and 101/07). Equally by the Provincial Assembly Decision on Provincial Administration (21/02 – consolidated version, 16/08 and 18/09 – change of name) a head of the provincial authority in charge of the administration in AP Vojvodina cannot perform any public, professional or other duty which is incompatible with his/her office, and his/her assistants cannot work in other provincial administration authorities, with another employer, or execute independent professional activity incompatible with his/her duties. The Executive Council may give consent to persons with scientific degrees to work in scientific institutions, if that does not affect the efficient operation of the provincial administrative authorities (Article 16).

Law on Civil Servants (*Official Gazette of RS* No. 79/05, 81/05 - corr., 83/05 - corr., 64/07, 67/07 - corr., 116/08 and 104/09) stipulates that laws and other regulations governing prevention of conflict of interest while discharging public office apply to civil servants in office, as well as provisions of this law regarding additional work and prohibition to establish a company, public service and practice entrepreneurship (Article 31). This law contains provisions on prevention of conflict of interest regarding prohibition to receive gifts and abuse of state authority office, additional work and informing on additional work, prohibition to establish companies and public services, limitations of membership in legal entity bodies (civil servant cannot be a director, deputy and assistant director in a legal entity, and member of the board, supervisory board or other management body of a legal entity can be only if appointed by the Government or other state authority) and reporting of interests related to decisions of state authority (Article 25-31). Acting contrary to these provisions shall be considered a serious violation of employment duties (Article 109). Same law stipulates that the civil servant or general service employee is obliged to notify his/her direct superior or manager if in regard to executing his/her work duties he/she came to realise that an official, civil servant or general service employee committed an act of corruption, in the state authority that employs him/her. Civil servant or general service employee shall enjoy protection from the day of written notification, in accordance with the Law (Article 23a). Civil servant shall be suspended from office, if he/she assumes a function in a state authority, autonomous province or local self-government body (Article 76). He/she shall also be removed from office if his/her employment terminates as a consequence of the implementation of a dismissal initiative originating from the measure of a public announcement of the recommendation for dismissal issued by the Anti-corruption Agency (Article 78). This law stipulates prohibition for officials in state authorities to be appointed to the High Civil Service Council (Article 166).

Also in AP Vojvodina, the Provincial Assembly Decision on provincial civil servants (*Official Journal of AP Vojvodina*, No. 9/05 – consolidated version., 18/09 – change of name) stipulates that laws and other regulations governing prevention of conflict of interest while discharging public office are applied to civil servants in office, as well as provisions of this law regarding additional work and prohibition to establish a company, public service and practice entrepreneurship.

In regard to officials in the judiciary, provisions governing prevention of conflict of interest are contained in fundamental system laws from this area, which in addition to general rules on proceedings, also contain concrete provisions governing office incompatibility. Therefore, the Law on Judges (Official Gazette of RS No. 116/08, 58/09 – decision of CC, 104/09 and 101/2010) stipulates, inter alia, that services, affairs and proceedings incompatible with judicial duties are determined by the law and that judges are obliged at all times to comply with the Code of Ethics, adopted by High Judicial Council (Article 3). Same law stipulates that a judge's salary implies a guarantee of its independence and security of his/her family and that a judge is entitled to a salary in accordance with dignity of judicial function and its responsibilities (Article 4). The law also sets out limitations on the discharge of other office or performance of other jobs, whereby a judge cannot hold office in organs of law-making and executive authorities, public services and organs of autonomous provinces and local self-government units. A judge cannot be a member of a political party, or be politically active in any other way, perform any other public or private paid work or provide legal services or advice for a fee (exceptionally, a judge may be a member of a managing body of an institution responsible for judicial training, as decided by the High Judicial Council in accordance with special law). Incompatible with the judicial function are also other services, activities and actions that are contrary to the dignity and independence of judges and damaging to the reputation of the court. Which of such actions are in fact incompatible with a judicial function is decided by the High Judicial Council and based on the Code of Ethics. A judge may, after working hours, practice teaching and scientific activities for a fee, without special approval. In cases specified by law, the judge may, during business hours, conduct educational and scientific activities in the institution competent for judicial training (Article 30).

As a disciplinary offences, it is stipulated that violation of a principle of impartiality, failure of judge to seek an exemption in cases with cause for exemption exists, or exclusion prescribed by the law and acceptance of gifts contrary to regulations governing conflicts of interest.

Also, judge's engagement in inappropriate relationships with clients or their legal representatives in the process that he governs or commenting on judicial decisions, actions or objects in the media in a manner contrary to the law and Court Rules, and performing of activities that were determined by law as incompatible with judicial function, delivering of incomplete and inaccurate data significant for the work and deciding of High Judicial Council and violation of provisions of Code of Ethics.

Serious disciplinary violation exists in case where in midst of a disciplinary offence severe disturbance occurred in exercising judicial authorities, or in executing work tasks in the court or severe damage to reputation and public confidence in the judiciary. In cases of obsolescence of cases and occurrence of significant damage to property to parties in the proceedings, as well as in cases of repeated disciplinary violations, there is a serious disciplinary offence. (Article 90)

The Law on Constitutional Court (*Official Gazette of RS* No. 109/07) regarding judges of

the Constitutional Court, also contains rules on incompatibility of other public offices or professional activities, or jobs (Article 16).

As well as for the judges, Law on Public Prosecutions (*Official Gazette of RS*, No. 116/08, 104/09 and 101/2010) contains provisions on independence in work (Article 5.), impartiality and proceedings in accordance with Code of Ethics adopted by State Prosecutorial Council (Article 47), prohibition of political activity (Article 49), material independence (Article 50), incompatibility of other functions, tasks or private interests with the function of a public prosecutor and deputy public prosecutor (Article 65), as well as provisions which prescribe disciplinary offences (Article 104).

The Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010) prescribes incompatibility of public prosecutorial offices with other offices, affairs or private interests. Public prosecutor and deputy public prosecutor cannot be in office in bodies of law-making and executive authorities, public services and bodies of provincial autonomy and local self-government units, members of political parties, practice public or private paid business, nor provide legal services for a fee.

Exceptionally, prosecutorial office holders may be members of managing bodies of institutions responsible for training in judiciary, upon decision of the State Prosecutorial Council.

Certain rules regarding prevention of conflicts of interests in executing public functions are contained in procedural laws that contain provisions on recusal, or exclusion for officials, during the procedure.

Law on General Administrative Procedure (*OJ of FRY* No. 33/97 and 31/01), as fundamental law applied by the state authorities when conducting the procedure and dealing with administrative matters, or when executing other tasks determined by this law, which contains provisions on recusal when the official has to decide on a particular administrative issue or to conduct a specific action in the proceedings, as soon as he/she learns about existence of a reason for recusal, is obliged to terminate any further work on the case and to inform organs competent for deciding on recusals, and in following cases: if in processed case party, co-authorised person, or co-obliged person, witness, expert, proxy or the legal representative of the party; with party, representative or proxy of the party is next of kin in linear relations, and in collateral relations up to the fourth degree conclusive, spouse or in-law related up to second degree conclusive, even when the marriage is terminated; with the party, representative or proxy of the party related as a guardian, adoptive parent, adoptive or foster parent; participated in the first degree procedure or in process of reaching decisions.

For the bearers of judicial functions, procedural laws in the area of judiciary stipulate situations when performing duties is not possible, or when they are to be excluded from case proceedings. On that note, provisions of Article 40 of the Law on Criminal

Procedure (*OJ of FRY* No. 70/2001. and 68/2002 and *OG of RS* No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law and 72/2009 and 76/2010) prescribe that the judge or lay judge can not perform judicial duties if he/she suffered damages from the relevant criminal offence; the defendant is his/her legal counsel, prosecutor, damaged party, his/her legal representative or proxy, spouse or next of kin in linear relations to any degree, and in collateral relations up to the fourth degree or in-law related up to second degree; if he/she is related to defendant, his/her defence counsel, prosecutor or damaged as a guardian, adoptive parent, adoptive or foster parent; if he/she performed investigative actions in the procedure, or participated in the procedure as a prosecutor, defence counsel, legal representative or defendant's or prosecutor's proxy, or examined as a witness or expert; if he/she participated in reaching the decision of a lower court or participated in the same court in reaching the decision contested by the appeal; if there are any circumstances to raise doubts about his/her impartiality. Provisions on disqualifications of judges and lay judges shall also apply to public prosecutors and persons that are lawfully authorized to represent the public prosecutor in the proceedings (Article 45). This law stipulates that the defence counsel cannot be a person who was treated as a judge or a public prosecutor in the same case or took actions in the pre-trial proceedings (Article 70).

The Law on Litigation Procedure ("Official Gazette of RS" No. 125/04 and 111/09) also contains rules on disqualification of the judge when there is a reason to cast doubt on his/her impartiality, and cases when the judge cannot perform his/her duties (recusal) (Article 65 and 66), as well as Law on Minor Offences (*OG of RS* No. 101/05, 116/08 and 111/09) that defines reasons for disqualification of a judge in misdemeanour proceedings (Article 102).

In addition to the above mentioned, provisions on conflict of interest, or incompatibility of certain functions with the functions in the Government, administration and judiciary may be contained in other regulations and provisions, such as the Law on the National Bank of Serbia (*Official Gazette of RS* No. 72/03, 55/04 and 85/05 – other law, 44/10) in terms of functions of Governor and Vice governor, members of the Council and employees with special authorities (Article 20); the Law on the State Audit Institution (*Official Gazette of RS*, No. 101/05 and 54/07), in terms of function of the members of the Council (Article 17); the Health Insurance Law (*Official Gazette of RS* No. 107/05 and 109/05 - corr.) for the members of the Management Board, members of Supervisory Board or deputy director of the Republic Institute for Health Insurance, director of Provincial Institute and branch director (Article 219); the Law on Health Insurance by which the members of Health Council of Serbia (Article 152); the Law on Higher Education (*Official Gazette of RS* No. 76/05, 100/07 – authentic interpretation and 97/08) for the members of National Council and *Accreditation and Quality Assurance Commission* (Article 10 and Article 13). Rulebook on determining the performance of activities which are incompatible with work in Administration for enforcement of imprisonment sanctions (*Official Gazette of RS* No. 9/03) which determines the jobs the execution of which is incompatible with the work of appointed and employed persons in Administration for Enforcement of Imprisonment Sanctions (Articles 1, 2 and 3).

Regarding public reporting of property and/or incomes of the above-mentioned officials, the applicable law is the Law on the Anti-corruption Agency which contains detailed provisions on the reporting of property, registry of officials and which data is available to public. The Law provides details specifying what property must be reported (salaries and other incomes, savings accounts in the country and abroad, without specifying the bank and account number, property claim on real estate in the country and abroad, without specifying the address of real estate, property claim on transportation vehicles and property subjected to registration (cars, motorcycles, boats, planes, ...), values, stock, loans and mortgages, service privileges such as the right to use an apartment for official use, official cars with or without the driver, official work phones etc.) An official shall report his/her property, property of his/her spouse or common-law partner as well as property of minor children living together with him/her in the same household.

Simultaneously, the law provides for an obligation on the Anti-corruption Agency to ensure availability of public data, taking into consideration the right to privacy. Property data of an official shall also be available to public when in accordance with other regulations, as well as other data to which a spouse or commonlaw partner gave consent for public availability.

The Anti-corruption Agency keeps a register of property, taking into consideration safety measures and protection of the right to privacy, and a register of officials (stating institutions and position names), a list of all legal entities in which an official possess more than 20% share or stock, as well as a list of gifts. The law stipulates that this data shall be published on internet presentation of the Agency.

The Agency reviews timeliness of reporting and accuracy and completeness of the data. The Agency reviews accuracy of data given in the Report in accordance with the annual plan of reviewing for a certain number of officials and categories of officials. The reviews are performed based on information and data acquired from state authorities. If inconsistency of the Report data and real values of the property of officials and its reported and legitimate revenue occurs in the procedure of reviewing the property of officials, the Agency shall determine the reasons of inconsistencies and report on that to an organ that employs the official, or other competent authorities. Deputies of the National Assembly are liable to same rules as officials.

52. Do precise codes of conduct exist, which indicate what is and what is not allowed, and which are subject to a permanent monitoring process? How are these codes of conduct enforced?

Code of Conduct for Civil Servants (Official Gazette of the RS, no. 29/08) adopted by High Civil Service Council and effective as of 29 March 2008, has been prescribed on the level of public administration of the Republic of Serbia,. Regulations of the High Civil Service Council shall be published in the Official Gazette of the Republic of Serbia. The

aim of the Code is to define detailed standards of integrity and rules of conduct for civil servants from public administration bodies, Government services and expert services of the administrative districts and to inform the public on expected conduct of civil servants (Article 1). The conduct of a civil servant contrary to the provisions shall be considered a minor violation of official duty, unless otherwise specified by law as serious violation of official duty (Article 2).

Law on Civil Servants (*Official Gazette of the RS* No. 79/2005, 81/2005 - corr, 83/2005 - corr, 64/2007, 67/2007 - corr, 116/2008 and 104/2009) stipulates that violations of Code of conduct for civil servants not covered by any of violations of duties from employment provided by this or separate law, represents minor violation of duty from employment (Article 108). Serious violations of duties from employment are repetitions of minor violations of duty established by a final decision imposing a disciplinary sanction (Article 109). Same law governs initiation and conduct of disciplinary proceedings, a hearing and the selection and weighing a disciplinary sanction (Articles 112-115), and the types of sanctions for minor (fine up to 20% of the salary for full working hours, paid for the month in which the fine was imposed), and the serious violation of duties arising from employment (fine up to 20-30% of salary for full working hours, paid for the month in which the fine was imposed, for the period of six months; transferring to the next lower salary grade; prohibition to progress for four years; transfer to the next lower rank position while keeping the salary grade whose ordinal number is identical to ordinal number of salary grade of the position from which he have been transferred) - Article 110. Disciplinary sanction imposed by final decision is recorded in Central register of staff, and erased from this register if the civil servant is not imposed by new disciplinary sanction in next two years from disciplinary sanctions for minor violations of duty, or in next four years from disciplinary sanctions imposed for serious violation of duty (Article 119).

Code of conduct in provincial authorities adopted by the Executive Council of the AP Vojvodina, based on Article 24(2) of Provincial Assembly Decision on the Provincial Administration (*Official Journal of AP Vojvodina*, No. 9/2009 – consolidated version and 18/2009 - change of name) and Article 25(1) of Provincial Assembly Decision on the Government of the AP Vojvodina (*Official Journal of AP Vojvodina*, No. 10/92, 12/92 - corr., 1/95, 3/2002, 23/2002, 17/2003 and 18/2009 – change of name) provides a set of rules of conduct for provincial civil servants and general service employees to comply with. The aim of the Code is to establish rules of conduct for provincial civil servant and head of provincial authority to comply, by written personal statement, in accordance with legislation and ethic principles, as well as informing the public with these rules, in order to establish a lasting trust of citizens for provincial authorities (Article 2). Transparency of the Code is achieved by publishing it on internet pages of Executive council of AP Vojvodina and internet pages of all provincial authorities (Article 32).

The Provincial Ombudsman within the jurisdictions supervises legality, expediency and efficiency of actions of provincial authorities; monitors the implementation and acts upon submissions regarding violations of this Code (Article 42), and heads of provincial authorities are obliged to, once per year and not later than 31 December, file the report on application of Code rules to the Executive council of AP Vojvodina that forwards integrated reports to the Provincial Ombudsman and publishes it on internet pages not

later than 31 January of the following year (Article 43). Violation of the Code rules represents a minor violation of work duties that provincial civil servant is held responsible for (Article 44). Violation of Code rules for provincial civil servants not covered by any of these violations from employment shall be considered as a minor violation of duty from employment (Article 130). For both of these violations, disciplinary sanctions shall be imposed (Article 131). For minor violations of duties from employment, a fine shall be imposed up to 20% from salary for full working hours, paid for the month in which the fine was imposed. For serious violations of duties from employment, a fine shall be imposed from 20% to 30% from salary for full working hours, paid for the month in which the fine was imposed, for a period of six months, and prohibition to progress from two to four years, as well as the termination of employment (Article 132). Disciplinary sanction imposed by final decision is recorded in Provincial register of staff, and erased from this register if the provincial civil servant is not imposed by new disciplinary sanction in next two years from disciplinary sanctions for minor violations of duty, or in next four years from disciplinary sanctions imposed for serious violation of duty (Article 114).

In terms of officials at the local self-government level, in accordance with the provision of Article 189 of the Law on Civil Servants, to employment relationship, until adopting special law, provisions of the Law on Labour Relations in State Authorities shall be applied (*Official Gazette of the RS* No. 48/91, 66/91, 44/98 – other law, 49/99 – other law, 34/2001 – other law, 39/2002, 49/2005 – decision of CCRS, 79/2005 – other law, 81/2005 – corr. of other law and 83/2005 – corr. of other law), which beside general rules on conscientious and impartial conduct and preservation of reputation of bodies they work in, do not contain rules of conduct prescribed for civil servants. Until adoption of the Law on the Anti-corruption Agency expanding the circle of officials, which is applicable from 1 January 2010, the officials at local level (in institutions, organizations etc.) did not have new rules of conduct to comply with. Due to need for defining ethical standards of conduct to which the officials at local level of authority shall comply with, the majority of municipalities and cities in the Republic of Serbia adopted a code of conduct for local government in accordance with the principles from the EU Code of Conduct for local and regional elected representatives (adopted in 1999) by the Congress of Local and Regional Authorities of Europe, which represents the recommendation from Council of Europe and Congress of Local and Regional Authorities of Europe). Assembly of the Standing Conference of Cities and Municipalities has adopted in 2004 Ethical Code of Conduct of officials in local self-governments in Serbia, recommended for adoption to cities and municipalities. Although the municipalities that have adopted the codes, set up special bodies for supervising the application of codes, the purpose of this code is primarily to create awareness about the obligation to comply with the standards of ethical conduct, considering the fact that the code contain only the rules, no penalties in the legal sense (publication of the code violation in the media is provided as a sanction – from Ethical Code of Conduct for officials in local self-government in Niš).

Based on jurisdictions stipulated by the Law on Judges (*Official Gazette the of RS* No. 116/08, 58/09 - decision CC, 104/09 and 101/2010), and Law on High Judicial Council (*Official Gazette of the RS*, No. 116/08 and 101/2010), High Judicial Council adopted the Code of Ethics on 14 December 2010 (*Official Gazette of the RS* No. 96/2010).

Code of Ethics determines ethical principles and rules of conduct for judges to comply with in aim to preserve and improve the dignity and reputation of the judge and judiciary. A judge must restrain from all acts and activities that may raise doubts to his impartiality and to compromise the impression of judiciary independence. Code of Ethics provide that the judge may perform other tasks important for enhancing the reputation of the judges and improve the work in court, or provide which extra-judiciary activities of judges do not interfere with its regular and proper exercise of judicial functions.

Pursuant to Article 30 of the Law on Judges, High Judicial Council decides what actions are contrary to the dignity and independence of the judge and damaging to the reputation of the court, based on code of Ethics. Violation of provisions from the Code of Ethics represents a serious disciplinary offence. When it finds responsibility of the judge for a serious disciplinary offence, Disciplinary Commission initiates the procedure for dismissal of the judge. Disciplinary sanctions are public warning, fine up to 50% of salary for a period of one year and prohibition to progress for three years.

Pursuant to Article 47 of the Law on Public Prosecutions, in exercising its functions, public prosecutor and deputy public prosecutor must comply with Code of Ethics, adopted by State Prosecutorial Council pursuant to Article 13 of the Law on State Prosecutorial Council (*Official Gazette of the Republic of Serbia*, No. 116/08). Code of Ethics is in preparatory phase at the moment.

Judges' Association of Serbia, as a professional, non government, non profit organization, adopted in 2003 Standards of Judicial Ethics – the existing general principles of judicial ethics which are in compliance with the international ethical standards (former Code of Judicial Ethics adopted in 1998). However, the Council for Ethical Issues of the Judge's Association of Serbia adopts opinions on compliance of the conduct of certain judges with the Standards of Judicial Ethics which are strictly advisory.

Codes of conduct are not being delivered to the Anti-corruption Agency at the moment, nor does the Agency perform their supervision.

53. Whistle-blowing – do clear rules (including on effective protection of whistle blowing) and reporting mechanisms exist in both the public and the private sectors? Please explain.

The status of whistleblowers in Serbia is regulated by three pieces of legislation, namely the Law on Civil Servants (*Official Gazette of the RS*, Nos 79/05, 81/05, 83/05, 64/07, 67/07, 116/08), Law on Free Access to Information of Public Importance - LFAIPI (*Official Gazette of the RS*, Nos 120/2004, 54/2007, 104/2009, 36/10) and Law on the Anti-corruption Agency (*Official Gazette of the RS*, Nos 97/2008 and 53/2010).

Apart from the measures continuously taken in the operation of the appeals panels of the Government, judiciary, and other state authorities, the Law Amending the Law on Civil Servants introduces the requirement to report suspicion on corruption. The duty of the civil servant or general service employee is to notify in writing the immediate superior or manager whenever they learn, while discharging their duties, that an act of corruption has

been committed by a public official, civil servant, or general service employee within the state authority that they work for.

A civil servant or general service employee reporting corruption in this manner is to be protected, according to Article 23a. Based on the same article the abuse of right of protection constitutes a severe violation of duty under the employment relationship. LFAIPI contains provisions on the protection of the source of information of public importance (Article 38 (4)-(8)). These provisions were introduced in the December 2009 amendments to the Law (Law Amending the Law on Free Access to Information of Public Importance, *Official Gazette of the RS*, No 104/09). The provisions apply to the public sector.

Article 38 (4)-(8), of the LFAIPI stipulate that the employees of a government body can not be held accountable or bear adverse consequences if they provide access to information of public importance, or information indicating a possible corruption, overstepping of authority, unreasonable use of public funds and illegal action or operation by a government body, and only if right to access to this information can not be restricted based on this Law. Should the employee be held accountable or bear any damage contrary to the above stated provisions, he or she will be entitled to compensation by the government body he or she works for.

These provisions are applied accordingly to the officials of a government body, persons working within the government body or for the government body based on a contract, and persons serviced by the government body or having the capacity of a party in a procedure before the government body.

The quoted provisions do not provide for essential protection of the person within the government body that may decide to make information publicly available in order to inform citizens and indicate irregularities or violations in public sector operations.

Article 56 of the Law on Anti-corruption Agency regulates the protection of a bona fide person making a referral to the Agency if he or she has reasonable doubt that corruption exists in the body he or she works for. Such person, as well as any other person giving a statement in proceedings conducted by the Agency against a public official, can not bear any adverse consequences due to such a statement. The Agency is in the process of drafting a Rulebook on the Protection of the WhistleBlower that offers practical protection too to the whistleblowers.

A 2006 Code of Business Ethics passed by the Serbian Chamber of Commerce provides for the prohibition of bribing (Article 44). The Code of Business Ethics establishes the principles and rules of business ethics that are binding for companies, members of the Chamber of Commerce, employees, members of the bodies, and persons engaged under a contract at a business entity. No repressive measures may be taken against the bona fide persons indicating the violations of these provisions.

54. Are there clear and transparent rules on funding of political parties, social partners and other interest groups? Are these entities subjected to external financial control in order to avoid conflicts of interest between their representatives, public officials and the private sector? What is the practical experience with implementation of these rules?

This issue in Serbia is regulated by the Law on the Financing of Political Parties (*Official Gazette of the RS*, No 36/04). This Law governs the financing, registration, and procedures for supervision of the financial operation of registered political parties, submitters of announced electoral lists and nominators of candidates for the President of the Republic of Serbia, municipality presidents, and mayors.

The new Law on Political Parties (*Official Gazette of the RS*, No 36/09) provides that a political party should be established at the founding assembly meeting, and that it should be organised and should operate exclusively on the territorial principle, whilst the status of the legal person is acquired by entering into the Register of Political Parties. A political party can be founded by at least 10,000 adult citizens of the Republic of Serbia having legal capacity, and the political party of a national minority by at least 1,000.

As for the registration of political parties, the Law requires from all political parties in Serbia to make their statutes and other general acts compliant, within six months, with all statutory requirements and act according to them. The Law provides that unless they harmonise their statutes and other general acts with the Law and file an application for registration within the above mentioned time frame, they will be deleted from the Register and lose the status of legal person.

Article 2 of the Law on the Financing of Political Parties provides that the funds acquired under this law may be used to finance the costs of regular operation of political parties and for the election campaign for the President of the Republic, members of parliament, mayors, presidents of municipalities and councils.

This Law also specifies that the finances from the designated activities may be acquired from public and private sources, in accordance with this Law. Public sources are the funds from the Budget of the Republic of Serbia, budget of a unit of territorial autonomy and budget of a unit of local self-government, appropriated for the financing of the regular operation of political parties and costs of election campaigns. Private sources are membership fees, donations by legal and natural persons, proceeds from promotional activities of the political party, proceeds from the assets of the political parties and legacies.

When it comes to donations, a political party is required to maintain special records of donations that it receives from legal or natural persons individually, by donors. These records show the donations by type (membership fee exceeding the amount specified in the statute of the political party, gift, free services or products, etc.). Further, the political party maintains records concerning the property by the type of property it owns (buildings, land and business premises, equipment, other fixed assets, advances, property

in supplies and money). The records maintained for fixed assets, advances, and supplies, show the data about the origins of the property (purchase, donation, legacy, gift, etc). The records maintained for buildings, equipment and other fixed assets include the data on the purchase value, write-off and current value individually for every asset. In case of buildings and business premises, data on the address and surface area of the building and the business premises is entered into the register. The register of money shows data on the daily turnover (incoming/outgoing transactions and balance on a specific date).

The reports made by political parties include the report on the origin, amount and structure of raised and spent funds for the election campaign which is made by the submitters of announced electoral lists and nominators of candidates running for President of the Republic, mayors, and presidents of municipalities; the report on the origins of donations exceeding the amount of RSD 6,000, and the report on the assets of the political party.

According to Article 4 of the Law on the Financing of Political Parties, the funds for regular operation of a political party from public sources available to political parties that have participated in the election, are appropriated at the level of 0.15% of the budget of the Republic of Serbia (less transfers to other levels of government and mandatory social security organisations), at 0.1% of the territorial autonomy unit's budget (less transfers from other levels of government and to other levels of government) and at 0.1% of the self-government unit's (less transfers from other levels of government). The funds (30%) obtained in this manner are allocated in equal amounts to all political parties' candidates, i.e. election lists, who have won seats in parliament or local assembly, whilst the remaining 70% is allocated to political parties according to the number of seats won. According to Article 9, Para 1, of the Law on the Financing of Political Parties, the funds available for financing of election campaigns are allocated at the level of 0.1% of the Republic of Serbia Budget (less transfers to other levels of government and mandatory social security organisations), at 0.05% of the territorial autonomy unit's budget (less transfers from other levels of government) and at 0.05% of the self-government unit's budget (less any transfers from other levels of government). The amount of 20% of the funds obtained in this manner are allocated in equal amounts to the submitters of electoral lists, i.e. nominators of candidates within ten days of the announcement of the election list, or the establishment of the list of candidates, whilst the remaining part of the funds (80%) is allocated within ten days of the announcement of electoral results to the submitters of the electoral lists that have won the seats, proportionally to the number of seats won.

If the funds obtained in this manner exceed the costs of the election campaign up to the date of election, the difference must be reimbursed into the budget of the Republic of Serbia/unit of territorial autonomy/local self-government no later than ten days from the date of transferring of funds.

According to Article 5 (1) of the Law on the Financing of Political Parties, the membership fee is a regular amount paid by a member as specified in the Statute of a

specific political party. Each amount exceeding the amount specified in the Statute is considered donation and must be adequately registered.

The issue of donations by legal persons for the regular operation of political parties is regulated in such a way that such contributions are restricted to the amount of one hundred average monthly salaries in the Republic of Serbia during the year preceding the year of the contribution, according to the official statistics of the authority competent for statistics.

Donation means not only money but also gifts, services rendered free of charge to the political party, and the services charged below the market value of the service. This is exactly the reason why every person offering a service to a political party or selling/donating a product is required to issue a receipt irrespective of who will cover the expenses of the service or product, or irrespective of whether the service has been rendered or product given free of charge.

According to Article 6 of this Law, political parties are prohibited from accepting material and financial assistance from public institutions and public enterprises, institutions where the State has a share in the capital, private companies offering public services under a contract with state authorities and public services for the duration of such contractual relation, and companies and other organisations performing public authorities.

With respect to funds raised for election campaigns there are also restrictions in terms of the maximum amount of funds raised from private sources and the amount of donations by natural and legal persons. The amount of funds from private sources, raised by a political party to finance an election campaign, may not exceed the amount of 20% of the funds raised from public sources (Budget) (Article 11 of the Law on the Financing of Political Parties). The amount contributed by an individual natural person for the costs of the election campaign may not exceed 0.5% of the amount that the party is entitled to raise from private sources for the purpose of election campaign. The contribution by an individual legal person for an election campaign may not exceed 2% of this amount.

The Law on Political Parties stipulates special rules for political parties as far as the keeping of financial records and final accounts is concerned. In addition to this, political parties are also subject to the requirement to keep financial records and financial accounts, which applies to legal persons in general, as specified in the Law on Accounting and Auditing and the by-laws passed based on this Law.

Article 16(1) of the Law requires from a political party to maintain accounting records of all income and expenditure, and that it maintains accounting records by the origin, amount, and structure of income and expenditure, in line with the regulations governing accounting (Article 16(2)). In this respect, there is no particular difference between political parties and other legal entities. However, as this issue is additionally regulated by the Law on the Financing of Political Parties, sanctions are envisaged in both laws in case of failure to maintain accounting records according to the law. According to Article

16(3) of the Law on the Financing of Political parties, accounting records of income and expenditure of a political party are subject annual audit in accordance with regulations governing accounting, and may be subject to supervision of the competent authorities.

- Are these entities subjected to external financial control in order to avoid conflicts of interest between their representatives, public officials and the private sector?

State Audit Institution may conduct a financial inspection, or inspection of direct and indirect beneficiaries of the Budget of the Republic, territorial autonomies, and local self-governments according to the regulations governing the budget system and system of public income and expenditure, in line with Article 10 of the Law on State Audit Institution. In accordance with the Law on State Audit Institution, the State Auditor performs supervision, checks compliance with rules and legislation by the beneficiaries of public funds.

The Rulebook on the Content of Records and Reports by Political Parties (*Official Gazette of the RS*, No 17/10) passed by the Anti-corruption Agency specifies in more detail the rules with regards to the content, keeping, and submitting of reports by political parties. Political party reports and their final accounts and reports on the funds raised and spent in a campaign are published in the Official Gazette of the RS, on political party websites and the website of the Agency. Thus they become publicly available, and the financing of political party transparent.

- - What is the practical experience with implementation of these rules?

Bearing in mind that the Anti-corruption Agency only became operational on 1 January 2010 when a majority of officials was found holding two or more public offices who then had to choose one public office within the time limit prescribed by Article 82 of the Law on Anti-corruption Agency, the application of coercive measures available to the Agency under the Law has not yet started.

55. What is the state of play in adopting a new law on party funding?

A working group of the Ministry of Justice has prepared the Draft Law on Financing of Political Activities. The working group consisted of representatives of state authorities (the Anti-Corruption Agency, Ministries and the National Assembly). The expanded composition of the working group included non-governmental organisations and Members of Parliament. The Draft Law was sent to the Venice Commission/ODIHR for the purpose of obtaining an expert opinion, as well as to the Council of Europe in order for the experts of GRECO to provide their expert opinion as well. The expert opinion of the Venice Commission was adopted at the session held on 17 and 18 December 2010. The comments of the experts of the European Commission have already been integrated in the Draft Law on Financing of Political Activities.

56. Does legislation on free access to information exist? What is the experience with its implementation? What is the role and remit of the Commissioner for Free Access to Information?

The Law on Free Access to Information of Public Importance of 5 November 2004 that has been amended three times (“OG of RS” No. 120/2004, 54/2007, 104/2009, and 36/2010—hereinafter: Law on Free Access to Information) regulates the procedure for exercising the right to access to information and the establishment of the Commissioner for Information of Public Importance as an independent state authority whose role, among other things, is to rule on complaints of applicants/information seekers in case the public authorities have not enabled exercising of this right. A complaint cannot be lodged against the decision of the National Assembly, the President of the Republic, the Government, the Constitutional Court, the Supreme Court of Cassation and the Chief Republic Prosecutor. Judicial protection before the Administrative Court of Serbia has been provided in relation to these authorities. Judicial protection in an administrative dispute before the aforementioned court has also been provided against the decision of the Commissioner.

The Commissioner submits an annual report on implementation of the Law on Free Access to Information to the National Assembly and forwards it to the President of the Republic of Serbia, the Government and the Ombudsman.

Since the Law on Free Access to Information was passed, the Commissioner resolved 6,355 complaints of citizens, journalists and other persons, including 5,686 grounded complaints (89.5%), 292 complaints (4.6%) rejected for formal shortcomings and 377 (5.9%) ungrounded complaints. (The above listed information presents statistical data in the area of free access to information of public importance from 2005 when the Commissioner’s Service was established and when it started acting on complaints of citizens).

The Commissioner issued 2,240 decisions in relation to grounded complaints ordering the public authorities to act upon the request, and discontinued the proceedings in 3,373 cases as upon the lodging of complaint and the intervention of the Commissioner, the authority acted upon the request, and in 73 cases the Commissioner revoked the decision of the public authority and returned the case to reconsideration. Out of the total number of decisions issued by the Commissioner, the public authorities failed to act in 398 cases (17.7%) presenting 6.9% of the total number of grounded complaints.

Pursuant to the Law on Free Access to Information, decisions of the Commissioner shall be final, enforceable and mandatory (Article 28). Until the last amendments of the Law on Free Access to Information from May 2010 (Official Gazette of RS” No. 36/10), if needed, Government of the Republic of Serbia ensured the enforcement of the decision of the Commissioner. The practice showed that the mechanism used for ensuring enforcement of the decisions of the Commissioner was not adequate and the Government did not implement it.

The Law on Amendments of the Law on Free Access to the Information of Public Importance ("Official Gazette of RS" No. 36/2010) from 28 May 2010, provided the Commissioner with enforcement powers enabling him to conduct the enforcement procedure of his decisions upon proposal of the person seeking the information, and if this does not bring any results, the Government should ensure enforcement of his decisions by direct enforcement.

As of November 2010, 106 enforcement proposals were submitted to the Commissioner, 80 of which he resolved. 29 fines were pronounced as forceful measures of execution of decisions. Proceedings were discontinued in 40 cases as there was subsequent action upon issuance of conclusion on permitting enforcement, whilst the proceeding is ongoing in other cases.

Application of forceful execution measures through fining in these proceedings has had effects, except in one case, where even the fines did not have effect, and the Commissioner asked the Government to ensure enforcement of Commissioner's decision by application of measures of direct enforcement in accordance with the law and the Government did not do that by 5 December 2010.

At the same time, an obstacle for full implementation of the Law on Free Access to Information was also the lack of full misdemeanour liability in cases of violation of the right of persons to free access to information or failure to meet other obligations arising from the law. According to the data from the Commissioner, the Ministry of Culture that was in charge of monitoring the implementation of the Law on Free Access to Information until 2009, acted only in around 10% of cases forwarded by the Service of the Commissioner. The reason for this was mainly related to the lack of human resources in this ministry. The Law on Amendments to the Law on Free Access to Information from December 2009 transferred the monitoring role to the Ministry of Public Administration and Local Self-Government - Administrative Inspectorate that has the capacity to conduct monitoring. Furthermore, the above mentioned amendments established misdemeanour liability of the head of an authority, and not of the responsible persons for acting upon requests. Due to the lapse of time it is not possible yet to evaluate the effects of the amendments to the Law on Free Access to Information from December 2009. In 2010 the Administrative Inspectorate submitted around 130 requests to initiate misdemeanour proceedings against public authorities for violation of the Law on Free Access of Information. Therefore, greater discipline in application of the Law on Free Access to Information is expected.

The right to free access to information is exercised through a proactive role of the public authorities which are obliged to make their newsletters available through their internet presentations or in some other way. In this way the access to information is achieved through the proactive obligation of publicizing them and without individual requests for access to information. In accordance with Article 40 (5) of the Law on Free Access to Information, the Commissioner passed the Guidelines for Developing and Publicizing Newsletters on the Work of Public Authorities from 21 September 2010 ("OG of RS" No. 68/2010) which entered into force on 28 September 2010, the International Right to

Know Day. Wishing to assist public authorities in applying the Guidelines appropriately, the Commissioner published the Commentary on the Guidelines for Developing and Publicizing Newsletters on the Work of Public Authorities. The Commissioner issued the previous Guidelines as early as in 2005.

57. Public procurement, privatisation, large budgetary expenditure, construction, land-use planning:

a) How are these areas monitored? Is the monitoring done efficiently and by an independent body? Is there sufficient follow-up to irregularities?

Monitoring of the enforcement of The Law on Public Procurement (“Official Gazette of RS”, no. 116/08) is done by the Ministry in charge of financial affairs. In line with this, Ministry of Finance is authorised to give opinions on the application of the provisions of the said Law and regulations adopted for its enforcement, and to monitor the enforcement of the Law on Public Procurement in the field of purposeful and legal use of finances from budgetary funds, organisations, companies, legal entities and other subjects.

In addition to the monitoring done by the Ministry of Finance, objective and competent control of the enforcement of the Law on Public Procurement is ensured through the possibility of instituting an administrative dispute by filing charges.

The legality of the decisions reached in the process of protecting the rights of bidders and public interest in public procurement, these being the final individual regulations by way of which decisions are made with regard to rights, obligations or the interest established by law, is subject to reassessment in administrative dispute proceedings.

Courts are state bodies independent and autonomous from the legislative and executive authority that protect rights and liberties of citizens, rights and interests of legal entities laid down in the law and ensure constitutionality and legality.

The Law on Public Procurement defines the activities to be performed by the Public Procurement Office, as a separate organisation established with the purpose of performing professional activities and other related executive activities in the field of public procurement.

The activities from the purview of the Public Procurement Office, among other things, include the following:

- 1) monitoring individual procurement cases;
- 2) submitting requests for the protection of rights in cases of violations of public interest;
- 3) informing the body authorised for the auditing of public funds, budgetary inspection and other bodies in charge of initiating misdemeanour proceedings on irregularities it identified while performing the activities for which it is authorised that occurred while

conducting the public procurement procedure and submitting reports on public procurement.

Furthermore, the Office manages the online Public Procurement Portal used for publishing adverts as prescribed by the Law on Public Procurement. The said Law also prescribes the obligation of purchasers to provide the Office with reports on concluded contracts in accordance with the law on a three-month basis.

Regarding the immediate control over certain types of procedures or individual cases, the Law on Public Procurement (LPP) foresees this kind of control only in the case of conducting “emergency” negotiation procedures (Article 24 (1) point 4 of the LPP), in which case the purchasers are obliged to provide the Public Procurement Office with the report on the conducted procedure whose obligatory contents are laid down in the Law no later than 3 days following the termination of the procedure. If, on the basis of the report, the Office finds any irregularities, they shall notify one of the bodies authorised to conduct actions and institute appropriate proceedings (the State Audit Institution, Budgetary Inspection, Ministry of Interior, The Prosecutor’s Office), or they can file a request for the protection of rights on account of the violation of public interest to the Republic Commission for the Protection of Rights in Public Procurement Procedures.

In the field of land-use, pursuant to the Law on Planning and Construction (“Official Gazette of RS”, no. 72/09 and 81/09, Article 41), planning documents along with the annexes must be made accessible to the public during the validity of the document in the seat of the submitter, except for annexes pertaining to special measures, conditions and requirements for adjusting to the considerations regarding the defence of the country, as well as the information on the zones and areas with building structures of special significance and interest to the country's safety. All planning documents adopted in line with this Law are kept in the Central Registry of Planning Documents managed by the ministry in charge of land-use and urban planning via the Republic Geodetic Authority within the National Infrastructure of geospatial data. Before the draft planning document can be viewed by the public, it is subject to specialist check.

Specialist checks include the examination of the coherence of the planning document with planning documents of the wider area, decision on its preparation, the said Law, standards and regulations, as well as the examination of the justification of the planning solution. Specialist check of the spatial plan for the area of special purpose and regional spatial plan – provincial spatial plan in line with the nomenclature of statistical territorial units at level 3 for the areas that are in its entirety located in the territory of the Autonomous Province is performed by the Commission formed by the Provincial Secretariat for Architecture, Urban Planning and Construction as a competent body of the autonomous province. One third of the members of the said Commission are appointed on the proposal of the Minister in charge of the affairs of spatial and urban planning.

The report is drawn up on the performed specialist check including data on the performed check, with all the observations and opinions of the competent body, i.e. the commission in charge of plans addressing each observation.

The planning document is made accessible to the public after the specialist check has been performed. Making the planning document accessible to the public is advertised in daily or local newspapers and it lasts 30 days from the date of advertising. The Republic Agency for Spatial Planning or the body of the local self-government unit, responsible for the affairs of spatial and urban planning is in charge of displaying the planning document to the public.

The competent body, i.e. the Planning Commission prepares a report concerning public's viewing of the planning document, including information on the performed viewing, along with all the observations and decisions made on account of each observation. This report shall be submitted to the person in charge of designing the planning document, who is obliged to effect decisions found therein 30 days after the date of report receipt.

In case the relevant body, i.e. the Planning Commission establishes that the adopted observations require essential changes to the planning document after it has been viewed by the public, they pass a decision to instructing the draughtsman to design a new draft or outline of the planning document, within the period not exceeding 60 days from the date of passing of the decision.

The monitoring of the enforcement of the provisions of the Law on Planning and Construction and regulations adopted based on this Law, is performed by the Ministry in charge of urban planning and construction. Inspection is performed by the relevant Ministry via its inspectors within the purview laid down in the law. The autonomous province is entrusted with the inspection in the area of spatial planning and urban planning for the territory of the autonomous province (Article 172. Paragraph 3 of the Law).

The activities of the urban planning inspection can be performed by the graduated civil engineer – master's degree, i.e. the graduated civil engineer or the graduated construction engineer – master's degree, i.e. the graduated construction engineer, with minimum 3 years of work experience in the trade who has passed vocational examination and meets other requirements as prescribed by the Law.

In performing the inspection, the inspector for urban planning has the right and duty to check if:

a company or any other legal person or entrepreneur drawing up spatial and urbanistic plans or performing other activities laid down in this Law meets the prescribed requirements;

the planning document regarding the organisation, spatial planning and arrangement has been drawn up and adopted in line with the law and regulations adopted pursuant to the law;

the site permit and the urbanistic design study have been done and issued in accordance with this Law;

the master project design which is the basis for the issuance of the construction permit has been drawn up in line with the site permit, and the planning document;

the changes in the state of the land are made in line with this Law and regulations adopted pursuant to this Law, i.e. if the changes in the state of the land are made in line with the code and standards of the trade;

a company, or any another legal person, i.e. public enterprise or any another organisation establishing special conditions for the construction of buildings and spatial organization, as well as technical data for connecting to the utility infrastructure, submitted the necessary information and requirements for the drawing up of the planning document, i.e. site permits within the prescribed time limits.

A company, or any another legal person drawing up spatial and urbanistic plans or performing other activities laid down in this Law; a company or any another legal or physical person who performs changes in the land, as well as the relevant municipal or city Administration, or the Administration of the City of Belgrade are obliged to enable the inspector for urban planning full and unhindered access to available documentation.

The Law on Planning and Construction authorises the inspector for urban planning to take the following measures in the performance of the inspection:

to issue a decision prohibiting further drawing up of the planning document, if they should establish that the company or any another legal person drawing up the planning document does not meet the requirements prescribed by the Law;

to issue a decision instructing the body in charge of urban planning in the local self-government unit to revoke the site permit and urbanistic design study within the period not exceeding 15 days, if they should establish that these acts are not coherent to the law, and the planning document;

to issue a decision instructing the ministry in charge of spatial planning, or the body of the autonomous province in charge of spatial planning to revoke the site permit within the period not exceeding 15 days, if they should establish that the site permit has not been issued in accordance with the law, and the planning document;

to launch the initiative before the second-instance body for revoking the construction permit;

to notify the relevant body, or the relevant inspector and take other measures to which they are authorised, if they should establish that the changes in the state of the land are not made in line with this Law and the regulations arising from this Law;

to notify the body in charge of issuing the planning document and suggest to the Minister in charge of spatial and urban planning the initiative for the assessment procedure of the legality of the document if they should establish that the planning document has not been produced in line with the Law or that the procedure of issuance has not been conducted in the manner laid down in the Law;

to notify the minister in charge of spatial and urban planning without any delay if they should identify that the body in charge of issuing the planning document has not issued the planning document within the prescribed time limit;

to take measures against a company or any other legal person if they fail to submit the necessary information for the connection to utility and other infrastructure;

to take other measures pursuant to the Law.

In case of item 1 listed above, a company or any other legal person or entrepreneur may continue to draw up the planning document when they redress the established irregularities and provide written information on this to the inspector who passed a decision on the prohibition of the drawing up of that planning document, once the inspector establishes the irregularities have been redressed. When the inspector for urban planning establishes that the planning document has been adopted contrary to the provisions of the Law on Spatial Planning and Construction, they shall suggest to the Minister in charge of spatial and urban planning to pass a decision prohibiting the implementation of the planning document until it is made coherent to the Law and notify the body relevant for its adoption about this. The Minister in charge of spatial and urban planning passes this decision within 15 days from the date the inspector for urban planning submitted the proposal.

Regarding the construction, the monitoring of the enforcement of the provisions of the Law on Spatial Planning and Construction and regulations adopted pursuant to this Law, is performed by the Ministry in charge of urban planning and construction. Inspection is performed by the relevant Ministry via its inspectors within the purview laid down in the law (Article 172. Paragraph 2 of the Law on Planning and Construction). The autonomous province is entrusted with the inspection over construction of buildings for which they issued the construction permit pursuant to the Law on Planning and Construction (Article 172 Paragraph 3. of The Law on Planning and Construction).

The activities of the inspector for urban planning can be performed by the graduated construction engineer – master's degree, i.e. the graduated construction engineer or the graduated civil engineer – master's degree, i.e. the graduated civil engineer, with minimum 3 years of work experience in the trade who has passed vocational examination and meets other requirements as prescribed by the Law.

Pursuant to the Law on Planning and Construction, in performing the inspection, the building inspector is granted the right and duty to check the following:

if a company or any other legal person or entrepreneur constructing the building, and the person performing expert monitoring, or persons performing certain activities on the project and construction of the building, meet the prescribed requirements;

if the notice on the commencement of construction has been submitted and if construction permit has been issued for the building being constructed, i.e. for the performance of construction works if the investor has concluded the construction contract in accordance with this Law;

if the building is being constructed according to the technical documentation based on which the construction permit has been issued, that is to say, the technical documentation which is the basis for issuing the decision on the notification of construction pursuant to Article 145 of this Law;

if the construction site has been appropriately labelled;

if the performed construction works, and the construction material, equipment and building installations meet the requirements set out in the Law and prescribed standards, technical standards and quality standards;

- if the Contractor has taken measures to ensure the safety of the building, adjacent buildings, traffic, the surroundings and the environment;
- if there are any faults on the building being constructed or the completed building which may endanger the safety of its use or the safety of the environment;
- if the Contractor keeps a construction diary, construction book and maintains the inspection book in the prescribed way;
- if the prescribed surveillance and maintenance of the building are performed in the course of construction and the use of the building;
- if structural inspection has been performed in line with the Law and the regulations pursuant to the Law;
- if the occupancy permit has been issued for the building intended for use;
- if the building is used for the purpose for which the construction permit and the occupancy permit have been issued;
- performs other activities prescribed by the Law and regulations pursuant to the Law.

The building inspector is authorised to monitor the use of buildings and take measures if they establish that the use of the building is associated with endangering human life and health, the safety of the surroundings, the safety of the environment and if unpurposeful use affects the stability and the safety of the building. In performing the inspection, the building inspector is authorised to enter the construction site and the building under construction, to ask for identification documents, to take statements from authorised persons, take photographs and make a video recording of the construction site or the building, and to take other measures related to inspection, with the purpose of establishing facts. The building inspector is obliged to provide professional assistance in the performance of the activities they have been entrusted with in the field of inspection and give expert opinions and explications, and immediately participate in the performance of the inspection supervision when necessary.

In the performance of inspection supervision, the building inspector is authorised to:

- order by way of a decision the removal of the building or its part, if the building is being constructed or if its construction has been completed without a construction permit;
- order by way of decision the stoppage of works and set the deadline not exceeding 30 days for obtaining, or amending the construction permit, if the building is not constructed in accordance with the construction permit, or master project design, and if the investor fails to obtain or amend the construction permit in the prescribed period, order the removal of the building, or its part;
- order by way of a decision the stoppage of works if the investor failed to conclude the construction contract in accordance with this law;
- order by way of a decision the stoppage of works and set the deadline not exceeding 30 days for obtaining the construction permit, if they establish that the works performed based on the decision stipulated in Article 145 of this Law, require the construction permit, and order the removal of the building or its part if the investor fails to obtain the construction permit within the prescribed period;
- order by way of decision the stoppage of works and set the deadline not exceeding 30 days for obtaining, or amending the construction permit, if the foundations built are not in

line with the master design study, and if the investor fails to obtain or amend the construction permit in the prescribed period, order the removal of the building, or its part; order by way of a decision the removal of the building or its part, if the construction of the building and construction works continue even after the passing of the decision on the stoppage of works;
order by way of decision the removal of the temporary building pursuant to Article 147 of this Law after the prescribed deadline has expired;
prohibit by way of decision the investor or the building owner to continue the removal of the building or its part, if the building or its part is being removed without the decision permitting the removal of the building or its part;
order by way of decision the stoppage of works if the investor failed to set expert supervision by a contract in accordance with this law;
order the taking of other measures in accordance with this Law.

The decision on the removal of a building or its part also refers to the parts of a building which are not described in the decision on removal, if they have been built after the official note has been made and if they constitute one construction entity.

The building inspector and the inspector for urban planning are obliged to submit the decision they issue in the course of inspection to the Serbian Chamber of Engineers at their request pursuant to The Law on Planning and Construction.

b) Is there parliamentary oversight?

The National Assembly, as the institution which is the holder of the constitutional and legislative power, within its competences, performs the oversight function pursuant to Article 7 of the Law on the National Assembly. Article 15, paragraph 3 of the said Law prescribes that the National Assembly performs an oversight over the activities of the Government, security agencies, the Governor of the National Bank of Serbia, the Ombudsman and other bodies pursuant to the Law.

As regards the parliamentary oversight in the abovementioned areas, it is important to stress that Articles 228 and 229 of the Rules of Procedure of the National Assembly define the procedure of considering the reports submitted by the Government or Ministries, which are submitted to the National Assembly according to the Law, and the obligation of the line Minister to submit the information on the work of the Ministry to the competent committee of the National Assembly once every three months. The aforementioned provisions of the Rules of Procedure enable the National Assembly and its working bodies to continuously and efficiently control the work of the Government and Ministries and monitor the implementation and enforcement of the adopted legislation. The provisions of the new Rules of Procedure create the opportunity for a more efficient oversight in these areas, which subsequently implies the improvement of the practice implemented thus far.

Regarding the issue of public procurement and parliamentary oversight in this area, in line with Articles 100 and 102 of the Law on Public Procurement (Official Gazette of RS,

No. 116/08), the National Assembly has elected members of the Republic Commission for the Protection of Rights in Public Procurement Procedures, upon the proposal of the Government. The Commission is an autonomous and independent body of the Republic of Serbia, which ensures the protection of bidders' rights and of public interest in the procedures of public procurement and is accountable to the National Assembly for its work.

Pursuant to Articles 100. and 102 of the Law on Public Procurement, The National Assembly appointed the members of the Republic Commission for the Protection of Rights in Public Procurement Procedures on the proposal of the Government.

The Republic Commission shall, within its competence:

- 1) decide on the requests for the protection of bidders' rights and public interest (hereinafter: request for protection of rights);
- 2) decide on the appeals made against conclusions of purchasers;
- 3) decide on the proposal of the purchaser that the submitted request for the protection of rights does not halt the activities in the procedure of public procurement;
- 4) set the expenses in the procedure for the protection of rights;
- 5) oversee the enforcement of the decisions it makes;
- 6) cooperate with international institutions and experts in the field of public procurement;
- 7) perform other duties laid down in the law.

The Republic Commission is accountable to the National Assembly for its work.

Parliamentary oversight over the privatisation process is conducted by the Privatisation Committee. The Privatisation Committee controls the work of the Government and the Ministry responsible for the privatisation affairs in conducting the privatisation process by reviewing monthly reports of the Ministry responsible for privatisation affairs in the course of the privatisation process, concluded contracts on asset sale, initiated privatisation processes and gives opinions and suggestions to the National Assembly regarding the privatisation issues, pursuant to Article 62 of the Law on Privatisation (Official Gazette of RS, no. 38/01, 18/03, 45/05, 123/07, 123/07 and 30/10) and the Rules of Procedure of the National Assembly. In addition, pursuant to Article 18 of the Law on the Privatisation Agency (Official Gazette of RS, no. 38/01, 135/04 and 30/10), the Government submits semi-annual report on the business operation of the Shareholder Fund to the National Assembly, which is considered by the Privatisation Committee.

In the area of construction and land-use planning, the National Assembly performs the oversight pursuant to Article 5 of the Law on Spatial Plan of the Republic of Serbia (Official Gazette of RS, no. 88/10), which foresees that the Government, at the suggestion of the Ministry responsible for spatial planning, annually submits the report to the National Assembly on the realisation of the Spatial Plan. The report is considered by the Committee on Urban Planning and Construction which is among other things, authorised to consider issues in the area of spatial planning.

In line with Article 36 of the Law on Planning and Construction (“Official Gazette of RS”, no. 72/09 and 81/09) under the conditions set out in this Law planning documents shall be drawn up by a public company, or any other organisation established by the local self-government unit with a view to performing the activities of spatial and urban planning, as well as companies, or other legal persons, listed in the relevant Registry for performing the activities of spatial and urban planning and the drawing up of planning documents.

In 2002, The Assembly of the Autonomous Province of Vojvodina (APV) pursuant to the Decision on the Establishment of a Public Company for Spatial and Urban Planning and Project Design (“Official Journal of APV”, no. 10/02), founded the public company “Institute for Urban Planning in Vojvodina” Novi Sad for permanent performance of activities related to spatial and urban planning and organization of land and settlements of strategic significance for the Republic, which pertain to the territory of the Autonomous Province of Vojvodina, specialist activities of the significance for Provincial bodies and specialist activities for the bodies of the self-government units in the territory of the Province which entrust the said Institute with these activities.

As Article 7 (1) point 1 of the Law on Public Procurement (“Official Gazette of RS”, no. 116/08) prescribes that the provisions of this Law shall not be applied to procurements made by organisation who are, in terms of this Law, considered purchasers and those to whom the Republic of Serbia, territorial autonomy or local self-government pursuant to the special law has granted special or exclusive right for performing the activity of rendering services which are the subject of the public procurement, the Provincial Secretariat for Architecture, Urban Planning and Construction does not conduct the procedure prescribed by the Law on Public Procurement when doing business with the public enterprise “Institute for Urban Planning in Vojvodina” Novi Sad.

The Decision of the establishment of this public enterprise foresees the obligation of the Board of Directors to submit annual reports on their business activity to the Assembly of the AP Vojvodina.

In addition, according to Article 96 of the Constitution of the Republic of Serbia and Article 3 of the Law on the State Audit Institution (“Official Gazette of RS”, no. 101/05, 54/07 and 36/10) the State Audit Institution shall be the supreme state audit authority of public funds in the Republic of Serbia. Furthermore, the State Audit Institution shall be an autonomous and independent state body, which is accountable to the National Assembly for performing the duties within its purview. The National Assembly appointed the members to the Council of the State Audit Institution at the suggestion of the Committee on Finances. The provisions of Articles 43 – 50 of the said Law, prescribe that the State Audit Institution shall submit reports to the National Assembly, types of reports to be submitted and the reviewing of reports by the National Assembly and the relevant Committee. Upon reviewing the report, the relevant Committee shall submit its own report to the National Assembly containing opinions and recommendations. By reviewing the reports on the performed Audit of the final account of the budget of the Republic of Serbia and the adoption of opinions and recommendations, the National

Assembly, or the relevant working group monitors the way in which the budgetary funds are expended. Moreover, indent 2 of Article 55 (2) of the Rules of Procedure of the National Assembly sets out that the Committee on Finances, the state budget and the oversight of the public funds expenditure (starting from the next session of the National Assembly) shall oversee the application of the state budget and accompanying financial plans in terms of legality, purposefulness and efficiency of the expenditure of public funds, and submit the report to the National Assembly about this along with suggested measures.

c) How is financial control regulated?

The Law on the Budgetary System (“Official Gazette of RS”, no. 54/09) prescribes that the contracts on purchasing goods, financial property, rendering services or performing construction work, concluded by direct or indirect beneficiaries of the budgetary funds and the beneficiaries of the funds of institutions for obligatory social insurance, must be concluded in accordance with the regulations governing public procurement, and that the Ministry of Finance shall be tasked with performing the inspection with the purpose of inspecting direct or indirect beneficiaries of the budgetary funds.

In the process of control of public procurements, the budgetary inspection shall establish if individual public procurements have been conducted in line with the regulations governing the area of public procurement.

In case it is established that the public procurement process has not been carried out in line with the regulations regulating public procurement or contrary to these rules, the budgetary inspector shall file a request for instituting misdemeanour proceedings against the purchaser, or the authorised person of the purchaser.

In addition, once the budgetary inspector establishes the invalidity of the public procurement contract, they shall submit the information to the Republic Public Attorney, with the view to protecting property rights and interests of the Republic of Serbia.

- Is there a functioning auditing authority?

The external audit of public finances is performed by the State Audit Institution established pursuant to the Law on the State Audit Institution (“Official Gazette of RS”, no. 101/2005) adopted in 2005, but which commenced its work only towards the end of 2007 after the election of the Council of the State Audit Institution.

As set out in the Declaration of Lima, the considerable funds expended by public authorities on contracts and public works justify a particularly exhaustive audit of the funds used. The relation of the supreme audit institution to public contracts and public works is laid down in Section 21 of this Declaration, yet the Institution does not have sufficiently developed capacities to assume auditing authority in the field of public procurement.

“Declaration of Lima:

Section 21: Public contracts and public works

The considerable funds expended by public authorities on contracts and public works justify a particularly exhaustive audit of the funds used.

Public tendering is the most suitable procedure for obtaining the most favourable offer in terms of price and quality. Whenever public tenders are not invited, the Supreme Audit Institution shall determine the reasons.

When auditing public works, the Supreme Audit Institution shall promote the development of suitable standards for regulating the administration of such works.

Audits of public works shall cover not only the regularity of payments, but also the efficiency of construction management and the quality of construction work.

In the auditing performed so far, the Institution included the public procurement in their reports and supplied their auditory findings and opinions on them. At the moment, the Institution does not have the capacities to act on individual notices, i.e. requests for performing audits which refer to public procurement.

The Institution is speeding up the recruitment of new employees, especially auditors, and it is expected that it shall be considerably strengthened in terms of staff by the end of 2011. Simultaneously with the recruitment process, training of the staff shall be an important function of the human resources for which the managers of organisational units shall be in charge (the supreme state auditors and the secretary of the Institution).

The Rulebook on the syllabus for taking the exam for acquiring the titles of a state auditor or an authorised state auditor, which prescribes the educational syllabus as the previous and obligatory stage in the process of taking the exam for acquiring auditory titles has been adopted. In addition to this training programme, the Institution is planning the continuation of the training programme in cooperation with the Office of the Auditor General of Norway and training organised within the UNDP project “Strengthening Responsibility Mechanisms in the Field of Public Finances”.

NB: a more detailed elaboration on the State Audit Institution has been given in the replies to question 37 within the Political Criteria and replies to questions 5, 6, 19, 20 and 21 of Chapter 32 (Financial Control).

58. Please provide succinct information on adhesion to relevant international conventions (e.g. the UN Convention against corruption, the Council of Europe Civil and Criminal Law Conventions on Corruption, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of proceeds from crime and the OECD Conventions on Combating Bribery of Foreign Public Officials in International Business Transactions and on Bribery in International Business Transactions).

The Law on Ratification of the UN Convention against Corruption came into force in October 2005 (*Official Journal of Serbia and Montenegro - International Treaties* No. 12/05).

The Law on Ratification of the Council of Europe's Criminal Law Convention came into force in March 2002 (*Official Journal of Federal Republic of Yugoslavia - International Treaties* No. 2/02 and *Official Journal of Serbia and Montenegro – International Treaties* No. 18/05).

The Law on Ratification of the Additional Protocol to the Criminal Law Convention on Corruption came into force in November 2007 (*Official Journal of RS - International Treaties* No. 102/07).

The Law on Ratification of the Council of Europe's Civil Law Convention on Corruption came into force in November 2007 (*Official Journal of RS - International Treaties* No. 102/07).

In view of provisions contained in Article 13, paragraph 2 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Republic of Serbia has not ratified the said Convention. However, an expert opinion of the Council of Europe that was prepared by a member of the OECD Group of States against Corruption points to the fact that the Criminal Code of the Republic of Serbia is fully harmonized with the said Convention.

59. What are the practical implications of implementation of the above mentioned international conventions including internal measures and anti-corruption strategies and initiatives to improve international anti-corruption cooperation (e.g. International Anti-Corruption Agency)?

With an aim to apply the Conventions and following the PAKO Project framework drafted by the Council of Europe, National Strategy for Combat Corruption was created and adopted by the National Assembly in December 2005. The Strategy was created in accordance with Article 5 of the UN Convention containing all elements predicted by the Technical Guidelines for Implementing the UN Convention against Corruption.

In accordance with the UN Convention, the Law on the Anti-corruption Agency was adopted (*Official Gazette of RS*, No. 97/2008 and 53/2010) as an independent state authority in charge of, *inter alia*, preventive anti-corruption fight and supervision of Strategy implementation.

The Law on the Anti-corruption Agency entered into force on 4 November 2008 thus enabling the establishment of a new institution of the Republic of Serbia to fight corruption. The Law on the Anti-corruption Agency based on which the Agency is an independent state authority, was made in accordance with international standards, especially Article 6 of the UN Convention against Corruption and specific recommendations from the GRECO. The Agency has a preventive and operational

competence in several areas – solving cases of conflict of interest of public officials in Serbia and controlling the funding of political parties, following regulations for the prevention of corruption, proposing amendments to various laws and supervising the implementation of the National Strategy for Combating Corruption, the accompanying Action plan and sectoral action plans, fulfilling international obligations, providing guidelines for drafting integrity plans and achieving cooperation with all governmental and non-governmental organisations in Serbia.

In accordance with the National Strategy for Combating Corruption, the Law on Amendments and Additions to the Law on Financing of Political Parties (*Official Gazette of RS*, no. 72/2003, 75/2003 – corr., 60/2009 - decision of CC) stipulates that the Agency shall take over some duties and competences from the Republic Electoral Commission, the Parliamentary Committee for Finance and the Ministry of Finance, related to the financing of political parties.

In order to combat corruption, the Agency cooperates with organisations such as GRECO, EPAC, RAI and UNODC, the Commission for the Prevention of Corruption of the Republic of Slovenia and the Independent Commission against Corruption of Hong Kong (ICAC). In cooperation with these two commissions, the Agency employees have attended intensive courses on the topic of corruption led by former and current employees of anticorruption bodies of Australia and Singapore. More specifically, cooperation with colleagues from the Slovenian Commission has contributed to the development of integrity plans and drafting guidelines for the integrity plans.

Also, the Criminal Code (*Official Gazette of RS*, no. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009 and 111/2009) was repeatedly amended to comply with the UN Convention against Corruption and the Criminal Law Convention on Corruption. The Criminal Code that entered into force on 1 January 2006 introduced bribing in private sector as criminal offence. The latest amendments from September 2006 introduced criminal offence of *Trading in influence* and amendments were introduced to criminal offences such as *Accepting bribe* and *Giving bribe*, for harmonization with UN Conventions against corruption.

Amendments to the Law on Organisation and Competence of State Authorities in Suppression of Organized Crime, Corruption and Other Very Serious Criminal Offences (*Official Gazette of RS*, No. 42/2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004 – other law, 45/2005, 61/2005 and 72/2009) from September 2009 stipulate that the Prosecutor for organized crime is in charge of, *inter alia*, crimes against official duty (*Abuse of office*, *Accepting bribe*, *Giving bribe* and *Trading in influence*), when the defendant, or bribed person, official or person executing public function based on election, nomination or appointment by National Assembly of the Republic of Serbia, Government of the Republic of Serbia, High Judicial Council or State Prosecutorial Council, as well as for criminal offence *Abuse of office*, when the amount of acquired material wealth exceeds 200,000,000 RSD, in accordance with Article 36 of the UN Conventions.

60. When did Serbia become a member of the Council of Europe Group of States Against Corruption (GRECO) and what measures have been taken to implement GRECO recommendations?

The State Union of Serbia and Montenegro became a member of the group of States against Corruption (GRECO) on 1 April 2003. Following the referendum in Montenegro on 21 May 2006, the Republic of Serbia became the successor of the State Union of Serbia and Montenegro.

The Anti-corruption Agency was established in April 2009 on the basis of GRECO 2006 recommendations for Serbia covering legislation; existence of specialised institutions, and the issue their independence; functioning and prevention mechanisms; and identification and seizure of proceeds from the criminal offences of corruption; prevention and detection of corruption in public administration; and the establishing of criminal liability of legal persons. The time limit was extended to additional 18 months in June 2008 at the 38th GRECO Plenary when GRECO adopted the *Joint First and Second Round Evaluation Report of the Republic of Serbia*.

The Republic of Serbia has complied with 12 from the total of 25 recommendations in a satisfactory manner. The recommendations referred to the area of public procurement, duration of tenure of the public prosecutor; establishment of a specialised anti-corruption department within the prosecutor's office; cooperation between the police and prosecutor's office; training programme for the police and prosecutor's office; protection of witnesses; seizure of assets; Action Plan for the Implementation of the National Strategy for Combating Corruption and mechanisms of implementation; introduction of the Ombudsman at the central and local levels; access to information of public importance; training of civil servants in the area of suppression of corruption; and adoption of a Code of Ethics in civil service. Following Serbia's Additional Report adopted on 25 June 2010, 8 additional recommendations were rated as satisfactory. They referred to the extension of the term of office of the Special Prosecutor for organised crime and his deputies; adoption of legislative and other measures for the establishment of an efficient system for the implementation of special investigation techniques which will ensure that the competent bodies have adequate equipment and training; extension of the legislative provision on the temporary freezing of suspicious transactions as well as the extension of the Law on the Prevention of Conflict of Interest in the Discharge of Public Office to all public officials in the state administration. Moreover, the value of all gifts that officials may receive (e.g. gifts the value of which does not exceed a half of the average monthly salary) is reduced to the level that will in no event raise suspicion that this is bribe or any other form of undue material benefit; and liability of legal persons for criminal offence of corruption has been established, which ensures their efficient and adequate punishing.

The remaining 5 recommendations have been complied with partially. They refer to the issue of private auditors and accountants, civil servants, requirement of certain institutions to report irregularities and promotion of judges and prosecutors.

61. Please provide an overview of legislation and case law relevant to the right to life (Art. 2 of the Charter of Fundamental Rights of the EU and Art. 2 of the European Convention on Human Rights) Also provide an overview of national legislation, ratification of international treaties, case law and custom/practice relating to the death penalty. How does your legislation cover extrajudicial killings and crimes in the name of honour? What are the practical results in investigating such crimes?

- Right to life

The Constitution of the Republic of Serbia ("Official Gazette of RS" No. 98/2006), by Article 24.- Right to life, inviolability of human life is guaranteed, it is determined that there is no death penalty in the Republic of Serbia, and cloning of human beings is prohibited. Also, the Constitution provides that the physical and mental integrity is inviolable and that no one can be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical or scientific experiments without their free consent. Criminal law protection is abandoned solely in certain cases, when the deprivation of other person's life is the only way to protect life, which is in the cases of the exclusion of unlawfulness (right of self-defence and necessity). Human life is protected from its beginning until the end, regardless of its quality and form.

The right to life is protected by a series of international and regional treaties for the protection of human rights. Universal Declaration on Human Rights represents the first comprehensive instrument on human rights adopted by United Nations General Assembly as a resolution, or an instrument that is not legally obliged, but has set a "common standard" of respect to therein stated rights and freedoms, and exerted great influence both on international convention of legislative nature which will follow, and the Republic of Serbia.

Among the most important which the Republic of Serbia ratified we highlight: International Covenant on Civil and Political Rights of United Nations – signed on December the 16th 1966 in New York, is ratified on 30th of January 1971 by the competent authority of SFRY (Republic of Serbia is a legal successor) and came into force on 23rd of March 1976, Second optional protocol on civil and political rights of United Nations – ratified in June 2001, European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (*Official Gazette of SMN –International agreements, No. 9/2003 5/2005 and 7/2005 – corr.*) with following protocols: Protocol 6 and Protocol 13, as well as European Convention on Extradition – ratified by the competent authority of SRY on November 5th of 2001 (Republic of Serbia is a legal successor).

International Covenant on Civil and Political Rights of United Nations and European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe require that each state party to the law guarantee the right to life and thereby abolishes the death penalty.

In addition, the by-laws in the area of police work are vital to the protection of the rights to life and: The Code of Police Ethics (92/06), in order to achieve highest national and international standards of police conduct and support to the rule of law; Code of conduct for civil servants (27/08); Rulebook on manner of performing police tasks (27/07); Rulebook on police jurisdictions (54/06); Rulebook on complaints procedure (54/06).

- Death penalty

The Federal Republic of Yugoslavia (Republic of Serbia is a legal successor) on June 2001 ratified the Second optional protocol with International Covenant on Civil and Political Rights, with which committed itself for abolishment of death penalty. Death penalty is abolished in the criminal legislation of the Republic of Serbia in 2002.

State union of Serbia and Montenegro (Republic of Serbia is a legal successor) has, upon admission to the Council of Europe on April the 3rd 2003, signed the Protocol No. 6 with European Convention for the Protection of Human Rights and Fundamental Freedoms, which obliges the state to abolish death penalty, except for acts committed in the time of war or imminent threat of war, as well as Protocol No. 13 which abolishes the death penalty without exception.

Pursuant to ratified European Convention on Extradition, during the conclusion of bilateral agreements the Republic of Serbia shall ensure that a person cannot be delivered to another state if he had a risk of death penalty in that state.

Affirmative rules of law of Republic of Serbia, and Criminal Code ("Official Gazette of RS", no. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009, and 111/2009), do not contain provisions regarding death penalty.

- Unlawful deprivation of freedom

The Criminal Code protects the right to life through determined criminal acts defined in Chapter Thirteen – Crimes against life and body, which include murder, first degree murder, manslaughter, and infanticide at birth, euthanasia, manslaughter through negligence, referencing to suicide and assisting in suicide. Within Chapter Twenty Eight of the Criminal Code, which defines criminal offences against constitutional order and security of the Republic of Serbia, criminal offense of murder of highest state authority representative is provided. Also, Criminal Code in Chapter thirty four - criminal offences against humanity and other values protected by international law, determines following criminal offenses: genocide, crimes against humanity, war crimes against civilians, war crimes against wounded and sick, war crimes against prisoners of war, organization and incitement to commit genocide and war crimes, unlawful killing and wounding of the enemy, aggressive war, jeopardizing persons under international legal protection, international terrorism, taking of hostages, etc.

In addition, there are groups of criminal acts which might endanger the lives of people, such as:

- Offenses against human health (previously prescribed by General Criminal Law, criminal acts related to drug abuse are now classified in this group; as well as new criminal offenses: transmission of HIV infection, unlawful exercise of medical experiments and drug testing and dishonest conduct in making and prescription of drugs)
- offenses against general safety,
- offenses against safety of public traffic,
- offenses against environment,

International Covenant on Civil and Political Rights of United Nations and European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe delegate obligation to protect human life from wilfully deprivation. This primarily refers to the proceedings of the national security forces.

However, any use of force by the police which resulted in the onset of death shall not be considered as a violation of the right to life. Necessary use of force in the aim of self-defence, extreme necessity, lawful arrest or prevention of escape of a person lawfully detained, riot and rebellion which are listed in Article 2(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms of Council of Europe are not considered as a wilfully deprivation of life as long as they meet the criteria under domestic legislation.

Therefore, every state shall strictly control and limit the circumstances in which a citizen could be deprived of life during the activity of state authorities.

Health protection

- Legislative framework

Health care of population in the Republic of Serbia is guaranteed by provision of Article 68. (1) of the Constitution of the Republic of Serbia according to which everyone shall have rights to protect their mental and physical health.

In its legislative activity in 2004 the Law on Medicines and Medicinal Products (“Official Gazette of RS” No. 84/04) as well as the Law on Protection of Population from Infectious Diseases (“Official Gazette of RS” No. 125/04) and in 2005 the Law on the Substances Used in the Illegal Production of Narcotics and Psychotropic Substances was adopted (“Official Gazette of RS” No. 107/05) as well as system laws: Law on Health Care (“Official Gazette of RS”, No. 107/05), The Health Insurance Law (“Official Gazette of RS”, No. 107/05), Law on Health Care Workers Chambers (“Official Gazette of RS”, No. 107/05). In accordance with the adopted laws, appropriate by-laws were provided also.

Health care system in the Republic of Serbia formally and essentially belongs to so called Bismarck model of mandatory social insurance system. This system is based on generally accepted principles: solidarity and reciprocity, publicity with rights for information, protection of rights of insured persons and protection of public interest, constant quality improvement and cost effectiveness of mandatory health insurance.

Environment Protection

Article 74. of the Constitution of Republic of Serbia guarantees healthy environment. According to provisions of that article, everyone has the right to a healthy environment and timely and complete information on its condition. Everyone shall be held responsible for protection of the environment, and especially Republic of Serbia and autonomous province and everyone shall have the obligation to preserve and improve the environment.

Legal norms governing the protection and improvement of environment in the Republic of Serbia are contained in a number of ratified international treaties, laws and other regulations. This applies particularly to regulations governing planning and construction, geological researches, water, soil, forests, flora and fauna, national parks, fishery, hunting and handling of waste, protection against ionizing radiation and nuclear safety.

The new legislative framework for environment protection was introduced in the Republic of Serbia in 2004 by the Law on Environment Protection (“Official Gazette of RS” No. 135/04 (old Law on Environment Protection “Official Gazette of RS” No. 66/91) – other provisions regarding environment protection, protection of air and noise are in force, Law on Strategic Assessment on Environmental Impact (“Official Gazette of RS” No. 135/04), Law on Environmental Impact Assessment (“Official Gazette of RS” No. 135/04) and the **Law on Integrated Prevention and Control of the Environment Pollution** (“Official Gazette of RS” No. 135/04) that comply with relevant EU regulations. These laws established jurisdictions of the Republic, autonomous province and local self-government units, rights and obligations for commercial and other subjects in the area of environment protection. Main issues regulated by the Law on Environmental Protection cover the following: Basic principles for environment protection, management and protection of natural resources, measures and conditions of environment protection, environmental monitoring, informing and involving the public, economic instruments, responsibilities for environment pollution, supervision and penalties.

Basic principles for environment protection, like the principle of “informing and involving the public” and the “principle of right to a healthy environment and judiciary approach”, are realized by: (a) implementation of provisions of above mentioned laws regarding provision of access to information, public participation in strategic impact assessment, assessment of environmental impact and issuance of integrated license, as well as right to a legal protection in proceedings before competent authority, or court; (b) reporting on environment condition at the Republic level, autonomous province and local self-government units.

Array of economic instruments such as fees for the use of natural resources, fees for pollution and economic incentives were all introduced by Law on Environmental Protection. Implementation of these instruments ensures the application of principles “the polluter pays” and “user pays” in accordance with requirements of EU. The obligation of polluters to pay compensations for polluting is applicable from 1st of January 2006. These

include fees for pollution according to the type of pollution from specific sources (e.g. air pollution, production and disposal of waste, substances that deplete the ozone layer and motor vehicles). In order to provide funds to promote protection and improvement of environment in the Republic, a Fund for environmental protection was established. The Fund has a legal entity status and is headquartered in Belgrade. Sources of income for the Fund, in addition to statutory sources, include fees that polluters and users, or users of natural resources pay. The Fund carries out activities regarding to financing of preparation and implementation of the program, projects and other activities in the area of preservation, sustainable use, protection and improvement of environment, as well as in the area of energy efficiency and use of renewable energy sources.

Environment protection is also ensured through legal protection. Criminal offenses are explicitly stipulated by law. Criminal Code ("Official Gazette of RS", no. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009 and 111/2009), contains a special chapter "Environmental crime" with 18 offenses against the environment: Environmental pollution (Article 260); Failure to take environmental protection measures (Article 261); Illegal construction and commissioning of facilities and plants that pollute the environment (Article 262); Damage to facilities and equipment for environmental protection (Article 263); Damage of environment (Article 264); Destruction, damaging and taking abroad protected natural goods (Article 265); Introduction of dangerous materials to Serbia and unauthorized processing, disposal and storage of dangerous materials (Article 266); Unauthorized construction of nuclear installations (Article 267); Violation of the right to information on environment condition (Article 268); Killing and torture of animals (Article 269); Transmission of infectious diseases in animals and plants (Article 270); Negligent provision of veterinary assistance (Article 271); Production of harmful substances for animal treatments (Article 272); Pollution of food and water for animal consumption and water supply (Article 273); Devastation of forests (Article 274); Forest theft (Article 275); Illegal hunt (Article 276); and Illegal fishing (Article 277). Fines in range of 10.000 to 1.000.000 RSD are provided for these offenses, or prison sentences up to 10 years, and for criminal offenses with especially dangerous consequences up to 12 years. Other specific laws with criminal provisions are not codified in Criminal Code (e.g. Law on Genetically Modified Organisms, Law on production and trade in toxic substances and Water law).

Use of firearms

- Police

The police officers handle tasks in line with the law and international standards accepted by the Republic of Serbia, following the objectives of the police in a democratic society and abiding by the principle of the rule of law.

The police operations are carried out in order and in aim to provide everyone with equal protection of the security, rights and freedom, enforcement of law and uphold the rule of law.

Performing the police activities is based on principles of professionalism, cooperation of legality in police work and proportionality in the application of police jurisdictions with the least of harmful consequences.

When carrying out police duties, police comply with international standards of police conduct, and in particular requirements determined by international acts regarding:

- Obeying the law and suppressing of illegality,
- Exercising of human rights,
- Non-discrimination in carrying out police tasks,
- Limitation and restraint in the use of force,
- Prohibition of torture and use of inhumane and degrading proceedings,
- Providing assistance to injured persons.

Police promotes good relations with citizens, other institutions, bodies, local communities, government and non-government organizations, including ethnic and minority groups. Police has a good collaboration with NGO's, especially in accommodating victims in shelters (for victims of violence), providing psychosocial and medical assistance, and through organizing joint education, specialist courses, training programs, aimed to police officers.

Use of firearms by law enforcement officer while performing official duty is regulated in the Law on Police (*Official Gazette of RS* No. 101/05) and other regulations.

Pursuant to provisions from Article 100 of the Law on Police, authorized officer, whilst performing official duty, shall use firearms only if by other use of force cannot achieve results in performing duty and when it is absolutely necessary, as follows: protection of human life; preventing the escape of person caught in the act of crime; prevent the escape of a person lawfully detained or a person with such an order issued for; protecting from direct attack on authorized officer; protecting from attack on object or secured person.

Provisions in Article 107 (2) of the Law on Police stipulate that the use of firearms is not allowed against a minor, except when it is the only way to defend against direct attack or threat.

Law on police regulates the use of firearms in the pursue of vessel and use of firearms on animals.

Pursuant to Article 108 of the Law on Police, when it is necessary to stop the vessel in pursue in internal water ways, police may use firearms to make it impossible to escape, stop and conduct to competent authorities only if such actions could not be achieved by other available means (verbal warning or intimidation shots over the vessel, provided that this does not represent a danger to others). When, as a last resort, shots are being fired at the vessel, the police do so to protect the lives of persons aboard and in line of fire. Firearms shall not be used if that endangers someone's life or if it is not necessary to preserve or protect someone's life.

Pursuant to Article 109 of the Law on Police, firearms may be used on animals only if there is no other way to protect from direct attack on human life or eliminate the danger to human health. Firearms may be used on a sick or severely injured animal only when veterinarian or other person is not able to take appropriate measures, and with consent of the owner of the animal and veterinarian or just with the consent of veterinarian if it is not possible to seek owner's consent or if the animal is not owned by any person. Firearms may be used on animal owned by some person if the treatment would be long, painful and with uncertain outcome, or if the animal due to contagious disease or irritation caused by pain may threaten the life or health of humans or if the animal is dangerous to the surroundings due to incurable disease.

Rulebook on Terms and Conditions for Use of Force ('Official Gazette of RS', No. 133/04) provides detailed conditions and manners that authorized officer of Ministry of the Interior have right to use legally determined means of coercion. Authorized officer is required when using means of coercion, whenever possible, to protect the lives of persons and conduct official duty with least harmful consequences to person or persons against whom a means of coercion are used and only for such time as there are reasons to.

Pursuant to provisions from Article 35, of the Rulebook, for every use of force, authorized officer shall, via emergency service, instantly notify immediate superior, and to file report in written form to immediate superior no later than 24 hours after use of means of coercion. After the use of coercive means which caused the death of a person or bodily injury, property damage or caused agitation among people, competent public prosecutor and investigating judge are immediately informed to conduct investigation, collect and provide material evidence. Immediate superiors in the police carry out internal control of necessity and regularity of using the means of coercion.

In applying police jurisdictions, police officers of the Ministry of Interior in the period of 2004 – 2008 conducted in accordance with the Law on Police and other regulations, respecting the standards set by European Convention for the Protection of Human Rights and Fundamental Freedoms, Basic principles of UN on utilizing force and firearms, European Code of Police Ethics and other international acts regarding police.

In the period from 2004 to the end of 2007, police officers have exceeded their jurisdictions in using firearms just in one case, in 2004 in Niš during the pursue of a person caught in the act of crime , but with no consequences.

- Armed forces

Use of firearms by members of the Armed forces of Serbia is regulated with the Law on the Armed Forces of Serbia (*Official Gazette of RS* No. 116/2007 and 88/2009).

Pursuant to Article 47 of the Law on the Armed Forces of Serbia, military officers are entitled to carry and use firearms, in accordance with service rules. In carrying out

combat missions military officers use firearms and other types of weapons according to the rules of combat.

Pursuant to Rules of service military officers, while in the course of guard and patrol service, duty service and other similar services, at military exercises and while performing other service duties, carry formation firearms, or firearms determined for certain service or executing specific task. Officer in the position of Brigade Commander (regiment) in the same or higher position may order carrying firearms in other circumstances. Persons in service of Armed forces apart from their official service, hold and carry firearms in accordance to same regulations applicable for the rest of citizens. Military officers in conducting their official duty use firearms if they cannot protect the lives of persons they guard; protect from attack or eliminate immediate danger from attack to property they guard; to protect from attack that is a direct threat to their lives. Military officer performing duties under direct leadership of commander use firearms only upon order from commander. Warning is given in accordance with specific duties when executing a concrete task, in compliance with this rule and other acts from the jurisdiction of the commander. Military officer is obliged to immediately inform its superior upon using the firearms.

Use of firearms by members of the Military Security Service is regulated by the Law on Security Services of the Federal Republic of Yugoslavia (*Official Gazette of FRY* No. 37/2002 and “Official Journal of SAM”, no. 17/2004).

Pursuant to Article 36 of the Law on Security Services of the Federal Republic of Yugoslavia, member of Military Security Service (VBA) have right to carry firearms and other means of coercion, as stated in official identification card. Member of VBA may use firearms in necessary defence and as a last resort, and in the arrest of the person caught in the act of crimes under jurisdiction of VBA, which resists the arrest with firearms.

In applying the above jurisdictions, from reviewing the initial report, there was no violation of the Law on Security Services of the FRY and other regulations, nor has any person died due to use of legal jurisdictions of VBA members. Also, there was no violations to procedures in applying jurisdiction of VBA members, therefore there was no investigations conducted in purpose to establish responsibility and punishment of responsible persons.

62. What strategies and measures are in place to ensure the respect of the right to integrity of the person?

Article 25 of the Constitution of RS laid down 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. The Criminal Code (“OG of the RS” No. 85/05, 88/05, 107/05, 72/09 and 111/09, hereinafter: CC) from 6 October 2005, within Chapter 14 Criminal Offences against Freedoms and Rights of Man and Citizen, contains several criminal offences protecting

personal integrity. It is hereby pointed out only to the criminal offence of Maltreatment and Torture, Article 137 of CC, punishable, depending on the form of crime, by imprisonment of six months to eight years.

The Government of the Republic of Serbia has adopted numerous strategies and appropriate measures for implementation of these strategies relevant for respect of the right to personal integrity, and these are:

1. Strategy for Reform of the System of Enforcement of Criminal Sanctions,
2. Poverty Reduction Strategy,
3. Strategy on Fighting Human Trafficking in the Republic of Serbia,
4. National Strategy on Resolving the Problems of Refugees and Internally Displaced Persons,
5. Youth Health Development Strategy,
6. National Ageing Strategy,
7. Strategy of Development of Social Protection,
8. National Employment Strategy 2005-2010,
9. National Strategy for Fighting HIV/AIDS,
10. National Action Plan for Children,
11. Strategy for Improvement of the Position of Persons with Disabilities in the Republic of Serbia,
12. Strategy of Development of Vocational Training in the Republic of Serbia,
13. Birth Promotion Strategy,
14. National Youth Strategy,
15. National Sustainable Development Strategy,
16. National Strategy for Prevention and Protection of Children against Violence,
17. Strategy of Continuous Improvement of Quality of Health Care and Security of Patients,
18. National Strategy for Improving the Position of Women and Promoting Gender Equality;
19. Public Health Strategy in the Republic of Serbia,
20. Strategy for Improvement of the Status of Roma in the Republic of Serbia,
21. Strategy on Health and Safety at Work in the Republic of Serbia for the period from 2009 to 2012,
22. Strategy for Migration Management.

63. In the fields of medicine and biology, do precise rules exist which indicate what is and what is not permitted? Are these rules subject to a permanent monitoring process, in particular with regard to the right to integrity of the person?

In the process of harmonization of Serbian legislation with European standards, directives and recommendations, four laws in the field of biomedicine and transfusion in 2009 were adopted

- Organ Transplantation Law
- Cell and Tissue Transplantation Law
- The Law on Infertility Treatment and Procedures of Biomedical In Vitro Fertilization (BMIF) Blood Transfusion Law

Organ Transplantation Law constitutes Directorate for Biomedicine within Ministry of Health, which began to function with the appointments of the first employees on 3rd of June 2010, taking big challenges and tasks in establishing a comprehensive and sustainable system of activities, improvement and development of transplantation for the purpose of treatment, state Directorate affairs and creation of institutional capacities and resources to implement new laws and establish cooperation and relations with related EU institutions.

Legislation in the field of biomedicine and blood transfusion created requirements for organ, cell and tissue transplantation, blood transfusion and BMIF procedures in the Republic of Serbia, in accordance with all directives, recommendations, standards and guidelines of medical science and practice of the EU. Biomedical and blood transfusion legislation clearly define rights, duties, and responsibilities, permitted and prohibited activities, with special emphasis on respect for freedom of choice, confidentiality and integrity.

It is clearly defined what is permitted or prohibited. All the rules are specified under the Articles pursuant to the Law and are subject to constant institutional, organizational and substantive supervision.

Article 6 of the Introduction to Cell and Tissue Transplantation Law governing the principles, rights, ethical principles and safety, among other principles, determines that "the process of transplantation is conducted in a manner which ensures giving the individual's interest and welfare precedence over those of society and science, guaranteeing respect for individual's dignity, interest and his legal rights, without discrimination."

Integrity of the donor and recipient as well as safeguarding confidentiality of all medical records data are guaranteed by many Acts of the Law being marked as the basic and most important rule and right through the entire Law in all aspects of cell and tissue transplantation procedure, from the beginning to the very end.

All provisions of the Law in all its parts are unambiguous, clear and concise and specifically define what is permitted or "prohibited".

Articles 26 to 30 determine certain unambiguously prohibited activities such as: prohibition of advertising and advertising one's needs or offering cells or tissue, the prohibition of trading human cells and tissues, prohibition of cells and tissue exchange (Article 29) which do not comply with international agreement that provides the highest professional standards of medical science and profession, safety, quality and prevention

of transmission of infectious diseases, and the Minister at the proposal of the Directorate for Biomedicine issues the permission in all cases. That is why (Article 30) prohibits the use of cell or tissue in the production or cosmetic products manufacture.

Exact provisions under this Law relating to freedom of choice, safety procedures, risk assessment and confidentiality are equally unambiguous, and the definition of these prerequisites ensures the protection of cell and/or tissue donor and recipient personal integrity.

Article 24 defines the obligations of the Directorate for Biomedicine to conduct Register of Cell or Tissue Donors of the RS, the method and procedure of keeping the data in the Register, data maintenance, and registration of donors, storage and data protection, data access procedures and the method and process of providing and protecting code in or to obtain approval for referring to registered data.

Article 25 regulates availability of data from the Register of Donors (cell and tissue), and Paragraph 1 under the Article determines "that data from the Single Register of Donors of the RS are available only to persons who are entitled to request and receive registered data." Pursuant to Point 2, an authorized health worker shall be assigned code for obtaining approval to registered data reference in the Registry, whereas Paragraph 3 under the same Article states that the Ministry can only use statistics from the Single Register of Donors.

Article 38 states that "data on donor and recipient (cell and/or tissue) represent an official secret which all individuals participating in the transplantation process as well as those to whom data is available are obliged to keep.

Article 39 establishes the prohibition of giving and using data, and Paragraph 1 states that the granting of cell or tissue is anonymous, whereas Paragraph 2 defines that it is "forbidden" to give information about recipient to donator or his family, and vice versa. Paragraph 4 stipulates that it is "prohibited" that (official) person participating in the transplantation "provides information about the donor or recipient's personality, as well as information about the individuals who were notified of the intended or possible transplantation. " Paragraph 5 and 6 determine that "all donor and recipients' personal data, including genetic information available to third parties, must be anonymous, without the possibility to identify donors and recipients" In order to "protect the data, all participants in transplantation are obliged to take measures for the protection of personal data, as well as those against assignment of unauthorized data, deleting or changing data in the database".

"Articles 41, 42 and 43 of the Law prescribe methods, procedures and donor/recipient data that are being collected, processed, kept and used as well as medical records, retention periods, and protection of donor/recipient data, whereas Article 44 determines "prohibition against the use and disclosure of donor/recipient personal data."

Article 49 establishes the following: "It is forbidden to take the cell and tissue from the living donor if the donor risks his/her life or health or if the risk of a living donor and recipient's benefits are disproportional.

Under Article 59 pursuant to the Law the prohibition of taking tissue in case of brain death of the individual who does not want to donate, in the form of a written statement.

Established Directorate for Biomedicine began to work with the appointments of the first employees on 3rd of June 2010 and it is working on implementation of new laws in the field of biomedicine, deals with certain public Directorate matters and creates institutional capacity and resources for implementing new laws into practice.

Also, and perhaps most importantly, the Directorate of Biomedicine regularly and constantly controls and supervises the organization and operation of health facilities that deal with cell, tissue, and organ transplantation, blood transfusion and Biomedically Assisted Procreation in terms of meeting the requirements regarding personnel, facilities, equipment, medical records management and everything in relation to implementation of new legislation.

Pursuant to the Law under Articles 9 to 13 the conditions for issuance, renewal and/or revocation of the transplantation are stipulated, whereas Article 67 to 74 shall ensure requirements regarding cell or tissue bank establishment and operating. The Directorate of Biomedicine controls meeting the requirements, based on the Directorate inspection and director's proposal - Minister issues, renews or revokes the transplantation license.. In this way, a regular institutional control and supervision of the authorised health care facilities is done. Internal professional control and supervision in health care institutions are provided with the formation of Teams for Transplantation(Article 9 of the Law), by appointing coordinators in each medical institution (Article 14 to 16) and Transplantation Ethics Committee activities in each institution (Article 17 of the Law). In addition, each cell and tissue bank is required to have an Individual responsible for quality management system (under Article 76 pursuant to the Law).

This is how regular and sustained external institutional control and supervision are provided (through the Directorate for Biomedicine within the Ministry of Health and its inspection) and constant (internal) individual responsibility as well as quality control of the professional performance and transplantation system operating with its work organization.

Articles 98 to 100 define criminal liability, whereas Articles 101 to 103 define tortuous liability of individuals involved in this activity, with serious penalties for disobey or failure to obey this Law. These penalties represent an essential system of providing employees' personal accountability as well as law enforcement.

We believe that many Articles of the Law are enough to guarantee donor's and/or recipient's personal integrity as well as confidentiality of all medical records data being marked as the basic and most important rule and right throughout the entire Law, across the whole cell and tissue transplantation process, from its beginning to the very end.

LAW ON INFERTILITY TREATMENT AND PROCEDURES OF BIOMEDICALLY ASSISTED PROCREATION regulates this field in an exact way, by precisely defining what is permitted/prohibited. In the introductory part of the Law regarding principles of the BMIF procedure, Articles 4 to 12 precisely determine general principles of the BMIF procedure.

- The principle of medical justification
- The principle of protecting human beings
- The principle of the public interest

- The principle of child protection rights and individuals connected with BMIF
- The principle of equality
- The principle of freedom to decide
- The principle of human dignity
- Privacy Principle
- Safety principle

Articles 13 to 17 of the Law regulate the requirements under which "An authorized health institution" may obtain, renew or lose the license issued every five years and granted by the Ministry of Health for BMIF. Rulebook on detailed conditions in terms of space, equipment, personnel or teams for BMIF, as well as the manner and procedure for issuance, renewal or revocation of license for BMIF procedure is under construction.

Articles 18 to 22 and 32 of the Law on BMIF regulate the obligation of forming the Expert team within an authorized medical institution, led by a "responsible physician" - a gynaecology and obstetrics specialist - a prominent expert in artificial insemination with at least five years experience, then Coordinators of the Expert Commission and the Transplant Ethics Committee.

Under Article 36 and 37 of the Law the responsible physician shall be obliged to give written and verbal information to those who participate in BMIF procedure, with clearly defined topics and issues (which are in the form of the (Rulebook on the Form of Notice and Written Consent).

Articles 32 to 34 and 40 to 53 specifically regulate BMIF procedure with donated reproductive cells. Method and procedure of donating reproductive cells, use of donated reproductive cells, establishing one of the "authorized health institution" for reproductive cells bank operating, keeping the Single Register of Donated Reproductive Cells in the Directorate for Biomedicine, donor information, consent forms and donor withdrawal of consent are precisely defined.

Articles 23 and 30 of the Law stipulate the requirements in terms of standard operating procedures and guidelines of good practice in BMIF procedures. The Rulebook is also under construction and all the recommendations and policies of the EU Directives and quality guidelines of the Council of Europe will be incorporated

Article 55 regulates the number of fertilized egg cells in the BMAP process; Paragraph 3 stipulates that "within one BMAP procedure it is not allowed to insert more than three embryos into the woman's body.

Article 56 of the Law clearly defines prohibited activities in BMAP procedures:

- Trading, offering, seeking reproductive cells or embryos;
- Donating to acquire any tangible or intangible benefits;
- Cells or embryos mediation or donation; import - export;
- Advertising and promoting; special services for sex selection, etc..)
- The development of embryos for more than 14 days, or for scientific and research purposes only.
- Changes in the genetic basis or creating new genetic material;
- Creation of new cells, tissues or organs;
- Creation of hybrids, chimeras and clones as well as their implantation

- Utilization of mixture of male and female cells belonging to more than one or deceased donor.
- Concomitant use of male and female reproductive cells;
- Ectogenesis, surrogate mother, identical twins
- Primitive groovegenesis therapy

The Law ensures personal integrity of the spouses or common-law partners or the donor and the recipient's reproductive cells, as well as the born child in the BMIF procedure, the obligation of oral and written notification and consent, the right to withdraw, legal consequences for parents, their own children, reproductive cells donors and recipients as well as the confidentiality of all medical records data, and defines them as basic and important rules and rights through the Articles of the Law, across the whole BMIF procedure, from its beginning to the very end.

Directorate for Biomedicine controls meeting the requirements for authorized health facilities registration in the BMIF procedure. Based on the Directorate inspection and director's proposal - Minister issues, renews or revokes the transplantation license of authorised health facilities. In this way, a regular institutional external control and supervision of the authorised health care facilities is done.

Authorized health institutions provide internal expert control and constant supervision along with building teams and teamwork in BMIF procedures as well as responsible physician – gynaecologist at the head of each team, appointed coordinators in each medical institution, Expert Advisory Commission (whose mandatory members, besides gynaecologists and experts in the field of embryology, are: social worker, psychologist and lawyer) and mandatory involvement in each case of the Transplantation Ethics Committee.

Therefore, Ministry of Health through the Directorate for Biomedicine controls the implementation of the lawful conduct of institutions performing BMIF procedures, whereas Articles 67 and 68 determine the operations and duties of supervision carried out by the Directorate regarding BMIF procedures.

Failure to comply with legal provisions leads to the criminal (Article 71 to 73) and tortuous liability (Article 74. and 75), with strict sanctions which should ensure lawful conduct.

We believe that the legal provision of In Vitro Fertilisation Law regarding BMIF procedures and Cell and Tissue Transplantation Law comply with the highest European standards of the *acquis* and achievements, both in professional terms and in terms of human rights and freedoms, personal choice, confidentiality and personal dignity and integrity protection of those who participated in the BMIF procedures as well as the born child. It defines clearly what is permitted/prohibited whereas all decisions are subject to regular and constant professional and institutional supervision.

ORGAN TRANSPLANTATION LAW regulates life and health protection of individuals through organ transplantation treatment, provides the same access and right to everyone for whom this is the only option and treatment method, on equal terms and without discrimination, on the basis of the Single waiting list of the RS that the Directorate for Biomedicine created with respect to the waiting lists based on the type of the organ in certain institutions. The waiting list shall be drawn up according to the

type of necessary parts of the body - organs. Donated organs are allocated to recipients on the basis of waiting lists in accordance with transparent, fair and generally accepted medical criteria (Article 23).

The provision of Article 8 of the Act provides that taking and transplanting body parts for the purpose of treatment is done in accordance with appropriate professional standards of medical science and practice and with respect for ethical principles, and that this procedure is done only if the treatment is medically justified, if it is the only possible way of treatment according to this Law. Therefore, this provision prescribes the person, place, and conditions under which the implementation of the procedure of taking and transplanting human body parts is permitted.

Furthermore, there are procedures prescribed in order to protect personal dignity and human integrity and other basic human rights and freedoms. Therefore, this procedure is done by implementing principles of the written consent or the recipient and donor's consent, donating for the purpose of treatment, non-commercial benefits as well as donor and recipient anonymity.

The provision of Article 41 excludes the possibility of abuse and stipulates that the process of taking and transplanting body parts is done after medical examinations and other treatment methods used to determine that this procedure is a benefit to the recipient, satisfying medical criteria of acceptable donor and recipient health risk with a reasonable likelihood of successful treatment.

*P*The Law, under Article 31, 32 and 35, clearly prescribes that the procedures of taking and transplanting donor and recipient's body parts guarantee protection of identity, dignity and other personal rights and freedoms, whereas the provision of Article 33 stipulates that recipient's physician has access to donor's health information, when so required by good medical reasons.

Health workers who participate in the process of taking and transplanting human body parts are required to take all the standard measures and activities to prevent the risk of spreading infectious or any other disease to the recipient in order to avoid impacts on the preserved body parts, according to the regulation of the Ministry of Health, which shall be passed upon Law adoption. The provision under Article 41 and 43 ensures human integrity protection and specifies that body parts can be taken from living donors solely for the purpose of the recipient treatment, unless there is a corresponding body part of the deceased donor or other form of medical intervention. The provision of Article 47 has the same meaning stating that taking of body parts from a living donor is allowed if the donor has given written consent for this procedure, which implies freely expressed will of the donor, and can be revoked by the beginning of the operation. Donor's consent given for body parts applies only to planned medical intervention, or only to certain taken parts of the body, but it can be also granted under another condition -that the transplantation is done to a certain person.

The provision of Article 42 prescribes protection of personal integrity in such a manner that the body parts can be taken only from an individual who is of age, legal capacity and capable of reasoning, so before taking the body parts, appropriate medical examinations and procedures are implemented to evaluate and reduce donator's physical and mental health risks. The same provision also stipulates that body parts can

be taken if a risk to donor's life or health is reasonable and satisfies medical criteria within acceptable limits and commensurate with the expected benefits to the recipient. The donor has the right to be informed of the yielded results significant for his health.

Taking body parts is done on the basis of the donor's consent information, as prescribed by the provision under Article 45 and 46, where the physician participating in the process of taking body parts is required to inform the donor of the nature, purpose and course of the treatment, the likelihood of its success and the usual risks of taking body parts.

The physician also introduces donor to the right to impartial advice regarding risks to human health and will not participate in taking and transplanting body parts, or is not recipient's chosen physician and other rights prescribed by this law.

The provision of Article 44 prescribes that Ethics Committee of Health Care Facility may authorize the taking of regenerative tissue from a minor and an adult who is not capable of reasoning, if the following conditions are met in a cumulative manner: there is no disposable and compatible donor who is capable of giving consent, the recipient is donor's sister or brother, organ donation is intended to save recipient's life; there is a prescribed consent of the legal representative or donor's tutor, or in case it lacks, the competent Centre for social work gives its opinion without opposing on the side of potential donor and recipient. The same article states that taking cells regarding donation with the purpose of saving recipient's life is also allowed in the case the prescribed consent of the legal representative or donor's tutor is obtained, or in case it lacks, the competent Centre for social work gives its opinion, if it is estimated that their intake includes only minimal risk and minimal burden for the donor.

Taking into account the customs and traditions of our society, provision under Article 51 prescribes that taking body parts from deceased donors can be done only if the person, as an adult of legal capacity and capable of reasoning, has given a written voluntary consent for this procedure to his/her chosen physician. The provision of Article 58 stipulates taking body parts from deceased minor to transplant it to another individual for the treatment purpose only with the written consent of both parents or one parent, if one of them died or was declared dead.

Taking body parts from deceased donors for transplantation to another individual after he/she was safely declared and confirmed deceased may be done in a proper way and according to medical criteria, whereas an individual whose body parts are taken for transplantation is declared deceased pursuant to this Law, if, on the basis of medical criteria, cessation of brain function is determined and confirmed. Taking body parts from the deceased donor is performed in the situation when the Health Facility Commission, consisting of at least three physicians, confirms death of the individual whose body parts can be taken for transplantation.

The provision of Article 57 stipulates that taking of body parts from a deceased person who is a foreign citizen or non-resident, is allowed for transplantation under the same terms as Serbian citizens unless otherwise stipulated by the International agreement.

Transplanting body parts is done when it is the only way of treating individuals whose part or parts of the body have been completely damaged or individuals whose damaged part or parts of the body suitable for transplantation decreased his/her quality of life that cannot be treated with other methods of comparable effectiveness although all treatment procedures have been previously conducted in accordance with medical standards and

practices. Body parts transplantation for medical treatment, is done with the approval of the medical board of the health facility. Therefore, this provision guarantees physical and personal integrity protection.

Provision of Article 21 and 22 stipulate voluntariness of body parts transplantation in the manner that it can be done only with written consent of the informed recipient who is of legal age and legal capacity and capable of reasoning. For minors and adults, who are legally incapable or incapable of reasoning, legal representative or tutor grants the consent. For persons who are not able to declare, a spouse, parent or relative in the direct or indirect line to the second degree of kinship may grant consent. Information is a basic element of these procedures including the provision of Article 28 which prescribes that a physician who participates in the process of body parts transplantation is obliged to inform the recipient on the nature, purpose and process of transplantation, the possibilities for success and common risks of what constitutes a note in the medical records. In case of urgency due to the recipient's life threat, when there is a compatible part of the human body, the physician can do the transplantation without the consent notified in medical records. Therefore, person's life or health cannot be questioned, but one should act in accordance with the rules of medical science and profession.

Organ transplantation Law implements the highest European standards and achievements, data confidentiality, donor and recipient's integrity and dignity, as well as regular and sustained foreign institutional control and supervision (through the Directorate of Biomedicine of the Ministry of Health and regular inspection activities), as well as constant (internal) individual responsibility and quality control of expert performance and transplantation system operating – organization of work by applying the Guide for Quality and Safety in organs, cells and tissue transplantation of the Council of Europe.

We believe that legal decisions in all four Laws in the field of biomedicine meet the highest European standards, norms and achievements in technical and professional terms and in terms of human rights and freedoms, personal choice, protection and confidentiality as well as personal dignity and integrity. It is clearly defined what is allowed/disallowed, and all decisions are subject to regular and continuous supervision implementation.

64. Please provide information on specific national legislative as well as administrative and technical measures designed to prevent the occurrence of torture, inhuman or degrading treatment or punishment in state institutions, prisons or police stations etc. In this respect, what measures are in place providing for the inspections of detention centres or police stations and how often such inspections take place? Is legal redress foreseen for victims?

Pursuant to Article 6 of the Law on the Execution of Criminal (Penal) Sanctions ("Official Gazette of RS" No. 85/05 and 72/09) it is stipulated that criminal penalties shall be executed in a manner which ensures the respect for the dignity of a person to whom it is being applied, and that the procedures in which the person against whom the penalties are being applied is subject to any form of torture, abuse, humiliation or experimenting are forbidden and punishable. Also, a disproportionate coercion against a person to whom penalties are applied is punishable.

Pursuant to provisions of the Law on the Execution of Criminal (Penal) Sanctions it is provided the right of defendant to file complaints and appeals, in cases of torture and other forms of inhuman and degrading treatment or punishment. Within the Administration, the process is twofold, and legal protection under the Administrative Court is provided.

Supervision over the convicted persons is performed by organizational units of the Administration for supervision (with supervision including status and protection of persons deprived of their freedom – Article 270(3) point 1. of the Law on the Execution of Criminal (Penal) Sanctions), Ombudsman, in accordance with the Law on Ombudsman, as well as NGO's dealing with the issues of protecting the rights of persons deprived of their freedom.

Article 127 of the Law on the Execution of Criminal (Penal) Sanctions stipulates that only those measures for maintaining law and order stipulated by this law and regulations adopted on the basis of this law may be applied to convicted person and only to the extent necessary, as well as that more severe measure than necessary cannot be applied given the nature of need for its purpose and its application in work. Article 128 of the same law stipulates the cases when measures of coercion may be used, Article 129 stipulates the types of measures of coercion that may be used. After the application of coercive measures, medical examination of convicted person is required, and repeated. Written report of the Security Service and the reports on conducted examination are delivered to the manager without any delay. Medical report contains statements of persons to whom the measures of coercion were applied about the manner of injuries and doctor's opinion on correlation between the measures applied and the resulting injuries. The institute manager informs the Administrative director on measures of coercion and forwards reports within 24 hours from the moment the measures were applied.

Surveillance department in the headquarters of the Administration for Execution of Criminal (Penal) Sanctions has the jurisdiction to check such cases by direct insight and interviews with the persons to whom the measures of coercion were used, without the presence of employees in the institute. In cases where there is a reason to believe that a crime which is prosecuted *ex officio*, or a commercial or disciplinary offence has been committed, authorized persons for supervision are obliged to file a criminal complaint to the competent authority, or to initiate appropriate proceedings, (Article 272. of the Law on the Execution of Criminal (Penal) Sanctions). In addition, and given that it is a criminal offence prosecuted *ex officio*, there is a legal obligation of reporting against a perpetrator of such criminal offence. Furthermore, exceeding in the application of measures of coercion by the employees in the correction facilities is treated as a serious violation of official duties, for which a disciplinary measure of employment termination may be imposed.

In the aim of torture prevention, Administration for Execution of Criminal (Penal) Sanctions, in the education and vocational training centre in Niš performs periodic training of employees in the Administration, which includes the treatment of persons deprived of their freedom, training for proper and lawful use of coercion measures and protection of human rights of persons deprived of their freedom.

It should also be noted that the Administration for Execution of Criminal (Penal) Sanctions, within the inflow of funds from the budget of the Republic of Serbia, earmarked for this purpose, renovates the existing correction facilities and builds new facilities in existing institutes, as well as new institutes (Correction institute in Belgrade), in line with the European standards, given the current overload of accommodation facilities.

Supervision over the enforcement measures is performed by the President of the Higher Court since the headquarters of the institute are located in its territory. Pursuant to Article 152 of the Criminal Procedure Code - CPC ("Official Gazette of FRY", No. 70/01, and 68/02 and "Official Gazette of the RS", No 58/04, 85/05, 115/05 – other law, 49/07, 20/09 – other law, 72/09 and 76/10) the court president or the judge appointed by him shall visit the prisoners at least once a week, and if he finds it necessary, without the presence of superintendent and guards, obtain information on how detainees are fed, how are they supplied with other necessities and how are they being treated. The president, or judge appointed by the president is obliged to immediately inform the Ministry for Justice on irregularities observed during his visit to the prison, and the ministry shall within 15 days notify the court president or the judge about measures taken to eliminate the irregularities. The Appointed judge cannot be the investigative judge at the same time. Paragraph 4 of the same Article stipulates that the president of the court and the judge may at any time visit detainees, to talk with them and to receive complaints from them. Article 150 of the same code provides the right for Ombudsman to freely visit detainees and to interview them without the presence of other persons, in accordance with the law.

If the victim was a subject to criminal offences of abuse and torture, the victim in the criminal proceedings has a status of an injured party and enjoys all his/her rights prescribed by the law (restitution request).

Article 34 of the Code of Police Ethics stipulates that "no one in the Ministry of Interior is permitted to order, perform, instigate or tolerate torture or other cruel or inhumane treatment which degrades human personality or other activity that may violate the right to life, freedom, personal safety, respect for private or family life, assembling and associating or any other right guaranteed by provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms".

In its work, the Ministry of Interior is guided by principles of general international law, including the prohibition of torture, which is contained in numerous international treaties on human rights. International acts are intrinsically implemented in the framework of legal system of the Republic of Serbia, including the most important regulations regarding the work and conduct of the Ministry of Interior (Constitution of the Republic of Serbia, Criminal Code of the Republic of Serbia, the Law on Juvenile Crime Offenders and Criminal Protection of Juveniles).

Ministry of Interior has provided an array of by-laws which contain the prohibition of torture, inhumane or degrading punishment or treatment, in accordance with the European standards (Code of Police Ethics, Rulebook on manner of performing police tasks, Rulebook on police jurisdictions, Rulebook on technical characteristics and method of use of coercive measures , Instruction on procedures of the police officers on

juveniles and young adults, Decree on Disciplinary Responsibility in the Ministry of Interior and Rulebook on complaints procedure).

Manner of conduct of police officers in performing security duties, and especially conditions for applying means of coercion are precisely provided in the regulations. The Law on Police stipulates that the police officer “shall use measures of coercion only if otherwise cannot complete the task and in a restrained manner and proportional to the danger that threatens legally protected goods and values, or to the severity of the act which police officer is trying to suppress”.

Mildest measure of coercion must always be used, proportional to the reason of use and in a method by which the official task is completed without unnecessary adverse effects, or in a manner that causes the least harm or material damage.

Upon every use of means of coercion, police officer shall file a report, not later than within 24 hours, and justification and regularity of using the means of coercion shall be evaluated by the official who is authorized to do so by the Minister.

If the authorized person determines that the use of means of coercion was unjustified and irregular, he proposes enforcement of statutory measures to the Police Director.

All cases of irregular use, exceeding and abuse of police jurisdictions are covered by the provisions of the Criminal Code of the Republic of Serbia and provisions on disciplinary responsibility of the employees.

The Ministry of Interior has the responsibility to file criminal charges, initiate disciplinary proceedings for serious misconduct, bring a decision on suspension for a police officer from the MoI until the termination of the proceedings, as well as to issue a decision to terminate the employment in case of a final judgement where the police officer is sentenced to imprisonment for a period exceeding three months.

Measures of control and supervision of detention centres or police stations, the Ministry shall conduct directly via Commission for supervision of implementation of the European convention on preventing torture, inhumane or degrading punishment or treatment, formed for the aim of:

1. Control and supervision of facilities for detention of persons within jurisdictions of the Ministry;
2. Insight into the condition of the premises and rooms which are being used for temporary detention of persons deprived of their freedom;
3. Control of hygiene conditions in the facility for detention of persons;
4. Supervision of facilities intended for conducting interviews with persons in order to find non-standard items (baseball bats, metal rods etc.) and insight into facilities intended for storage of such items;
5. Control of records of persons apprehended and persons deprived of their freedom and applied powers;
6. Control and supervision of processed subjects (cases) with the elements of torture, inhumane or degrading treatments performed by police officers of the Ministry;
7. Proposing measures for eliminating observed failures and control of proposed measures;

8. Organizing professional educations in the area of preventing torture, inhumane or degrading punishment and treatments, conduct of police officers towards the persons deprived of their freedom, detained persons and juveniles in cases where determined necessary after executed controls;
9. Organizing lectures on the subject of prevention and promotion of protecting the rights of persons deprived of their freedom, detained persons and juveniles etc.;

MoI Commission for supervision of implementation of the European Convention on preventing torture, inhumane or degrading punishment or treatment shall arrange a tour of the premises of police directorates and their organizational units (police stations and police substations) in accordance with objectives contained in the decision of the Minister and recommendations of the Council of Europe's Committee for prevention of torture. In the period between 2005 and 2007, the Commission had performed tours of the premises in all 27 regional police directorates, and within these tours the Commission visited total of 108 police stations and police substations, and made detail elaborates on every individual case (total of 1189 pages). In order to act upon recommendations in the period from 2008 to 2010, the Commission performed repeated tours of premises for all 27 regional police directorates (and their 157 organizational units), during which, among other things, it gained insight into the condition of 229 detention facilities.

Visits to the regional police directorates the Commission plans and implements continuously, depending on the condition that was found during previous visits to regional police directorates, in order to control the implementation of recommendations of the Council of Europe's Committee for prevention of torture.

65. Is there any independent body which oversees the conditions in such institutions? Give details on disciplinary and criminal sanctions for State agents accused of ill treatment or torture during the exercise of their duties. Please provide relevant statistics.

Article 278 of the Law on the Execution of Criminal Sanctions (*Official Gazette of the RS*, No 85/05 and 72/09) requires from the National Assembly of the Republic of Serbia to establish a **Commission for the Control of the Execution of Criminal Sanctions**.

The mentioned Article provides that the National Assembly establishes this Commission upon the proposal of the Committee on the Judiciary and Administration. The Commission has five members who are familiar with the issues relevant to the execution of criminal sanctions but who are not employed at the Administration for the Execution of Penitentiary Sanctions. The Commission is independent in its operation, and the abovementioned Administration is required to provide the Commission with all the data relevant for its operation. The Commission has all the powers of an authorised entity through which the Administration for the Execution of Penitentiary Sanctions supervises the work of penitentiary institutions. This Administration submits to the Commission its work report once a year. The Commission submits a report on the situation in the area of execution of criminal sanctions regulated by the Law, at least once a year and communicates it to the National Assembly and the line Ministry.

Other than the above mentioned provisions, the Law does not further specify the procedure of nomination of candidates for the Commission's members, criteria for their

nomination and selection, provision of conditions and resources for their work, and resources for a special compensation for the work of the Commission members. This was the reason why an issue was raised of how to address the fact that the Law has failed to regulate these issues, i.e. how will the Committee, based on the provisions of the Law, propose the members of the Commission and using which act will they provide the conditions and resources for the Commission's operation. It is beyond doubt that the provision of the resources is the first precondition for exercising the principle of independence and autonomy of the Commission in the discharge of its function as defined by the Law.

These outstanding issues are the reason why this Commission has not been established yet. However, the Committee on the Judiciary and Administration is close to a solution to overcome the above mentioned issues, and it is expected that it will make a motion for establishing the Commission shortly.

The Committee on the Judiciary and Administration has held, in this legislature of the National Assembly, two Committee sittings in penitentiary and correctional institutions, one in 2009 at PCI Zabela, and the other in 2010 at PCI Niš, when the members visited the Neuropsychiatric Hospital "Gornja Topionica". Some members of the Committee on Labour, Veterans, and Social Issues and Committee on Health and Family participated in the Committee's work

The Protector of Citizens (hereinafter: Ombudsman) is one of the institutional mechanisms for controlling the respect of rights of persons deprived of freedom.

Article 150 of the Criminal Procedure Code (*Official Gazette of the FRY*, Nos 70/2001 and 68/2002 and *Official Gazette of the RS*, Nos 58/2004, 85/2005, 115/2005, 85/2005 – additional law, 49/2007, 20/2009 – additional law, 72/2009 and 76/2010) provides that the Ombudsman is entitled to make unhindered visits to detained persons and to talk to them in private, according to the law.

According to Article 22 of the Law on the Protector of Citizens (*Official Gazette of the RS*, Nos 79/2005 and 54/2007) the Ombudsman is responsible for the control of the respect of rights of persons deprived of liberty within the scope of activities of state authorities, primarily institutions under the competence of the Ministry of Justice-Administration for the Execution of Criminal Sanctions, Ministry of the Interior, Ministry of Health, and the Ministry of Labour and Social Policy. His/her role is to monitor the respect of rules and legislation of their operation with respect to the persons deprived of freedom, respect of the rights of persons deprived of freedom and detection of violations both committed in enactments and actions, and violations that result from omission. In order to protect the rights of persons deprived of liberty, the Ombudsman cooperates with the competent state authorities and non-governmental organisations dealing with individual rights and freedoms, primarily the rights of persons deprived of freedom, and with relevant international bodies. The Ombudsman has his/her deputies one of whom deals also with over the control of the protection of rights of persons deprived of freedom.

In addressing the applications submitted by persons deprived of liberty who complain of violation of their human rights, but also at his/her own initiative, the Ombudsman conducts on-the-spot controls of the institutions where such persons are located, makes

reports of the violations found, and gives recommendations as to how to remedy them. The Ombudsman is entitled to an unhindered access to all institutions and premises where persons deprived of liberty are located and to talk to the persons deprived of freedom in privacy, as well as with the employees of the institutions. The Ombudsman is also entitled to inspect any data, regardless of the degree of confidentiality. The Ombudsman conducts periodic preventive monitoring visits with a multidisciplinary team consisting of doctors, psychiatrists and forensic experts, in addition to lawyers. A special attention is given to accommodation capacities and other living conditions of persons deprived of liberty, whilst reports recommend measures to be implemented in order to remedy the noted systemic and individual deficiencies.

Statistical data are provided in the answer to question No.64.

In 2010, the Ombudsman informed, in one case, the competent public prosecutor on the circumstances indicating that persons deprived of liberty had been exposed to torture.

The Republic of Serbia has signed the following 7 basic UN conventions in the area of human rights protection:

- 1) International Covenant on Civil and Political Rights;
- 2) International Covenant on Economic, Social and Cultural Rights;
- 3) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- 4) Convention on the Elimination of all Forms of Discrimination against Women;
- 5) Convention on the Rights of the Child;
- 6) Convention on the Elimination of all Forms of Racial Discrimination;
- 7) Convention on the Rights of Persons with Disabilities.

To date, Serbia recognised the competence of the Human Rights Committee, Committee for the Elimination of Racial Discrimination, Committee for the Elimination of Discrimination against Women and UN Committee against Torture, and it also ratified the European Convention on the Prevention of Torture, Inhuman, or Degrading Treatment or Punishment and at the same time the competence of the Council of Europe Committee against Torture that has been on two missions to Serbia up to this date.

In addition, **NGOs** active in the protection of human rights of persons deprived of liberty also perform an independent control (Helsinki Commission for Human Rights, Human Rights Committee from Valjevo, Human Rights Centre from Niš, Belgrade Human Rights Centre).

In case of a reasonable suspicion that excessive coercive force or any other form of torture, mistreatment or humiliation has been exerted on a convicted person, the **Administration for the Execution of Criminal Sanctions under the Ministry of Justice** of the Republic of Serbia institutes the disciplinary proceedings against the employee of the penitentiary-corrective institution, and in case of reasonable suspicion that the actions of the employee have features of a criminal offence, it files a crime report to the competent prosecutor's office. Exceeding powers in the application of means of coercion constitutes is deemed as a severe violation of employment responsibilities and duties for which a measure of employment termination may be pronounced.

In 2009, 20 disciplinary proceedings were instituted against the employees of the Administration for the Execution of Criminal Sanction with respect to their exceeding of powers in application of means of coercion, of which 17 were finalised by the end of 2009. Thirteen employees were fined for a severe violation of employment duties by reducing their full-working time monthly salary by 20% to 30% for the period of six months, and one employee was disciplinary punished by termination of employment. In 2010, two disciplinary proceedings were instituted and terminated, whilst three disciplinary proceedings started in 2009 were also finalised in 2010. Four employees were fined for severe violations of employment duties by reducing the full-working time monthly salary by 20% to 30% for the period of up to six months.

In 2009, criminal proceedings were also instituted against 13 employees of the Administration for the Execution of Criminal Sanctions as they committed criminal offences related to the excessive use of means of coercion. The same persons were also detained pending trial. The said criminal proceedings are still pending. In 2010, there have been no criminal proceedings with respect to excessive use of means of coercion.

The Ministry of the Interior organises and conducts the internal control of the police, taking into account also public opinion on the police (Article 7, para 1, Item 13, of the Law on Police, *Official Gazette of the RS*, No 101/2005 and 63/2009 – decisions of the Constitutional Court). The Ministry of the Interior established an Internal Police Control Department managed by assistant minister who is appointed according to the Law (Article 7, Para 2, of the Law on Police).

Control of the Police in the Republic of Serbia is regulated by the Law on Police (2005) and may be **external and internal**. The external police control is carried out by the National Assembly, the Government, competent judicial authorities, state authorities competent for certain supervisory tasks, as well as other institutions and bodies specified by the law. The internal police control is conducted by the Internal Police Control Department which focuses in its operation and conduct on the respect of international conventions ratified by Serbia that relate to human rights, Code of Police Ethics, and other recognised standards of professional conduct of police officers.

Control of police work is also conducted by addressing complaints filed by authorised heads of organisational units of the Ministry, i.e. the Complaints Commission (composed of three members one of whom represents the public, which ensures respect of the principle of objectivity and independence in operation and decision-making) by conducting the complaint procedure (Article 180 of the Law on Police). The procedure for the resolution of complaints is specified by the Minister in the Rulebook on the Procedure for Resolving of Complaints (*Official Gazette of the RS*, No 54/2006 of 27.06.2006) and an Instruction on the Application of the Complaint Procedure Rules (No 5405/09-6 of 26.10.2009).

According to the data held by the Ministry of the Interior, it can be said that the phenomenon of police mistreatment and torture is not frequent in Serbia. Rather, there are only isolated cases whose number is inconsiderable if compared to the number of police officers and police interventions undertaken (a similar assessment was given by the Council of Europe Human Rights Commissioner, stating that cases of police violence in Serbia are an exception rather than a rule).

In the last 3 years (2007, 2008 and 2009), 33 crime reports were filed against 45 police officers for criminal offences with the elements of torture. The number of crime reports filed for criminal offence with the elements of torture makes a total of 2.4 % of the total number of all crime reports filed against police officers.

Apart from criminal responsibility, disciplinary responsibility measures too were undertaken against all police officers by instituting disciplinary proceedings and discharging from work in the Ministry of the Interior.

The Internal Police Control Department, as an organisational unit of the Ministry of the Interior responsible for the control of legality of police officers' work, focuses particularly on checking citizens' grievances and other indications of excessive use of means of coercion. Citizens' grievances are the Department's priority. Thus, immediately after their receipt, the Department checks them, and in case it establishes that police officers exceeded their authorities, it recommends that disciplinary measures be undertaken against the responsible police officers.

A Commission for the Monitoring of the Implementation of the European Convention on the Prevention of Torture, Inhuman, or Degrading Punishments or Treatment, composed of the Internal Police Control Department, Department for Finances, Human Resources and Common Affairs, Crime Police Directorate, and Police Directorate.

The Commission's tasks are to:

- Inspect premises for detaining persons in the Ministry's organisational units;
- Conducts direct inspection of the state of buildings and premises used for temporary stay of detained persons;
- Supervises hygienic conditions in the premises used to detain persons;
- Inspect premises used for interviewing persons for the purpose of detecting non-standard objects (baseball bats, metal sticks, etc) and directly inspects buildings and places intended for their storage;
- Supervises (inspects) records of detained persons and powers applied, and the objects found with them;
- If it assesses as required, it supervises and monitors processed cases with elements of torture, inhuman or degrading treatments committed by the Ministry's police officers;
- Organises and initiates training in the area of prevention of torture, inhuman or degrading punishments and treatment, and conduct of police officers of the Ministry toward the detained persons;
- Performs other activities intended for prevention and promotion of protection of the rights of persons deprived of liberty, detained persons and minors.

In addition, the Commission has developed forms "Rights of the person deprived of liberty", "Rights of a detained person", and "Rights of a minor deprived of liberty", in accordance with the Criminal Procedure Code, and the Ministry implements them in practice. These forms are published at the website of the Ministry of the Interior in .PDF format, under "Documents" and sub-title "The Commission of the Ministry of the Interior for the Prevention of Torture, Inhuman or Degrading Punishments or Treatment", in Serbian and English.

66. Please provide information on specific national legislative, strategies as well as measures designed to prevent the occurrence of slavery, servitude and forced or compulsory labour.

Prohibition of slavery, servitude and forced labour is prescribed by Article 26 of the Constitution of the Republic of Serbia ("OG of RS" No. 96/2006) so that no one may be kept in slavery or servitude. Any form of human trafficking is prohibited, as well as forced labour (sexual or financial exploitation of person in unfavourable position is considered forced labour). Labour or service of persons serving sentence of imprisonment if their labour is based on the principle of voluntarism with financial compensation, labour or service of military persons, or labour or services during war or state of emergency in accordance with the measures prescribed on the declaration of war or state of emergency, shall not be considered forced labour.

Furthermore, the right to work is guaranteed by Article 60 of the Constitution of the Republic of Serbia that guarantees the right to work in accordance with the law. Everyone shall have the right to choose his occupation freely and all jobs shall be available to everyone under equal conditions. Everyone shall have the right to respect of his/her personal dignity at work, safe and healthy working conditions, necessary protection at work, limited working hours, daily and weekly interval for rest, paid annual leave, fair remuneration for work and legal protection in case of termination of employment and no one may wave these rights. Women, the youth and persons with disabilities shall be provided with special protection at work and special working conditions in accordance with the law.

It should be emphasized that the Constitution (Article 16) prescribes that generally accepted rules of the international law and ratified international treaties present an integral part of the legal system of the Republic of Serbia and that they shall be directly applied. With regard to this, we would like to mention that the Republic of Serbia has ratified numerous relevant conventions of the International Labour Organisation.

On 31 August 2009, the National Assembly adopted amendments to Article 388 Human Trafficking of the Criminal Code of the Republic of Serbia (OG of RS" Nos. 85/2005, 88/2005 – corrigendum, 107/2005 corrigendum, 72/2009 and 111/2009) increasing the statutory minimum and maximum for the basic form of the criminal offence, laying down the imprisonment of three to twelve years for the basic form of the criminal offence without the possibility of pronouncing sentence below the statutory minimum. It is also laid down that the users of services of victims of human trafficking shall be punished by six months to five years of imprisonment if the victim of human trafficking is an adult, and one to eight years of imprisonment if the victim of human trafficking in persons is a minor, which is in accordance with the Council of Europe Convention on Action against Trafficking in Human Beings that the Republic of Serbia ratified on 18 March 2009.

Amendments to Article 185 of the Criminal Code of RS have been adopted and the title of the Article has been changed to Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography . The title of Article 389 of the Criminal Code of Serbia has also been amended to Trafficking in Minor Persons for Adoption which increases the age limit and protects the minors from all forms of exploitation and trafficking. Furthermore, more stringent potential criminal

sanction for the criminal offence from Article 184 Mediation in Prostitution has been introduced.

In December 2006 the Government of the Republic of Serbia adopted the Strategy for Fighting Human Trafficking ("OG of RS" No. 111/06) showing the readiness and political will to join the world efforts in fighting human trafficking. This document was made pursuant to the Guidelines for National Action Plans of the Stability Pact and in accordance with the Program of the International Centre for Migration Policy Development (ICMPD) for development and implementation of comprehensive national anti-trafficking responses and the best practices in the region.

On the session held on 30 April 2009 the Government of the Republic of Serbia adopted the Conclusion on Adoption of the National Action Plan (NAP) for Fighting Human Trafficking for the period 2009 to 2011. It is important to mention that this NAP is a unique solution in the region and that it was agreed upon by representatives of governmental, nongovernmental and international organisations. Thanks to this, this comprehensive action plan presents an example of good practice and unique cooperation in the region.

Pursuant to the Law on Prohibition of Discrimination ("OG of RS" No. 22/2009) slavery, human trafficking, apartheid, genocide and ethnic cleansing are qualified as severe forms of discrimination (Article 13 (4)). It is forbidden to practice physical and other forms of violence, exploitation, express hatred, disparagement, blackmail and harassment pertaining to gender, as well as to publicly advocate, support and act following prejudices, customs and other social models of behaviour based on the idea of gender inferiority or superiority, i.e. stereotypical gender roles (Article 20 (2)).

Great efforts are being invested in increasing cooperation on the international, regional, and national level to effectively apply the legislature and programs related to human trafficking.

In order to improve cooperation of the judiciary and the police, the Decision of the Government of the Republic of Serbia from 11 December of 2008 ("OG of RS" No. 114/2008) established the Commission for action harmonisation and further improvement of cooperation in the areas of judiciary and the internal affairs in the issues of public interest, particularly fight against corruption, organised crime, terrorism, drugs, human trafficking, asset forfeiture, money laundering and other related issues.

The Commission was established to provide opinion, expert explanation and to propose measures aiming at action harmonisation and further improvement of cooperation within the European Union visa regime liberalisation for the republic of Serbia and the process of European integrations, above all on the issues of fight against corruption, organised crime, terrorism, drugs, human trafficking, asset forfeiture, money laundering and other related issues.

The Criminal Procedure Code was amended ("OG of FRY" Nos. 70/2001. and 68/2002 and "OG of RS" Nos. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010) in August 2009 in order to introduce special investigative techniques and special jurisdiction of prosecutors and the police. Training

programs are being developed for implementation of the Law on Seizure and Confiscation of the Proceeds from Crime, for financial investigation, forfeiture of real estates as means for committing criminal offense. Regional cooperation is the key in fighting trafficking in persons and it includes use of evidence obtained abroad. In 2006 Serbia ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters which entered into force in August 2007 as an especially important international treaty in the area of international legal assistance. International and European standards in the area of international legal assistance in criminal matters were introduced in the Law on Mutual Assistance in Criminal Matters ("OG of RS" No. 20/2009) which entered into force in March 2009.

The Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings was passed on 18 March 2009.

The Law on Foreigners ("OG of RS" No. 97/2008) which entered into force on 1 April 2009 laid down that a foreigner who is the victim of human trafficking shall be granted temporary residence in the Republic of Serbia, and if they do not have sufficient funding to provide for themselves, they shall be provided with appropriate accommodation, meals and basic living conditions (Article 28).

67. Has Serbia ratified relevant international conventions and agreements?

The Constitution of the Republic of Serbia ("Official Gazette of RS" No. 98/2006 Article 16) prescribes that 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 that they shall be applied directly.

The Republic of Serbia has ratified the following conventions:

I UNITED NATIONS CONVENTIONS

1. International Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921, as amended by the Protocol signed at Lake Success, New York, on 12 November 1947. (succession: 12 Mar 2001);

2. International Convention for the Suppression of the Traffic in Women of Full Age, concluded at Geneva on 11 October 1933, as amended by the Protocol signed at Lake Success, New York, on 12 November 1947 (succession: 12 Mar 2001);

3. International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, amended by the Protocol signed at Lake Success, New York, 4 May 1949. (succession: 12 Mar 2001);

4. International Convention for the Suppression of White Slave Traffic, signed at Paris on 4 May 1910, amended by the Protocol signed at Lake Success, New York, 4 May 1949 (succession: 12 Mar 2001);

5. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Lake Success, New York, 21 March 1950 (succession: 12 Mar 2001);

6. Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Lake Success, New York, 21 March 1950 (succession: 12 Mar 2001);
7. Slavery Convention, Geneva, 25 September 1926 and Protocol amending the Slavery Convention signed at Geneva on 25 September 1926 (succession: 12 Mar 2001);
8. Protocol amending the Slavery Convention signed at Geneva on 25 September 1926, New York, 7 December 1953 (succession: 12 Mar 2001);
9. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, 7 September 1956 (succession: 12 Mar 2001);
10. Convention on the Rights of the Child, New York, 20 November 1989 (succession: 12 Mar 2001);
11. Amendment to the article 43 (2) of the Convention on the Rights of the Child, New York, 12 December 1995 (acceptance: 4 October 2001);
12. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, New York, 25 May 2000 (ratification: 2 July 2002, entry into force: 10. Oct 2002)
13. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000 (signature: 12. Dec 2000)

II INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS

14. Forced Labour Convention, Geneva, 28 June 1930. /No.C29/ (succession: 24 Nov 2000);
15. Labour Inspection Convention, 1947, /No.C81/ (ratification: 24 Nov 2000);
16. Night Work (Women) Convention (Revised), 1948 , /No.C89/ (ratification: 24 Nov 2000);
17. Night Work of Young Persons (Industry) Convention (Revised), 1948, /No.C90/ (ratification: 24 Nov 2000);
18. Abolition of Forced Labour Convention, Geneva, 1957, /No.C105/ (ratification: 10 July 2003);
19. Weekly Rest (Commerce and Offices) Convention, 1957, /No.C106/ (ratification: 24 Nov 2000);
20. Labour Inspection (Agriculture) Convention, 1969, /No.C129/ (ratification: 24 Nov 2000);

21. Minimum Wage Fixing Convention, 1970, /No.C131/ (ratification: 24 Nov 2000);
22. C132 Holidays with Pay Convention (Revised), 1970, /No.C132/ (ratification: 24 Nov 2000);

23. Worst Forms of Child Labour Convention, Geneva 17 June 1999, /No.C182/ (ratification: 10 July 2003)

III COUNCIL OF EUROPE CONVENTIONS

24. Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950, /CETS No. 005/ - Article 4 (entry into force: 3 March 2004);

25. Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16 May 2005, /CETS No: 197/ (entry into force: 14 April 2009);

26. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote, 25 October 2007, /CETS No. 201/ (ratification in course).

68. What is the practical experience with implementing the legislation in this area?

The Constitution of the Republic of Serbia ("Official Gazette of RS" No. 98/2006) Article 26 stipulates that no one may be kept in slavery or servitude, that any form of human trafficking is forbidden and that forced labour is forbidden. It is therein provided that sexual or financial exploitation of person in unfavourable position is considered as forced labour. Labour or service of persons serving sentence of imprisonment if their labour is based on the principle of voluntarism with financial compensation, labour or service of military persons, or labour or services during war or state of emergency in accordance with the measures prescribed on the declaration of war or state of emergency, shall not be considered forced labour.

Since there was a problem in practice in application of Article 111 of the b) Criminal Code of the Republic of Serbia (consumed the cases of trafficking and human trafficking), there was a need for new legislative solution and more precise definition of these forms of crime. New Criminal Code of the Republic of Serbia entered into force on 1st of January 2006, which separated and specifically sanctioned trafficking and illegal crossing of borders and human trafficking (provisions of Article 350).

The Criminal Code of the Republic of Serbia ("Official Gazette of RS" No. 85/05, 88/05 – corr., 107/05 – corr., 72-09) in Article 371 stipulates that "Whoever by violating international law within a widespread or systematic attack directed against a civilian population, orders: Carry out murders; putting the population or a part thereof in such a conditions of life that lead to their complete or partial extinction; enslavement; forced relocation; torture; rape; forced prostitution; forced pregnancy or sterilization in order to change the ethnic composition of population; persecution or expulsion on political, religious, racial, national, ethnic, cultural, sexual or any other grounds; detention or abduction of persons without giving information to deprive those persons of legal protection; oppression of a racial group or establishing domination of one such

a group over another; or any other similar inhuman treatments which deliberately cause severe suffer or serious endangering to health or who commits any of the foregoing acts, shall be punished by imprisonment for at least 5 years, up to 30 to 40 years”.

Criminal Code in Article 390 stipulates the criminal offense of holding in slavery and transportation of enslaved persons. It is provided: whoever, in violating the rules of international law, places another person in slavery or some similar relation or keeps it in such a relation, buy, sell, sell to another person or mediates in buying, selling or handing of such a person or incites another person to sell its own freedom or the freedom of the person it supports or takes care of, shall be punished by imprisonment from 1 to 10 years, and if the offense is committed against a minor, shall be punished with imprisonment from 5 to 15 years.

The Law on Criminal Procedure provides legal presumption for proactive approach in the fight against trafficking. This approach, which is already being applied, is based more on evidences collected by special investigation techniques, rather than on the testimony of the victim.

According to the statistical reports in the last 5 years there were no reported or prosecuted persons for such a criminal offenses in Serbia.

According to the case analysis of the Special Department of the High court in Belgrade, it was found that in criminal proceedings, which are being executed in this department because of illegal crossings of the national border and human trafficking from the Article 350 of the Criminal Code, an international element is largely present, whether it relates to the perpetrators of the crime, or persons injured in these cases (persons who are trafficked), and the fact that the predicate offenses are typically committed in the territories of larger number of states.

When it comes to specified criminal offense, in 2003, total of 13 criminal proceedings were initiated due to above mentioned criminal offense, of which 10 are completed with final legal judgements, total number of processed perpetrators in all these proceedings is 100, and 85 of them are found guilty by final convictions.

We use this opportunity to point out that the territory of the Republic of Serbia, as is well known, one of the main transit routes for smuggling heroin and trafficking to the countries of European Union, and exactly for these reasons in these criminal offenses also an international element appears, expressed through cooperation between criminal organizations from various countries. In that sense, there is a significant cooperation on international level, which led to the fact that other countries processed organized criminal groups that collaborated with so-called domestic criminal groups. The most significant types that appear in our country are drug trafficking and trafficking in persons, which we have already presented with statistical data. The court regularly notifies on outcome of the every criminal proceeding to the competent state authorities and representatives of the court, which participate in working groups that adopt appropriate strategies to combat crime and combat against particularly two types of illegal trade.

The Republic of Serbia strives toward proactive approach in combating human trafficking, thereby reducing secondary victimization of victims. Repeated victimization

of victims during court procedures and cross-examination by defence counsel of the accused can be largely avoided by using this approach.

When conducting politics of the Republic of Serbia within the Constitution and legislation of National Assembly, in line with UN Millennium Development Goals and Poverty Reduction Strategy, the Government influences overall reduction of factors which contribute to human trafficking, especially the women and children in the Republic of Serbia. The Government of the Republic of Serbia adopted Strategy on Fighting Human Trafficking in the Republic of Serbia on 12th of December 2006, which was made pursuant to the Guidelines for National Action Plans of the Stability Pact and in accordance with the Program for development and implementation of comprehensive national anti-trafficking responses and the best practices in the region, and which is consisted of series of measures and activities to be undertaken in order for timely and comprehensive response to this major social problem.

In order to protect the rights and interests of victims, the Republic of Serbia signed the Declaration on obligations in Ministry forum of the Stability Pact held in Tirana in 2002. By signing this declaration, Ministry of the Interior has committed to legalize the status and guarantee the extension of residence permits to foreign citizens victims in human trafficking and thus contribute to more efficient stopping of network of this kind of organized crime.

Having in mind the aforementioned standards of human trafficking victims, as well as international commitments of our country, the Ministers of Interior of RS in 2004 adopted Instructions on conditions of approval of temporary residence permits to foreign victims of trafficking.

69. How are the rights protecting and upholding respect for private and family life, home and communications ensured? In which circumstances can they be set aside?

- Constitutional and legislative measures designed to protect and uphold respect for private and family life and home and the implementation of these measures:

The Constitution of the Republic of Serbia ("Official Gazette of RS", no. 98/2006) sets out in its Article 40 that the person's home shall be inviolable, i.e. that no one may enter a person's home or other premises against the will of its tenant nor conduct a search in them, without the court order. Entering a person's home or other premises, and in special cases conducting search without witnesses, shall be allowed without a court order if necessary for the purpose of immediate arrest and detention of a perpetrator of a criminal offence or to eliminate direct and grave danger for people or property in a manner stipulated by the law. The Criminal Code ("Official Gazette of the RS", no. 85/05, 88/05, 107/05, 72/09 and 111/09, hereinafter: CC) of 6 October 2005, sanctions the violation of the inviolability of the home (Article 139) with a fine or imprisonment up to 3 years, as well as the conduct of an illegal search of the home (Article 140) with the imprisonment sentence in the duration of up to three years.

Personal data enjoy constitutional, legal and judicial protection. The right to have one's personal data safeguarded is a constitutional right. The Constitution of RS in its Article 42 guarantees the protection of personal data and stipulates that the collection, keeping,

processing and using of personal data shall be regulated by the law. Additionally, the Constitution of Serbia defines in that same provision that the use of personal data for any purpose other than the one they were collected for shall be prohibited and punishable in accordance with the law, unless these are necessary to conduct criminal proceedings or protect the safety of the Republic of Serbia, in the manner stipulated by the law. Finally, the Constitution of Serbia defines in its Article 42 that everyone shall have the right to be informed about personal data collected about him in accordance with the law and the right to court protection in the event these are abused.

The principal umbrella law governing the protection of personal data is the Law on Personal Data Protection (“Official Gazette of RS”, no. 97/2008 and 104/2009 – other law, hereinafter: LPDP) the aim of which is to ensure to each and every natural person the exercise and the protection of his rights to privacy and other rights and freedoms. Provisions of the LPDP are applied to all types of automated processing as well as to the processing contained in the collection of data that cannot be performed in an automatic manner.

The elements, conditions, contents and the procedure for upholding respect for family life are set out in the Family Law (“Official Gazette of RS”, no. 18/05) of 24 February 2005, which includes the following provision: “All have the right to respect of their family life” (Article 2(2)). The Family Law does not contain provisions defining the family; instead, pursuant to the provisions of Article 2 (2) of this Law, the family life is defined as a legal standard, i.e. the courts in the Republic of Serbia are left with the possibility to define the notion of the family in each particular case leaning on the practice of the European Court of Human Rights.

The Rulebook on the organisation, norms and professional work standards of centres for social work (“Official Gazette of RS”, no. 59/08 and 37/10) contains the principles that oblige every centre for social work (the guardianship authority), in the performance of their public authority in the field of protection and family assistance, and exercising of rights and rendering services, to respect human rights and the dignity of the beneficiary (Article 6), safeguard the confidentiality of information on personal and family circumstances (Article 14), represent interests and rights of beneficiaries and ensure equal access to services to all citizens, irrespective of their ethnic, cultural, religious, gender or socioeconomic differences, disability and sexual orientation.

Violations of the right to uphold respect for private and family life as set out in Article 8 of the European Convention on Human Rights pertaining to the violation of right to family life, were found in six judgements of the European Court of Human Rights, whereas in one case it was established that there were no violations of the right the applicant had complained about. The judgements also found the violation of the right to a hearing within a reasonable time limit and to an efficient legal remedy and awarded the payment of general damages – in three of the cases these were accompanied by the payment of legal costs. The applicants’ complaints included: the length of the divorce proceedings and the granting of custody rights, the establishment of paternity and maintenance for children, the dragging of the execution of a final judgement, i.e. the failure to execute the final judgement on custody, i.e. visitation, as well as the fairness of conducting the proceedings/judgement reference: V.A.M. against Serbia, application no. 39177/05; Tomic against Serbia, application no. 25959/06; Jevremovic against Serbia, application no. 3150/05; Felbab against Serbia, application no. 14011/07;

Salontaji – Drobnjak, application no. 26500/05; Damjanovic against Serbia, application no. 5222/07; Krivosej against Serbia, application no. 42559/08)/

The measures the Republic of Serbia has taken with a view to executing these judgements, in order to ensure the respect for private and family life, aimed at removing shortcomings in the whole legal system in the Republic of Serbia are the following:

- the judgements were published in the Official Gazette of RS in Serbian and English;
- the awarded damages were paid;
- In September 2008, the seminar on the implementation of Article 8 of the European Convention was organised. Apart from the judges from the European Court of Human Rights and the representatives of the Secretariat, it was attended by the representatives of all public authorities whose work is related to the exercise and the protection of the right to private and family life. The debate contributed to the clearer identification of problems. The ideas for their resolution were also presented.
- The Ministry of Labour and Social Policy has adopted the Manual on the competences of the Centres for Social Work, the time frame and the procedures that shall be carried out with regard to the enforcement of the Family Law. The acting in accordance with this Manual commenced on 1 April 2009;
- it is to be expected that the new Law on Executive Procedure shall prescribe measures that shall ensure a more efficient execution of court judgements in family matters.

- Constitutional and legislative measures designed to protect and uphold respect for the privacy of communications and the implementation of these measures:

Article 41 of the Constitution of the Republic of Serbia stipulates that the confidentiality of letters and other means of communication shall be inviolable and that derogation shall be allowed only for a specified period of time and based on the decision of the court if necessary to conduct criminal proceedings or protect the safety of the Republic of Serbia, in a manner stipulated by the law. The Criminal Code penalises the violation of the confidentiality of letters and other mail (Article 142) with the fine or imprisonment sentence up to two, that is, 3 years, as well the unauthorised wiretapping or recording (Article 143), with the fine or imprisonment sentence up to 3, or 5 years.

The Law on Electronic Communications (“Official Gazette of RS”, no. 44/10, hereinafter: LEC) of 30 June 2010, in the objectives and principles Section for regulating the relations within the electronic communications sector (Article 3) provides that they are, *inter alia*, based on ensuring a high level of protection of personal data and user privacy, in accordance with the LPDP and other laws. Hereby the Commissioner, within the overall scope of his work, shall be in charge of the personal data protection in the field of electronic communications (in particular regarding data retention and confidentiality of communications).

Pursuant to Article 126 of the LEC, interception of electronic communications that reveals the content of communications shall not be permitted without the prior consent of the user, except for a specified time and based on the court decision, if necessary for conducting criminal proceedings or the protection of safety of the Republic of Serbia, but this shall not prevent the recording of communications and the related traffic data carried out for the purpose of providing evidence of commercial transactions or other business relations, in which both parties are aware, or must be aware of or have been

explicitly warned that the communications may be recorded. The use of electronic communications networks and services to store or gain access to user data stored in the terminal equipment of subscribers or users shall be allowed on the condition that the subscriber or user concerned is provided with clear and comprehensive information about the purpose of data collection and processing, in accordance with the law governing personal data protection, and is also given an opportunity to refuse such processing, without preventing any technical storage or access to data for the purpose of providing communication over electronic communications networks or provision of services explicitly requested by the user or subscriber.

Pursuant to Article 127 of the LEC the operator shall enable lawful interception of electronic communications and the relevant state authority which conducts lawful interception shall keep records on intercepted electronic communications which in particular include specification of the act stipulating legal foundation for interception, the date and the time of interception, and keep these records as confidential, pursuant to the law governing the confidentiality of data. When the relevant state authority which conducts lawful interception of electronic communications is unable to conduct a lawful interception of electronic communications without accessing the premises, electronic communications network, associated facilities or electronic communications equipment of the operator, the operator shall keep records of the received requests for interception of electronic communications, which shall in particular include identification of the authorised person in charge of interception, the date and the time of the interception, and keep these records as confidential, in accordance with the law which regulates the confidentiality of data. For the purpose of meeting the obligation to enable lawful interception of electronic communications, the operator shall, at its own expense, provide necessary technical and organisational conditions (devices and programme support), and forward evidence to the Republic Agency for Electronic Communications.

Pursuant to Article 128 of the LEC the operator shall retain data on electronic communications (hereinafter referred to as: the retained data) for the purpose of crime detection, conducting investigations and criminal proceedings, in accordance with the law which regulates criminal proceedings, as well as for the purpose of protecting national and public security of the Republic of Serbia, in accordance with the laws governing the operation of security agencies of the Republic of Serbia and the operation of the authorities in charge of internal affairs. The operator is obliged to retain the data in their original form or as data processed in the course of electronic communications activities, however, the operator is not obliged to retain data the operator has not produced or processed. The operator shall keep the retained data for 12 months after the communication has taken place and in such a manner that they can be accessed without delay, i.e. that they can be provided at the request of the relevant state authority without delay.

The relevant state authority which accesses and/or which the retained data are provided for, shall keep records on the access and/or provided retained data that shall include in particular: Specification of the act stipulating the legal foundation for access, and/or provision of retained data, date and time of access, and/or provision of retained data, and also keep these records as confidential, pursuant to the law which governs confidentiality of data. When the relevant state authority is unable to access retained data without accessing the premises, electronic communications network, associated facilities or electronic communications equipment of the operator, the operator shall

keep records of the received requests for the access and/or provision of retained data, which shall include in particular the identification of the authorised person who has accessed the retained data and/or who the retained data were provided to, specification of the act stipulating legal foundation for the access and/or provision of retained data, as well as to keep these records as confidential, in accordance with the law which governs confidentiality of data.

On 30 September 2010 the Commissioner and the Ombudsman submitted to the Constitutional Court a joint proposal for the assessment of constitutionality of the provision of Article 128 (1) and (5) of the LEC, on account of being incoherent to Article 41(2) of the Constitution of the Republic of Serbia as they allow the implementation of special measures that derogate from the confidentiality of letters and other means of communications not only in cases when the court decision is provided, but also without the court order – in cases when this possibility is prescribed by law, or at the request of the relevant state authority. Unconstitutionality of such a viewpoint has already been established by the previous decision of the Constitutional Court IUz–149/2008 of 28 May 2009, passed at the initiative of the Provincial Ombudsman for the assessment of the constitutionality of Article 55 (1) of the Law on Telecommunications (“Official Gazette of RS”, no. 44/03 and 36/06). The same request asked for the assessment of the constitutionality of the provisions 13 (1) in connection to point 6 of Article 12 (1), and Article 16 (2) of the Law on Military Security Agency and Military Intelligence Agency (“Official Gazette of RS”, no. 88/2009) of 28 October 2009, which prescribe that Military Security Agency (MSA) “based on the request of the MSA director or the person he authorises” shall implement special activities and measures which derogate from the confidentiality of letters and other means of communication, even though these measures could be implemented only on the basis of the court order.

According to the Law on Police (“Official Gazette of RS”, no. 101/05) of 14 November 2005, Criminal Procedure Code (“Official Journal of FRY”, no. 70/01 and 68/02, and the “Official Gazette of RS”, no. 58/04, 85/05, 115/05, 49/07, 20/09 – other law and 72/09) 76/10) of 28 December 2001, and the Law on Minor Offences (“Official Gazette of RS”, no. 101/05) of 21 November 2005, police officers may deny the person of certain rights guaranteed by the Constitution of RS, that is, they can use their legal authority in relation to them.

- Violation of the right for the respect of privacy of communications of prisoners:

The European Court of Human Rights has found the violation of the right to uphold respect for private and family life as set out in Article 8 of the European Convention on Human Rights in 2 cases regarding the reading of the prisoners’ correspondence. On that occasion it was observed that the mere finding of the violation was just satisfaction for the applicant, hence only legal costs were awarded. Judgements: Stojanovic against Serbia, application no. 34425/04 and Jovancic against Serbia, application no. 38968/04/. The measures the Republic of Serbia has taken with view to executing these judgements, in order to ensure the respect for private and family life concerning the reading of the prisoners’ correspondence, which were aimed at redressing shortcomings of the overall legal system in the Republic of Serbia are the following:

-The judgement in the case Jovancic against Serbia was published in the Official Gazette of RS, in Serbian and English and on the website paragraph.net alongside the observations made by experts;

-The Republic of Serbia amended the provisions pertaining to the reading of the prisoners' correspondence. According to Article 34 of the Law on Amendments to the Law on Enforcement of Criminal Sanctions ("Official Gazette of RS", no. 72/09), of 3 November 2009, Article 75 of the Law on Enforcement of Criminal Sanctions was amended ("Official Gazette of RS", no. 85/05 of 6 October 2005). Pursuant to this provision, a convicted person has unlimited right to correspondence at his expense. In a closed prison facility with special security, a closed prison facility or a closed prison ward, at the suggestion of the prison director, or the Director of the relevant Administration, the relevant first-instance Court may, for the purpose of maintaining order, safety and security, preventing crime and protecting the victims, decide that for the specified time, the contents of letters are to be monitored or prohibit the correspondence altogether. The convicted person has the right of appeal against such decision within 3 days immediately to the higher instance court, but the appeal does not postpone the execution of the decision. In case of suspecting that prohibited items are sent and received via letters, the letter addressed to the convicted person, and the letter sent by him shall be opened in his presence and inspected, and prohibited items confiscated. The convicted person has the right to unsupervised correspondence with his defence counsel, the Ombudsman and other state authorities and international organisations for the protection of human rights. With the view to enforcing these provisions of the law, the Director of the Administration for Enforcement of Prison Sanctions with the Ministry of Justice, informed via a memorandum the Administrations of prisons on the need to strictly adhere to the legal provision regulating the opening of the mail of convicted persons and stressed that this shall be allowed only in the case where it is thought that the mail may be of suspicious contents, and even then it shall only be opened in the presence of the prisoner.

70. Please describe the exact procedure for the application of house searches and special investigative means (such as telephone tapping) and how the protection of fundamental rights is ensured. Is, for example, any case of telephone tapping or house search allowed without a judge's warrant? What is the practical experience with implementing the legislation in this area?

Searching of persons and premises are evidentiary actions that are used by authorized officials - police officers of MoI in a manner and procedure specified by the Criminal Procedure Code ("Official Journal of FRY", no. 70/01 and 68/02, and the "Official Gazette of RS", no. 58/04, 85/05, 115/05, 49/07, 20/09 – other law and 72/09) 76/10).

Searches of premises and other facilities of the defendant or other persons shall be performed if it is likely that the defendant will be caught or the evidences of a criminal offence relevant to the proceedings could be found. Searches of lawyer's offices may be performed only in relation to a certain case, files or documents. Searches of persons may be performed if it is likely that evidence and objects relevant to criminal proceedings will be found.

Search is ordered by the court, in writing, by a reasoned order. Search warrant shall be presented before the search to a person to whom or on whom this search will be performed. Before the search, the person to whom this warrant applies shall be

summoned to hand over the person, or objects that are being searched. This person shall be informed that he/she has the right to a lawyer, i.e. defence attorney who may be present during the search. If the person to whom this warrant applies demands the presence of the lawyer, or defence attorney, the beginning of the search shall be postponed until their arrival, which shall not be longer than three hours. A search can be performed without previous presentation of a warrant, as well as previous summon to hand over the person or objects, or notification on rights to a lawyer or defence attorney, if armed resistance is expected, or other type of violence, or if the destruction of objects and items relevant to the criminal procedure is being prepared or in progress.

By rule, the search is conducted in day light. Search may be conducted during night time, if ordered so by the court, as well as if the search started in day time and could not be completed or if there are reasons from Article 81.(1) of this code. Occupant of the apartment or other facilities shall be asked to attend the search, and if he/she is absent, his agent shall be summoned, or someone from adult household members or neighbours. Locked premises, furniture or other items shall be opened by force only if its holder is not present or not willing to open them. During the forceful opening, any unnecessary damage shall be avoided. Two adult citizens shall attend the search of premises or persons, as witnesses. Females can only be searched by other females and the witnesses shall also be of the same gender. Person in charge of the search and present witnesses must be of the same gender as the person being searched. Before the beginning of the search, witnesses shall be warned to supervise the process of the search, as well as that they are entitled to put their objections before signing the record on search, if they believe that contents of the record are not correct.

When searching the premises of state authorities, companies or other entities, the principal shall be summoned to attend the search. When a lawyer's office is being searched in accordance with paragraph 2 of this Article, or in the absence of the lawyer who is the owner of the office, a representative of relevant bar association shall be summoned, and if that is not possible, another lawyer, member of this association shall be summoned. Searches and investigations in military buildings shall be conducted upon approval of competent military officer. The search of the premises and persons should be conducted carefully, with respect to intimacy and dignity and without any unnecessary disturbance of the house order.

Records shall be put together upon every search of the premises or persons, signed by the person upon which or on which the search was conducted and the person whose presence is mandatory. During the search, only items and documents relevant to the investigation shall be temporarily seized. Seized items and documents shall be clearly stated in the record, which will also be put into the certificate issued to the person from whom the items and documents are taken, immediately after the search. The course of the search may be visually and audio recorded, and items found during the search can be specifically photographed. The records/photographs shall be attached to the search record.

If objects irrelevant to the criminal offence for which the warrant was issued are found during the search of the premises or persons, but which indicate to some other criminal offence prosecuted *ex officio*, these objects shall be taken and entered into the record, and certificate shall be issued immediately upon the search. They shall forthwith inform the public prosecutor for initiating the criminal proceedings thereof. These items shall

be returned immediately if the public prosecutor finds no grounds for criminal proceedings, and there is no other legal basis for seizure of these items. Competent authorities of the law enforcement agencies may enter the premises or other facilities and exceptionally conduct the search without the presence of witnesses, if required so by the occupant or if someone calls for help, or in order to execute a court order to detain or bring the defendant, or for the immediate arrest of the offender, or to eliminate direct and serious threat to people and assets. Reasons for search without witnesses must be specified in the record. Occupant, if present, has the right to file a complaint against the actions of the authorities from paragraph 1 of this Article. Competent officer of law enforcement agencies is obliged to inform the occupant on this right and to file his complaint into the certificate on entering the premises, or records on searching of the premises.

In cases referred to in paragraph 1. of this Article a record shall not be made, but the certificate shall be immediately issued to the occupant, stating the reasons for entering into the premises, or other facilities , as well as stating the complaints of the occupant. If the search was also carried out in other premises, it shall be conducted under provisions from Article 79 (3 and 7) of this Code. Competent officers of law enforcement agencies may, during the execution of detention or arrest order, conduct the search of a person without the order and presence of witnesses if there is a grounded suspicion that the person holds a weapon or other item suitable for attack, or if there is a suspicion that the suspect may throw away, conceal or destroy objects to be taken from him as evidence in criminal proceedings. When the authorized officers of the law enforcement agencies conduct searches without the search warrant, they are obliged to immediately submit a report to the investigative judge, and if the proceedings have not started yet - to the public prosecutor.

Items that are to be taken under the criminal law or items which may serve as evidence in criminal proceedings, shall be temporarily seized and handed over for safekeeping to the court, or otherwise safekeeping of these objects shall be provided.

Automatic data processors and equipment for electronic data storage are included in these items. People who use such devices and equipment are obliged to provide necessary access to the required data and instructions for their use to the competent authorities, upon the court order. Competent authority for the proceeding shall, in the presence of a qualified person, inspect the devices and equipment before the seizure of these items, and record their contents. If the user is present during the inspection, he/she may file a complaint against these actions.

Whoever is in the possession of such items is obliged to hand them over upon the order from the court. The person who refuses to hand over the objects shall be fined in amount up to 100.000 RSD, and if he/she refuses to hand over the objects even after the fine has been issued, that person may be fined once more to the same amount as the first fine. Officials or person in charge in the state authority, company or other legal entity shall receive the same treatment.

In relation to the application of measures from Article 504e of the Criminal Procedure Code “Surveillance measures and phone wiretapping and other conversations and communication” which are being used by the prosecution authorities only in order to detect and prove criminal offences from Article 504e of the Criminal Procedure Code,

for criminal offences of organized crime, corruption, and other severe criminal offences, we would like to point out that the foregoing measure in the Ministry of Interior is conducted in such a way that the police officer of the Criminal Police Directorate delivers a written reasoned statement to the competent public prosecutor, requiring permission to apply the measure, after which the investigating judge may, in response to a written and reasoned proposal of the public prosecutor, order phone tapping of the person for which is suspected to have committed a criminal offence (from the Article 504a) or in the stage of preparation to commit such a crime. Investigating judge shall prescribe the measure by a reasoned order. The measure may not last more than six months and only for in exceptional cases it may be prolonged only two more times, in duration of three months. The order issued by the investigating judge from the Article 504e may be enforced by police officers of CPD of the MoI, BIA and VBA. Aforementioned bodies write daily reports on the execution of the measures and together with gathered recordings submit them to the investigating judge and the public prosecutor upon their order.

Upon a written and reasoned proposal of the public prosecutor, investigating judge may order surveillance and recording of the phone and other conversations or any other communication via technical means as well as optical recording of the person for which there is a grounded doubt to have committed criminal offence from Article 504a of this Code, if evidence for prosecution could not be collected otherwise or if the evidence collection would be significantly hampered. Measures could be exceptionally ordered if there is a reasonable suspicion that one of the criminal offences from Article 504a of CPC is in preparation, and circumstances of the case indicate that criminal offence could not be otherwise detected, prevented or proved, or if it would cause severe difficulties or great hazard.

Investigating judge shall prescribe the measure with a reasoned order. All data on the person upon which the measure shall be executed are stated in the order, as well as reasons for suspicion, extents and duration of the measures. The measure may not last more than six months, and only in exceptional cases it may be prolonged only two more times, in duration of three months. Execution of the measures shall be terminated as soon as the reasons for execution are terminated. Only the competent bodies of law enforcement, Security-Information Agency or Military-Security Agency may execute the order of the investigative judge. Upon the execution of the measure, Security-Information Agency and Military-Security Agency create daily reports on execution of the measures and together with gathered recordings submit them to the investigative judge and the public prosecutor upon their order.

Competent officials-police officers of the Criminal Police Directorate execute the measures in the Ministry of Interior, by executing the order i.e. measures upon receiving the order from the investigating judge. Aforementioned measures are applied only to persons indicated in the order, using certain phone numbers. Records on applied measures (orders from the investigating judge and other accompanying acts) are kept in protected premises of the MoI, and overall materials (audio recordings and statistical data) are delivered to the investigating judge of the competent court for further jurisdiction. Telephone tapping without a court order is not allowed.

Postal, telegraph and other companies, enterprises and persons registered for information transmission are obliged to enable application of measures for the law

enforcement agencies, Security-Information Agency and Military-Security Agency. Upon an order from the investigating judge, recordings may be executed on public places and other premises which are not residential. During the application of the measure, the order of the investigative judge and the procedure of execution are considered as an official secret. Upon the execution of the measure, law enforcement agencies, Security-Information Agency and Military-Security Agency shall provide the investigating judge with recordings and special report that contains: time of the beginning and ending of the measure, data on official who conducted the measures, description of technical devices used, number and identity of persons involved, and evaluation on rationality and results of the applied measure. Investigating judge may order the recordings obtained by technical devices to be completely or partially transcribed and described. The Investigating judge shall forward all materials obtained during the application of measures to the public prosecutor. If the public prosecutor does not initiate criminal proceedings within six months from the day of receipt of the material from paragraph 2 of this Article or if he states that material shall not be used in the proceeding, or that he shall not demand initiation of a proceeding against the suspect, the investigating judge shall issue a ruling on destruction of collected material. The investigating judge may inform the person upon whom the measures from the Article 504e paragraph 1 were applied about the adopted decision, if during the application of the measure his/her identity was established. The material shall be destroyed under the supervision of the investigating judge. Investigating judge shall prepare a report on actions from this paragraph. If, during the application of measures, actions contrary to the provisions of the Code or order of the investigating judge occurred, collected evidences cannot be used as grounds for a court decision. If during the application of measures, material evidence was collected which can be related to the criminal offence but not comprised in the orders of the investigating judge, such material may be used in the criminal proceedings only if it relates to criminal offences prescribed in the Article 504a of the Criminal Procedure Code.

In the court practice of the Supreme Court of Serbia and the Supreme Court of Cassation there were very few recorded cases of phone tapping and search without a valid court order. For example, Judgement of the Supreme Court of Serbia rev. 877/07 from 17th of May 2007 and Judgement of the Supreme Court of Serbia rev. 3446/08 from 15th of January 2009, where compensation of immaterial damage due to illegal wiretapping and the search was granted.

71. Respect of privacy: is privacy safeguarded by law?

The right to have one's personal data safeguarded is a constitutional right. The Constitution of Serbia (*Official Gazette of RS* No. 98/2006) in its Article 42 guarantees for the protection of personal data and defines that the collection, keeping, processing and using of personal data are all governed by the law. Additionally, the Constitution of Serbia defines in that same provision that use of personal data for any purpose other than the one they were collected for shall be prohibited and punishable in accordance with the law, unless these are necessary to conduct criminal proceedings or protect the safety of the Republic of Serbia, in the manner stipulated by the law. Finally, the Constitution of Serbia establishes in its Article 42 that everyone shall have the right to be informed about personal data collected about him in accordance with the law and the right to judicial protection in the event these are abused.

The principal umbrella law governing the protection of personal data is the Law on Personal Data Protection (OJ of RS No. 97/2008 and 104/2009 – second law, hereinafter: LPDP) the aim of which is to ensure to each and every natural person the exercise and protection of his rights to privacy and other rights and freedoms. Provisions of the Law on Personal Data Protection are applied to all the types of automated processing as well as to the processing contained in the collection of data that cannot be performed in an automatic manner.

Neither the Family Law (*Official Gazette of RS* No. 18/05) nor any other law governing the field of marriage, family and domestic relations contain provisions that precisely provide for the matters of collecting, storing, processing and using of personal data in the area involved, which is however an obligation derived from Article 42 of the Constitution of Serbia and Article 8 of the LPDP.

Pursuant to the Criminal Procedure Code (OJ of FRY No. 70/2001. and 68/2002 and OJ of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010) police officers may enter a person's apartment or other premises and carry out a search thereof if the occupant of the apartment requests so, if somebody is calling for help, in order to place under arrest a fugitive offender who committed a criminal offence subject to prosecution *ex officio* and in order to ward off a serious danger that poses threat to the life and health of people or to property of substantial value.

In addition, pursuant to the Criminal Procedure Code, police officers may, by order of an Investigating Judge, record telephone and other types of conversation or communication via some other technical devices of persons for whom there are reasonable grounds to suspect that they themselves or with some other person have committed criminal offences against the constitutional order and security, against humanity and international law or offences that involve elements of organized crime.

In an answer to this question and since there are no other legal sources for protecting and guaranteeing the right to privacy in the field of electronic communications aside from the Law on Electronic Communications, the Ministry of Telecommunications and Information Society would like to draw your attention to our answer to question number 69 contained in the Subgroup 23.

72. Elaborate how the right to marry and the right to found a family are protected within your legislation.

Under the Constitution of Serbia (OJ of RS No. 98/06) everyone has the right to decide freely to enter into or to dissolve a marriage as well as the right to freely decide to procreate or not. Marriage, marital relations and domestic relations are governed by the Law.

The Family Law (*Official Gazette of RS* No. 18/05), Second Section, Articles 15 – 41, governs the matters relating to marriage, namely: conditions for entering into marriage, impediments to marriage, legal effects of a marriage and dissolution of a marriage.

Marriage is a cohabitation of a man and a woman governed by the law (Article 3). A marriage is concluded between two persons of opposite sex who make declarations of

their wills before a registrar. Marriage may be concluded only if the future spouses agree to it of their own free will. Spouses are equal in marriage.

In the Republic of Serbia, a marriage may not be concluded unless there is consent of wills as well as unless a person is eighteen years old, considering that there is an exception to this case. A court may allow to a person who is not yet eighteen years old to enter into marriage provided that he/she is 16 years old and has reached the physical and mental maturity necessary for entering into marriage (Article 23). Spouses are free to decide, each on their own, which occupation or profession they are going to take up or practise as well as to determine by mutual consent where they are going to live and to decide on how they are going to run their household.

Spouses are obliged to provide support for each other. A spouse as well as a common law partner who does not have enough means to support himself/herself and who is as well a person with a work disability or without employment is entitled to be supported by the other spouse in proportion to the latter's means. A spouse who at the time of entering into an illegal or unlawful marriage knew the grounds for its illegality or voidance is not entitled to support. Furthermore, a spouse or a common law partner is not entitled to be supported by the other spouse or common law partner if that would do an obvious injustice to the other spouse (common law partner). A child's mother who does not have enough means to support herself is entitled to receive maintenance from the child's father for the period of three months prior to childbirth and for one year after the childbirth, but any such mother shall not be entitled to receive maintenance if that would do an obvious injustice to the father.

Property belonging to one of the spouses may be common or separate and they are free to regulate their property relations by means of a marriage contract as well.

A common law marriage is a lasting union of a woman and a man living together, neither of whom is impeded by marriage (common law partners). Common law partners have the same rights and obligations as spouses (Article 4). From the above it follows that both marriage and common law marriage have been made equal in the Republic of Serbia.

A marriage may end in a death of one of the spouses, by annulment and by divorce. Spouses are entitled to divorce should they conclude a written agreement on divorce which must without fail contain a written agreement on the exercise of their parental right as well as on the settlement of their common property. An agreement on the exercise of the parental right may be concluded in the form of an agreement on joint exercise of the parental right or in the form of an agreement on the independent exercise of the parental right. Each and every spouse is entitled to divorce if marital relations have seriously or permanently deteriorated or if the union in which spouses live together may not objectively be achieved.

Divorce proceedings are initiated by filing with a court a petition for a divorce by mutual consent or an action for divorce. Either spouse may file an action for divorce. The right to file an action for divorce shall not be transferred to spouses' heirs. They may continue the already commenced proceedings in order to be determined that there were grounds for divorce. Heirs of spouses who have already initiated a matrimonial dispute by filing a petition for a divorce by mutual consent may decide to continue the proceedings that have already commenced in order to be determined that there were

grounds for divorce. Guardian of an invalid spouse with a work disability may file an action for divorce provided that there is prior consent by a guardianship authority. If an action in a matrimonial cause is filed by the attorney of a litigant, such power of attorney must be certified and issued only for representation in a matrimonial dispute. Such a power of attorney must contain a statement as to the type of action and grounds for lodging such an action. One and the same attorney may not represent both spouses in a matrimonial cause that has been initiated by filing a petition for divorce by mutual consent.

In any matrimonial cause, the plaintiff may withdraw his/her action before the main hearing has been concluded without consent of the respondent and if there is consent of the respondent, he/she may withdraw it prior to the legally effective finalization of the proceedings, and a petition for divorce by mutual consent may be withdrawn by either spouse or by both of them prior to the legally effective finalization of the proceedings.

An agreement between spouses on the exercise of their parental rights shall be entered into the operative provisions of a divorce judgment should the court deem that such an agreement lies in the best interest of the child and the same applies to the agreement on the settlement of their common property.

In any matrimonial cause, the court is obliged to give a ruling on exercising the parental right as well as on partial or complete termination of the parental right. In addition, it may rule to impose one or more protective measures against family violence.

In relation to judicial and administrative proceedings, mediation (conciliation) represents an alternative mechanism for settling of disputes. Instead of such proceedings – which usually last too long and exposes litigators to considerable expenses, both in terms of their finances and emotions – a neutral and analytical assessment of a mediator increases the probability that such a dispute may be settled by a compromise and that parties to the cause will preserve their dignity.

Particular importance is attached to mediation in family law, bearing in mind that almost as a rule a divorce is a traumatising experience for both parents and their children. That is the reason why the Family Law provides as well for the procedure of mediation as an integral part of the proceedings in any matrimonial dispute (Articles 229 – 246), in accordance with the Council of Europe's Recommendation No. R(98)1 concerning mediation in family relations.

A mediation procedure consists of two stages: a procedure for an attempt at reconciliation, the purpose of which is to restore the broken relationship between the spouses without divorce and a procedure for an attempt at settlement of dispute by mutual consent, the purpose of which is to help spouses whose marriage ended in divorce or annulment reach a settlement concerning the exercise of their parental rights and division of common property.

Mediation is regularly employed along with the proceedings in a matrimonial dispute that has been initiated by an action filed by one of the spouses. As a rule, mediation is carried out by a court of law. When an action for annulment or divorce of marriage has been received, the court shall set down a mediation hearing that shall take place only before a judge sitting alone. The judge presiding over mediation is obliged to

recommend to both spouses that they should seek counselling from psychologists and social workers.

Reconciliation is attempted only in cases of matrimonial disputes that have been initiated by actions for divorce. The purpose of reconciliation is to restore the broken relationship between spouses without conflict or divorce.

73. What are your legal provisions on marriage or legal partnership, if any, including of same-sex couples?

Regulations governing the field of family relations (the Family Law, *Official Gazette of RS* No. 18/05) do not contain any direct stipulations with regard to same-sex partnerships save indirect ones, by way of provisions stipulating that persons who enter into marriage must be of the opposite sex or who has the right to adopt a child, and so forth.

- Freedom of thought, conscience and religion

74. Please give details and explain any limitations to this freedom, which are permitted.

A guarantee of freedom of thought, conscience and religion

Freedom of thought, conscience and religion is guaranteed under Article 43 of the Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/06). Paragraph 1 of that Article of the Constitution provides for the right to stand by one's own belief and religion or to change them by one's own choice. Paragraph 2 of the same Article states precisely that no person shall be under obligation to declare his/her religious or other beliefs, while Article 3 stipulates that everyone shall have the freedom to manifest their religion or religious beliefs by performing rituals, attending religious service or teachings, individually or in community with others as well as to manifest their religious beliefs in private or in public.

The freedom of thought and expression is guaranteed under Article 46 that guarantees the freedom of thought and expression as well as the freedom to seek receive and disseminate information and ideas by means of speech, writing, and art or in some other manner.

In Article 48, through measures implemented in education, culture and the news media, the Republic of Serbia promotes the understanding, recognition and respect of diversity arising from specific ethnic, cultural, linguistic or religious identity of its citizens.

Pursuant to Article 50, paragraph 1 everyone has the freedom to establish newspapers and other means of disseminating information to the public without prior permission and in the manner laid down by the law.

Article 18, paragraph 1 and 2 of the Constitution provides for direct implementation of human and minority rights guaranteed by the Constitution as well as by the generally accepted rules of international law, ratified international treaties and laws. The same Article lays down that the law may prescribe the manner of exercising rights proclaimed

in the Constitution provided that the Constitution explicitly provides for it or provided that it is necessary to do so in order to for a specific right to be exercised owing to its nature, whereby the law may not under any circumstances affect the substance of the guaranteed right.

The manner in which the freedom of thought, conscience and religion may be exercised is governed by provisions contained in several Laws. In terms of exercising the freedom of religion, the most important is the Law on Churches and Religious Communities (*Official Gazette of RS* No. 36/06). Article 1 of the Law stipulates that the freedom of religion includes: freedom to have or not to have, to keep or alter one's religion or religious conviction, or freedom of belief, freedom to profess one's faith in God, freedom to manifest individually or in community with others and in public or in private one's religion or religious conviction in worship, observance, religious teaching and education, cherishing and developing of religious tradition; freedom to develop and advance religious education and culture.

Under Article 5 of the Law on Churches and Religious Communities, citizens have the freedom of association and public assembly for the purpose of manifesting their religious beliefs in accordance with the Constitution and the law and they are free to join churches and religious communities in accordance with the law. Under Article 7 of the Law, the state is not allowed to interfere in the enforcement of autonomous regulations of churches and religious communities.

The Law on Churches and Religious Communities stipulates that churches and religious communities are to be registered in a special Register of Churches and Religious Communities maintained by the Ministry competent for religious affairs. Article 10 of the Law prescribes that traditional churches and religious communities are the Serbian Orthodox Church, the Roman Catholic Church, the Slovakian Evangelist Church AC., the Christian Reformist Church, the Evangelist Christian Church AC, the Jewish Religious Community and the Islamic Religious Community. It is stipulated that in order to be entered in the Register, they are to submit to the Ministry an application containing the name of the Church or religious community, its registered address as well as the name, surname and capacity of the person empowered to represent and act on behalf of such church or religious community. Other religious communities, in addition to the above, submit a decision on founding a religious organization which contains names, surnames, numbers of identification documents and signatures of its founders constituting at least 0.001% of the Republic of Serbia's citizens of full age who have permanent residence in the Republic of Serbia according to the last official census or foreign nationals that have temporary residence in the territory of the Republic of Serbia, its statute or some other document of the religious organization that includes: description of its organizational structure, manner of its management, rights and obligations of its members, an outline of the fundamentals of its religious teachings, religious rites, religious goals and principal activities of that religious organization as well as information about permanent sources of income of such religious organization.

Under Article 31, Churches and religious communities conduct public worship, perform religious rites and other religious activities in temples, other buildings or premises owned by them or in rented premises. Public worship, religious rites and other religious activities may be conducted or performed as well in hospitals, military and police facilities, penitentiary institutions and correctional facilities, whereas in schools,

welfare and child protection institutions, in public places as well as in places related to historic events or individuals those may be conducted or performed on appropriate occasions pursuant to the law. The law guarantees that places of worship are protected and may not be violated while public worship is being conducted pursuant to the Constitution, the law and autonomous legislation of Churches and religious communities.

Article 40 of the Law on Churches and Religious Communities guarantees the right to religious education in public and private primary and secondary schools in accordance with the law.

With the aim of advancing religious freedoms and the freedom of information, Churches and religious communities are entitled under Article 43 of the Law on Churches and Religious Communities to use public broadcasting service in compliance with the Constitution and the law as well as to undertake their own activities pertaining to the news media and publishing independently. Churches and religious communities are obliged to state in full view their full name on their news media and publications. When informing the public about their own activities, Churches and religious communities are obliged to clearly state the nature and content of the activity involved.

The Law on Armed Forces of Serbia (*Official Gazette of RS* No. 116/07 and 88/09) stipulates in its Article 25 that in order to make possible for exercising the freedom of religion in the Armed Forces of Serbia, religious services are to be organized. Article 26 of the aforementioned Law prescribes that the Government shall define how religious service is to be conducted in the Serbian Armed Forces and Article 27 prescribes that relations between the Ministry of Defence and Churches or religious communities with regard to conducting religious service are to be defined by separate agreements.

Protection of freedom of thought, conscience and religion

Article 22, paragraph 1 of the Constitution of the Republic of Serbia provides that everyone shall have the right to judicial protection when any of their human or minority rights guaranteed under the Constitution have been violated or denied, including as well their right to remedy the consequences arising from such violation. Protection of human rights within the judiciary system of the Republic of Serbia is provided for by courts of law. Article 198, paragraph 2 of the Constitution provides that the legality of final individual acts or acts of state authorities against which appeals are not allowed or have been exhausted and whereby rights, obligations and interests of natural and legal persons arising from the law are decided shall be subject to reassessment before a court of law in administrative dispute proceedings. Pursuant to the cited constitutional provision, the Law on Churches and Religious Communities provides in its Article 23 for the finality of a decision the Ministry has made in administrative proceedings concerning the entry into the Register of Churches and Religious Communities, refusal of the application for entry therein, denial of entry therein or deleting therefrom as well as for the possibility of bringing administrative dispute against such a decision, which shall be heard before the court of competent jurisdiction.

The Constitution of the Republic of Serbia provides for constitutional and judicial protection of human rights and liberties and thus for the freedom of religion. Article 170 of the Constitution of the Republic of Serbia provides for the possibility of lodging a

constitutional appeal against individual acts or actions of state authorities or organizations vested with public powers which violate or deny human or minority rights. A constitutional appeal may be lodged in instances when legal remedies for the protection of human and minority rights guaranteed under the Constitution have been exhausted or have not been provided for. The Constitutional Court of Serbia makes rulings on constitutional appeals.

In its Article 22, paragraph 2, the Constitution of the Republic of Serbia provides for the right of citizens to address international institutions in order to protect their freedoms and rights guaranteed under the Constitution.

Allowed restrictions of the freedom of thought, conscience and religion

Article 20 of the Constitution of the Republic of Serbia governs the matter of restrictions of human and minority rights. Under this Article of the Constitution, human and minority rights guaranteed under the Constitution may be restricted by law provided that such a restriction is permitted by the Constitution and intended for the purpose allowed by the Constitution, to the extent necessary to achieve the constitutional purpose of such restriction in a democratic society and without affecting the substance of the guaranteed right involved. In paragraph 2 of the said Article, the Constitution explicitly provides that the attained level of human and minority rights may not be lowered, while in paragraph 3 it stipulates that when restricting human and minority rights, all state bodies, in particular courts, have a duty to consider the substance of the right being restricted, the pertinence of the restriction, the nature and extent thereof, the relation between the restriction and its purpose as well as if there is a possibility to achieve the purpose of the restriction by employing a less severe restriction on the right.

Under Article 46 of the Constitution, the freedom of expression may be restricted by law only should it be necessary to protect the rights and reputation of other persons, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia.

Article 43, paragraph 4 of the Constitution states precisely the manner in which the freedom of religion may be restricted, extent of and reasons for such a restriction. This constitutional provision stipulates that the freedom of manifesting religion or beliefs may be restricted by law only if it is necessary in a democratic society in order to protect the lives and health of people, morals of a democratic society, freedoms and rights of citizens guaranteed in the Constitution, public safety and order or to prevent the inciting to and stirring up of religious, national and racial hatred. In its Article 49, the Constitution prohibits inciting to religious inequality, hatred and intolerance and prescribes that it shall be punishable.

Under Article 50, paragraph 3, there is no censorship in the Republic of Serbia. A court of competent jurisdiction may prevent the dissemination of information and ideas through the media only when this is necessary in a democratic society to prevent inciting to the violent overthrow of the order established under the Constitution or to prevent the violation of territorial integrity of the Republic of Serbia, to prevent the propagation of war or inciting to direct violence or in order to prevent the advocacy of

racial, national or religious hatred whereby discrimination, hostility and violence are encouraged or provoked.

Article 3, paragraph 1 of the Law on Churches and Religious Communities stipulates that the freedom of religion or religious belief may be subject only to those restrictions as are prescribed by the Constitution, the law and ratified international documents and which are necessary in a democratic society to protect public safety, public order, morals and to protect the freedoms and rights of others, while paragraph 2 of that same Article of the Law stipulates that religious freedom may not be used in such a way as to threaten the right to life, the right to health, children's rights, the right to personal and family integrity and the right to property or in the way to provoke and incite religious, national or racial intolerance. In terms of the above cited provisions of the Constitution and the Law, the Article 20, paragraph 4 of the Law precisely states that Ministry competent for the affairs of religion shall, in a procedure for registration, pass a decision to reject an application for entry of a religious organization into the Register should its goals, teachings, rites or activities be contrary to the Constitution and public order or should they threaten the lives, health, freedom and rights of others, the children's rights, the right of personal and family integrity and the right to property. In the event that activities of an existing religious community threaten the right to life, the right to mental and physical health, children's rights, the right to property, public safety and public order or if they provoke or incite to religious, national or racial intolerance, the Constitutional Court of Serbia may ban such a religious community. Keeping in mind how evolved religious pluralism is and how good cooperation between religious communities is, not a single procedure for banning a church or a religious community has been initiated in the Republic of Serbia nor has any of them been deleted from the Register of Churches and Religious Communities.

The Constitution provides for a possibility of derogation from human and minority rights. Under Article 200 – 202 of the Constitution, derogation from human and minority rights may be allowed only in exceptional cases, namely in the event of declaring the state of emergency or the state of war. Upon declaration of the state of emergency or the state of war, it is allowed only to derogate from human and minority rights guaranteed under the Constitution but only to the extent deemed necessary. Article 202 of the Constitution explicitly stipulates that measures providing for derogation may not bring about discrimination on the grounds of race, sex, language, religion, national affiliation and social origin.

The Law on the Armed Forces of Serbia stipulates in its Article 13, paragraph 1, point 1 and 2 that in the performance of his duties, a member of the Serbian Armed Forces shall be obliged to act in accordance with the Constitution, the law and other regulation, according to the rules of his profession, objectively and neutrally in terms of political party activism, that he shall not display his party or other political emblems and he shall not express his political beliefs.

75. Please give information on the measures taken to prevent discrimination against religious minorities in Serbia.

Under the Constitution, discrimination on the basis of religion is expressly forbidden in the Republic of Serbia. Article 21, paragraph 3 of the Constitution (*Official Gazette of RS* No. 98/2006) provides that every form of discrimination is prohibited, either direct

or indirect, on any grounds whatsoever, in particular on the grounds of race, sex, national affiliation, social origin, birth, religion, political or some other beliefs, economic status, culture, language, age and mental or physical disability. In addition, Article 49 of the Constitution prohibits any provoking of and inciting to religious racial, national, religious or some other inequality, hatred and intolerance and prescribes that those shall be punishable. Expression and protection of religious specificity are guaranteed in particular to members of national minorities and under the Constitution, fostering the spirit of tolerance and intercultural dialogue is a special task to be accomplished by the state. Under Article 79 of the Constitution, members of national minorities are, *inter alia*, entitled to: express, preserve, foster, develop and publicly express their religious specificity, while under Article 81, the Republic of Serbia shall, in the field of education, culture and the media, foster the spirit of tolerance and intercultural dialogue and undertake efficient measures aimed at advancing mutual respect, understanding and cooperation among all the people living in its territory regardless of their ethnic, cultural, linguistic or religious identity.

The Republic of Serbia is a party to all the relevant international treaties pertaining to the field of human and minority rights whereby discrimination is defined and prohibited. Under the Law on the Prohibition of Discrimination (*Official Gazette of RS* No. 22/09), discrimination may be defined as any kind of unjustified differentiation or unequal treatment, i.e. an act of omission (exclusion, limitation or giving precedence to) in relation to persons or groups as well as members of their families or persons close to them which is made, given or done in an overt or veiled manner and which is based on the grounds provided for in the Law as forbidden, including as well religious beliefs.

Deriving from the above stated provisions contained in the Constitution of the Republic of Serbia, the Law on Churches and Religious Communities (*Official Gazette of RS* No. 36/06) forbids religious discrimination stipulating in Article 2, paragraph 1 that nobody may be subjected to coercion that might threaten the freedom of religion nor may they be forced to declare their religion and religious beliefs or absence thereof, while in paragraph 2 of the same Article, it stipulates that nobody may be harassed, discriminated against or privileged on the basis of their religious beliefs, affiliation or non-affiliation to a religious community, participation or non-participation in public worship or religious rites or practising or not practising of guaranteed religious freedoms and rights.

Article 18 of the Law on the Prohibition of Discrimination also makes a stipulation that should anybody act contrary to the principle of free manifestation of religion or beliefs or should a person or a group be denied the right of finding, upholding, professing or altering their religion or beliefs, including as well the right to express or act in accordance with their beliefs, either in public or in private, that shall constitute religious discrimination. Actions of priests and religious officials are not regarded as discrimination provided they are performed in accordance with religious doctrines, beliefs and goals of Churches or religious communities registered in the Register of Religious Communities or in accordance with a special law governing the freedom of religion and the status of Churches and religious communities.

There is no binding definition of a religious (denominational) minority in the legislative system of the Republic of Serbia. Considering that there is a special definition of a national minority in the legislative system and that an enormous percentage of members

of national minorities (over 99%) belongs to traditional Churches and religious communities (this distinction is covered in more detail in our answer to question no. 76), it is obvious that in the Republic of Serbia religious minorities may not be equated with national, linguistic or other minorities and that the notion of “a religious minority” may be understood to mean only a community comprising a small congregation or a congregation that is smaller in number in relation to other religious communities. What is more, the Law on Churches and Religious Communities makes a provision in its Article 18 that in procedures for registrations of newly founded religious communities a decision on founding a religious organization is to be submitted, which may be made by 0.001% of the Republic of Serbia’s citizens of full age who have permanent residence in the Republic of Serbia according to the last official census or of foreign nationals that have temporary residence in the territory of the Republic of Serbia, which constitutes a significantly smaller number when compared to the majority of member states of the European Union. Certain stipulations contained in the Law on Churches and Religious Communities that provide for special ways of settling matters for the benefit of Churches and religious communities that have small congregations, indicate towards taking the position that in the Republic of Serbia only communities that have small number of congregation members may be considered as religious minorities. Thus, the Law on Churches and Religious Communities, deriving from the Constitution of the Republic of Serbia (please refer to our answer to question no. 76) promotes equality among Churches and religious communities, including certain provisions according to which the position of Churches and religious communities depends as well on the number of members in a congregation but allowing for the possibility of implementing measures of positive discrimination for the benefit of religious communities that have a small number of members of the congregation. For instance, Article 29, paragraph 3 of the Law on Churches and Religious Communities stipulates that the Government shall set on an equal and pro-rata basis the amount of funds intended for the exercise of social rights of clergy and religious officials depending on the number of members of the congregation of individual Churches and religious communities as per the latest census conducted in the Republic, whereas the principle of positive discrimination may be applied to Churches and religious communities with a small number of member of the congregation. The Ministry of Religion of the Republic of Serbia has accommodated every request of small religious communities for financial aid.

The Ministry of Religion has been cooperating with all the Churches and religious communities very effectively. This statement is supported by consultations that were held with certain religious communities, in the first place the confessional ones, the purpose of which was to arrive at an adequate solution pursuant to the Law on Churches and Religious Communities to finalize registration procedures that had been started. The result of such an approach is that in the previous year many a small religious community has been entered into the Register: the Free Church of Belgrade, the Jehovah’s Witnesses – a Christian religious community, the Testament Church of Zion, the Union Seventh Day Adventists Reform Movement and the Protestant Evangelical Church "Spiritual Centre". In addition, apart from the traditional (please refer to question no. 76) and herein listed Churches and religious communities, the following have been entered in the Register of Churches and Religious Communities as well: Christian Adventist Church, the Evangelist Methodist Church, the Church of Jesus Christ of Latter-day Saints, Evangelic Church in Serbia, the Church of the Love of Christ, Spiritual Church of Christ, Union of Christian Baptist Churches in Serbia, the religious community of Christian Nazarene, the Church of God in Serbia, the Church of

Brothers in Christ in Serbia and Protestant Christian Community in Serbia, based on which it can be concluded that religious pluralism in the Republic of Serbia is well advanced. The Ministry of Religion has been making available certain funds for promoting the publishing activities of these religious communities and has been inviting them to participate at scientific symposiums and round table conferences at which the issues addressed pertain to the development of religious rights and position of the Churches and religious communities in our society. Pursuant to positive regulations, some of them have founded pre-school institutions, secondary schools and faculties.

Criminal offences against freedoms and rights of a man and a citizen are defined within the scope of the Criminal Code (*Official Gazette of RS* No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009). Article 128 stipulates that whoever denies or restricts the rights of a man and citizen established under the Constitution, laws and other regulations or general acts or ratified international treaties on the grounds of national or ethnic affiliation, race or religion or due to absence of such affiliation or on the grounds of differences in terms of political or other convictions, sex, language, education, social status, social origin, economic status or some personal characteristic or based on any such distinction grants another privileges or benefits shall be punished with imprisonment for up to three years. Article 132 prescribes that whoever prevents or restricts another's freedom of religion or freedom of practising religion shall be punished with a fine or imprisonment for up to one year. The same punishment shall be imposed on everyone who prevents or hinders another in conducting religious services. Whoever coerces another to express his religious conviction shall be punished with a fine or imprisonment for up to one year. A provision has been made in Article 174 for imposing sanctions on whoever damages the reputation of another on the grounds of racial, religious, national or some other affiliation in such a manner as that whoever should in public expose to ridicule another person or a group on the basis of their affiliation to a certain race, skin colour, religion, nationality, ethnic origin or some other personal characteristic shall be punished with a fine or imprisonment for up to a year. Sanctions imposed on those who instigate national, racial and religious hatred and enmity are precisely stated in Article 317. Whoever instigates or exacerbates national, racial or religious hatred or enmity among the peoples and ethnic communities living in Serbia shall be punished with imprisonment of six months to five years. If the offence is committed by coercion, maltreatment, compromising one's security, exposure to derision of national, ethnic or religious symbols, damage to other person's belongings, desecration of monuments, memorial and graves, the offender shall be punished with imprisonment of one to eight years.

It would be necessary to emphasize that a number of religiously motivated incidents in the Republic of Serbia has been significantly reduced and that the level of inter-religious cooperation has been substantially raised.

76. What is the constitutional status of religions in your country? Is there any state religion? Is there a legislative framework for conscientious objection? If so, please provide details.

Under Article 11, paragraph 1 of the Constitution (*Official Gazette of RS* No. 98/2006), the Republic of Serbia is a secular state. Paragraph 2 of the same Article of the Constitution provides that Churches and religious communities shall be separated from the state, wherefrom the provision contained in paragraph 3 of the same Article is

derived, according to which no religion may be established as either state or mandatory religion.

The principle of separation of the church and the state is explicitly prescribed as well under Article 44 of the Constitution. Under this Article, Churches and religious communities are separated from the state, equal and free to establish independently their internal structure, manage their religious affairs, perform their religious rites in public, found religious schools, social and charity institutions and run them in compliance with the law.

The Law on Churches and Religious Communities (*Official Gazette of RS* No. 36/06) explicitly provides in its Article 2, paragraph 3 that there is no state religion, while in Article 4 it stipulates that the entities of corporate religious freedom in terms of the Law itself are traditional Churches and religious communities, confessional communities and other religious organizations. Article 10 of the Law prescribes that traditional churches and religious communities are those with centuries-long historic continuity in Serbia and the legal personality of which has been acquired based on special legislation. The Law expressly states their names: the Serbian Orthodox Church, the Roman Catholic Church, the Slovakian Evangelist Church AC., the Christian Reformist Church, the Evangelist Christian Church AC., the Jewish Religious Community and the Islamic Religious Community. Confessional communities are all those Churches and religious organizations whose legal status was regulated with an application made pursuant to the laws that were in effect in the period of former Yugoslavia – the 1953 Law on Legal Status of Religious Communities and the 1977 Law on Legal Status of Religious Communities in the Socialist Republic of Serbia. All the other religious organizations are in fact newly founded religious organizations. The distinction stated above does not bring about any differentiation between Churches and religious communities in terms of the extent of rights they enjoy following their registration; instead it results solely in a different manner of registration and different documents that are required for registration. Under Article 6 of the Law on Churches and Religious Communities, Churches and religious communities are independent from the state and equal in the eyes of the law regardless of the aforementioned group they belong to. This Article provides as well that they are free and autonomous in defining their religious identity and that they have the right to regulate and maintain their order and organization independently and to conduct their internal and public affairs independently.

Churches and religious communities in the Republic of Serbia have, owing to a long-lasting tradition of respect and understanding for each other, established a relation of cooperation both between themselves and with the state as well. Therefore, the constitutional principle of separation of the church from the state does not implicitly include the prohibition of cooperation. On the contrary, the state, through the Ministry of Religion as the competent authority pursuant to the Law on Ministries (*Official Gazette of RS* No. 65/2008, 36/2009) promotes and fosters the freedom of religion, cooperates with the Churches and religious communities and advances their position in the society, provides protection for religious elements in the cultural and ethnic identity of national minorities, furthers religious education and provides assistance with the inclusion in the educational system, provides support and help in the building of religious structures and in the protection of sacral cultural heritage, provides assistance with the protection of legal and social position of churches and religious communities, exercise of their rights established under the law, regulation and improvement of social

and economic status of holders of religion (the clergy, the monks and nuns, religious officials, pupils and students of religious schools), maintains the Register of Churches and Religious Communities and so forth. Appreciation for religious beliefs in the public sphere is the most relevant with regard to the respect of employees' rights to miss work at the time of their religious holidays as well as with regard to the respect of the conscientious objections.

Under the Law on State and Other Holidays in the Republic of Serbia (*Official Gazette of RS* No. 43/01 and 101/07) employees are entitled not to work during their religious holidays. Holidays for members of Christian religious communities are the first day of Christmas, the Easter holidays, starting from Good Friday and including the day after Easter Sunday, for members of the Islamic community they are the first day of the Ramadan and the first day of Qurban Bayram, and for members of the Jewish Community, it is the first day of Yom Kippur. They are entitled to receive their regular salary for all those days.

Conscientious objection has been defined as another constitutional category. It is prescribed in Article 45 of the Constitution that no person shall be obliged to perform either military or any other service involving the use of weapons if this opposes his religion or beliefs and that, in accordance with the law, any person pleading conscientious objection may be called up to fulfill military duty without obligation to carry weapons in accordance with the law.

The legal framework for pleading conscientious objection is provided by the Law on Alternative Civilian Service (*Official Gazette of RS* No. 88/09) which, among other matters, governs the exercising of the right to conscientious objection of persons subject to conscription and doing the military service performing alternative civilian work.

Additionally, Article 33 of the Law on Military, Labour and Material Obligation (*Official Gazette of RS* No. 88/09) stipulates that conscientious objection may be pleaded with a territorial organ with which the recruit is registered in the register of conscripts not later than eight days from the date on which he received the call-up papers; the right to do one's military service unarmed may not be exercised by a recruit: 1) who has a licence to carry or have a gun; 2) who has in the last three years filed a request to carry or have a gun; 3) who has previously been convicted by a final sentence for a criminal offence which is prosecuted *ex officio* or for a criminal offence involving violent elements which is prosecuted based on a private action; 4) who has in the previous three years been convicted by a final sentence of provoking or taking part in riots and affrays and against whom criminal proceedings have been taken for a criminal offence prosecuted *ex officio*, save for the offence of conscription evasion.

When pleading conscientious objection, a recruit may submit a request for doing his military service unarmed or for doing alternative civilian service. When a person fulfils his military duty unarmed, it lasts for six months and is done at headquarters, units and institutions of the Serbian Armed Forces pursuant to the Law on Military, Labour and Material Obligation. Conscripts doing their military service unarmed are assigned duties and tasks which do not require carrying weapons or any use thereof. In regard to all the other rights and obligations, they are equal with conscripts doing their military service armed.

Conscientious objection may be pleaded as well by a conscript who is a member of the reserve forces of the Serbian Armed Forces and he may do so after a period of four years has ended, following the date on which he finished doing his military service with weapons.

Alternative civil service is done in state bodies, organizations, institutions, units and legal entities designated for such purpose pursuant to a decision of the Minister of Defence, financed from the budget of the Republic of Serbia and performing the activities of common social interest. Alternative civil service is provided for recruits who for religious, moral or otherwise justified reasons of conscience wish to substitute doing military service with weapons for the alternative civilian service under the conditions and in the manner provided for in this law. The alternative civilian service lasts for nine months. A recruit shall be enlisted in alternative civilian service in the calendar year in which he reaches the age of 19 or at the latest by the end of the calendar year in which he reaches the age of 27. Exceptionally, a recruit may, under special conditions, be enlisted in alternative civilian service at the latest by the end of the calendar year in which he reaches the age of 30.

A special innovation, introduced under the Law on Alternative Civilian Service, pertains to the liability of organizations and institutions should they fail to provide conditions for doing alternative civilian service or to ensure the rights to which a person is entitled in the course of doing his alternative civilian service as well as should it be established that a person doing the alternative civilian service was treated in a demeaning, inhumane or degrading manner.

Legislative provisions provide for the control of the implementation the alternative civilian service via participation of persons from other ministries and local self-governments in the work of bodies dealing with matters of the alternative civilian service. Inspections is conducted by the Defence Inspectorate through the application of provisions contained in the Law on Alternative Civilian Service.

Provisions contained in the Law introduce mandatory training for persons in alternative civilian service in civil protection assignments since most of the persons enlisted in alternative civilian service, after its completion, are to be deployed to civil protection units.

77. Is there a legislative framework for conscientious objection to military service? If so, please provide details.

Article 43 of the Constitution of RS (*Official Gazette of RS* No. 98/2006) guarantees freedom of thought, conscience, beliefs and religion, as well as the right to stand by one's own belief or religion or to change them by one's own choice. Under Article 45 of the Constitution of RS, no person shall be obliged to perform, military or any other service involving the use of weapons if this opposes his religion or beliefs.

Any person pleading conscientious objection may be called up to fulfill military duty without obligation to carry weapons, in accordance with the law. In the Republic of Serbia, a recruit pleading conscientious objection may submit a request for doing alternative civilian service or for doing military service unarmed.

Alternative civilian service is governed by the Law on Alternative Civilian Service which was adopted on 26 October 2009 (*Official Gazette of RS* No. 88/09).

The matter of fulfilling military duty unarmed is governed by the Law on Military, Labour and Material Obligations which was adopted on 26 October 2009 (*Official Gazette of RS* No. 88/09).

Alternative civilian service is done within state bodies, in organizations, institutions, units and legal entities designated for such purpose pursuant to a decision of the Minister of Defence, financed from the budget of the Republic of Serbia and performing the activities of common social interest.

Persons enlisted in alternative civilian service do community work which is not conditioned by either professional education or occupation, but rather needs, tasks and purpose of the organization at which the alternative service is performed.

By observing the Council of Europe Recommendation No. 87 of 1987, according to which the length of any alternative service may not assume a character of punishment, the Law on Alternative Civilian Service stipulates that the alternative civilian service shall last nine months, which is consistent with the accepted international standards.

Protection from demeaning, inhumane and degrading treatment of persons during their alternative civilian service has been introduced under this Law.

When a person fulfils his military duty unarmed, it lasts for six months and is done at headquarters, units and institutions of the Serbian Armed Forces. The conscripts doing their military service unarmed are assigned duties and tasks which do not require carrying or using weapons.

In regard to all other rights and obligations, the conscripts doing their military service unarmed are equal with conscripts doing their military service armed.

On 15 December 2010, the National Assembly of the Republic of Serbia adopted the Decision on the abolishment of the compulsory military service whereby, due to professionalisation of the Serbian Armed Forces, the compulsory military service shall be abolished when it is completed by the conscripts who commenced it in 2010.

The Decision shall take effect as of 1 January 2011 and it has been provided that enlistment in military service in the Serbian Armed Forces shall be based on the principle of voluntary participation, pursuant to the amendments to the Law on Military, Labour and Material Obligation, which were passed by the National Assembly on 15 December 2010.

It has been provided that both women and the members of the reserve component who have completed their alternative civilian service or their military service unarmed may enlist in voluntary military service involving the carrying of weapons.

78. Please provide statistics on the number of religiously motivated incidents for the last five years.

The Criminal Code ("Official Gazette of RS" No. 85/05, 88/05 – corr., 107/05 – corr., 72-09) stipulates the criminal offence of instigating national, racial, religious or other form of hatred or enmity – Article 317. by imposing imprisonment sentences ranging from 6 months to 5 years to whoever instigates and incites national, racial or religious hatred or intolerance among the people and ethnic communities living in Serbia, or whoever commits coercion, maltreatment, compromising one's security, exposure to derision of national, ethnic or religious symbols, damage to other person's belongings, desecration of monuments, memorial and graves, the offender from paragraph . shall be punished with imprisonment from 1 to 8 years in case the offences are committed by abuse of position or authority, or if they result in riots, violence or other grave consequences for the coexistence of people, national minorities or ethnic groups living in Serbia. For offences stated in paragraph 2 the offender shall be punished with imprisonment from 2 to 10 years in cases when the offences are committed by abuse of position or authority, or if they result in riots, violence or other grave consequences for the coexistence of people, national minorities or ethnic groups living in Serbia.

Analysis of criminal offences, misconducts and all other actions resulting in damage to religious objects, indicate two major forms of endangering: a) where acquiring unlawful material gain is the motive and b) where the manner of execution and circumstances in which the offences are committed indicate to religious intolerance as a likely motive.

Special attention has been dedicated to this problem because these events in multi-religious and multinational environments tend to gain different connotation, exactly due to specific nature of objects upon which offences were committed. In this respect, and with the aim of adequate protection of these objects, in police directorates of the Ministry of Interior analysis and evaluations of endangerment are conducted, and security assessments and action plans are composed based upon them.

In addition to the fact that in majority of the cases the motive is acquiring unlawful material gain, where objects of Serbian Orthodox Church are in most imminent danger, there were recorded incidents of sacrilege upon religious objects where due to nature of execution (destruction of windows and writing graffiti of insulting contents on religious objects) and the environment in which this was done, that could be put into context of religious intolerance (in 2007 – 83; in 2008 – 81; 2009 – 54 and in the period January – November 2010 – 44 incidents).

Taking into consideration all manners of displaying religious intolerance, it can be concluded that in 2007, Christian Adventist Church, in relation to all other religious communities in the Republic of Serbia, is most frequently being targeted by reckless and intolerant individuals (16 cases of demolition on objects of this religious community, 9 of which in the territory of AP Vojvodina).

However, owing to precautionary measures taken by this Ministry, in the 2008 there was a decrease of display in religious intolerance towards this religious community, whereas 10 attacks on their objects were reported (two of which in the territory of AP

Vojvodina), in 2009 there was 9 recorded cases of damages on Christian Adventist Church, and in period of January – November 2010 – 5 cases.

Besides Christian Adventist Church, the damages on Roman Catholic Church could also be put into context of religious intolerance (10 – in 2007; 13 – in 2008; 9 – in 2009; and 3 in the period of January – November 2010 and 1 – in this year), on objects of religious community „Jehovah’s Witnesses“ (8 – in both 2007 and 2008; 7- in 2009; 5 – in the period of January – November 2010), on the „Church of Jesus Christ of Latter-day Saints“ (2 - in 2007; 7 - in 2008; 2 – in 2009; and 3 – in the period of January – November 2010), on objects of Islamic religious Community (2 – in 2008; and 2 – in the period of January – November 2010), on the objects of Jewish religious Community (2 – in 2008; and 2 - in the period of January – November 2010) etc.

It is clear that it cannot be stated with certainty that these cases are expressions of religious intolerance, i.e. motivated by religious intolerance, but it is certain that in the environments where they occurred (multi-religious and multinational), due to the nature of objects and manners of execution, provoke exactly that reaction or get special media attention. In addition, due to reason that such cases may be misused, or used for creating a false presentation in the public, these cases are strictly recorded and provided with intensive work on their resolution, because only with detection of the perpetrators, motive for the crime can be obtained (although this is in jurisdiction of judicial authorities).

According to statistical data from the prosecution office, in 2005, for the criminal offence of instigating national, racial, religious or other form of hatred or enmity from Article 134 of the Basic Criminal Code (valid at the time), total of 93 persons were reported. Charges were dismissed against 40 persons. Sixteen persons were indicted, and two persons were sentenced to imprisonment. Two acquittals were issued. In 2006, for this criminal offence, (Article 317. in the new Criminal Code) 107 persons were reported, 20 of which were acquitted, 71 person were indicted, and 21 person were sentenced, 6 of them to prison and 15 of them received a suspended sentence, and total of 5 appeals were reported on behalf of the public prosecutor, 4 of which upon a punishment decision. Thus, in 2007 for this criminal offence 58 persons were reported, 15 of which were acquitted. Total of **29** persons were charged. Total of 15 convictions were reached and 7 of them imposed prison sentence, 6 suspended sentences and 2 persons were acquitted. Total of 7 appeals were reported from the public prosecutor, 5 of them because of punishment decision. Thus, in 2008 for this criminal offence 81 persons were reported, 17 of which were acquitted. Total of **69** persons were charged. Total of 26 convictions were reached, 15 of them imposed prison sentence, 9 suspended sentences, 1 person was fined and 1 security measure was imposed. Total of 19 appeals were reported from public prosecutor, 8 of them because of punishment decision. Thus, in 2009 for this criminal offence 82 persons were reported, 18 of which were acquitted. Total of **16** persons were charged. Total of 38 convictions were reached for the criminal offense in the reported period and previous periods, 9 of them imposed prison sentence, 9 suspended sentences, 1 person was fined and 28 suspended sentences were reached. Total of 8 appeals were reported from public prosecutor, 7 of them because of punishment decision.

After examining damages from resolved cases, made on religious objects, it has been concluded that those damages resulted as a consequence of reckless behaviour of

children or irresponsible behaviour of teenagers of various nationalities, often under influence of alcohol and in groups, performing criminal activities and committing offences, and which are not being predominantly motivated by national hatred or intolerance.

Regarding religiously motivated incidents:

By court ruling published on 14th of December 2010, adopted upon submission of Života Jovanović, the European Court of Human Rights, by giving priority to this submission, for the first time so far, established that the Republic of Serbia infringed Articles 3 (prohibition of torture and inhumane treatment) and 14 (prohibition of discrimination) in relation to Article 3 of the European Convention on Human Rights.

- Freedom of expression including freedom of the media

79. Please describe the media landscape (written press and audiovisual sector). How are the audiovisual media financed? Is there a supervisory body for the (audiovisual) media, what is its composition and how does it function? Have recommendations of experts from the Council of Europe and OSCE been taken into consideration when drafting legislation in the field of media?

Under the Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/2006 (Article 46), the freedom of thought and expression is guaranteed as well as the freedom to seek, receive and disseminate information and ideas by means of speech, writing, art or in some other manner. Freedom of expression may be restricted under the law only should it be necessary to protect the rights and reputation of other persons, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia. The Constitution also stipulates (Article 50) that everyone has the freedom to establish newspapers and other means of disseminating information to the public without prior permission and in the manner laid down by the law. Television and radio stations are founded in accordance with the law. There is no censorship in the Republic of Serbia. A court of competent jurisdiction may prevent the dissemination of information and ideas through the media only when this is necessary in a democratic society to prevent inciting to the violent overthrow of the order established under the Constitution or to prevent the violation of territorial integrity of the Republic of Serbia, to prevent the propagation of war or inciting to direct violence or in order to prevent the advocacy of racial, national or religious hatred whereby discrimination, hostility and violence is encouraged or provoked. Exercising of the right to a correction of untruthful, incomplete or erroneously circulated or disseminated information whereby a person's right or interest has been violated and of the right to respond to published or broadcast information is governed by the law.

The Law on Public Information (*Official Gazette of RS* No. 43/03, 61/05 and 71/09) lays down that the right to public information entails in particular the freedom of expression of thought, the freedom to collect, research, publish, broadcast and disseminate ideas, information and opinions, the freedom to publish and circulate (distribute) newspapers and the other public media, the freedom to produce and broadcast radio and television programme, the freedom to receive ideas, information and opinions as well as the freedom to establish legal entities that undertake the activities of the public media. Public information is free, in the interest of the public and

may not be subject to censorship. No person may, even in an indirect manner, curtail the freedom of the public media, in particular by abuse of public or private powers, abuse of rights, influence or control over the funds intended for printing and circulating the public media or over devices used for broadcasting and radiofrequencies, as well as by employing any other means suited to restrict the free flow of ideas, information and opinions. No person may exert any kind of physical or other pressure on any public media or its staff or any kind of influence suited to hinder them in the performance of their work. A court of law shall rule, as a matter of urgency, if there were violations of freedom of information.

Approximately 500 print media and 19 services of news agencies have been registered in the Republic of Serbia. The Republic Broadcasting Agency has granted over 450 licences to broadcast radio and television programmes. Seven licences to broadcast programme on the national level have been granted, two of which were issued to the Public Broadcasting Service, the Serbian broadcasting institution, while five were issued to other commercial broadcasters of television programme. On the regional level, 34 licences to broadcast television programme and 38 licences to broadcast radio programme have been granted. On the local level, 100 licences to broadcast television programme and 250 licences to broadcast radio programme have been granted. An independent regulatory authority, the Republic Broadcasting Agency, is in charge of monitoring the work of broadcasters.

- Financing of the audiovisual media:

Under the Law on Broadcasting (*Official Gazette of RS* No. 42/2002, 97/2004, 76/2005, 79/2005 – other law, 62/2006, 85/2006, 86/2006 - Corrigendum and 41/2009), all the radio and television stations which were founded by municipalities or cities were obliged to finalize their privatization processes by 31 December 2007. All the radio and television stations have been commercialized and are funded from privately-owned funds. The Laws provide for several exceptions, namely:

- 1) The Law on Broadcasting provides for the existence of two public services: Broadcasting Institution of Serbia and Broadcasting Institution of Vojvodina. Public broadcasting services are financed by means of television subscription paid for by the citizens.
- 2) The Law on Local Self-government (*Official Gazette of RS* No. 129/2007) provides that a municipality may, through its bodies, establish television and radio stations in order to report and inform the public in the languages of national minorities that are officially used in the municipality, as well as in order to report to and inform the public in the languages that are not officially used in the municipality when such reporting and informing represents the attained level of minority rights (Article 20, point 34);
- 3) The Law on the Capital (*Official Gazette of RS* No. 129/2007) stipulates in its Article 8, paragraph 2, point 5) that the City of Belgrade may establish on its territory television and radio stations, newspapers and other news media in accordance with the law.

- Supervising authority for the audio-visual media and its operation:

There is a supervising authority for the audio-visual media in the Republic of Serbia, namely an independent regulatory authority called the Republic Broadcasting Agency. The Republic Broadcasting Agency was founded under the Law on Broadcasting.

Article 6 of the Law on Broadcasting governs the legal status of the Agency. Article 6 provides that the Republic Broadcasting Agency is established as an autonomous or independent organization exercising public powers pursuant to this Law and regulations passed on the basis of this Law with the view of ensuring conditions for the efficient implementation and development of the established broadcasting policy in the Republic of Serbia in a manner befitting a democratic society. The Agency is an autonomous legal entity and it is in terms of its work independent of any state body as well as of any organization or person involved in the production and broadcasting of radio and television programmes and/or any related activity.

The Law on Broadcasting stipulates that the Agency shall have legal personality. The body of the Agency is the Agency's Council, which makes all the decisions on the issues that come within the Agency's competence. The Agency's Council is elected by the National Assembly and it consists of nine members. The president of the Council represents and acts on behalf of the Agency. Agency's Council members shall be appointed from the ranks of prominent experts in the fields of importance for undertaking activities within the competence of the Agency (media experts, experts in advertising, lawyers, economists, telecommunication engineers and so forth). The Agency is financed from the proceeds gained from broadcasting fees paid pursuant to the Law by broadcasters for the right granted to them to broadcast programme. In the event that the Agency fails to generate the planned income arising from broadcasting fees, the funds lacking shall be provided for from the Budget of the Republic of Serbia. The provision of lacking funds does not affect the independence and autonomy of the Agency. The work of the Agency is open to the public and it is obliged to publish an annual report on its work in a transparent manner.

- Taking into consideration Recommendations of experts from the Council of Europe and OSCE when drafting legislation in the field of the media:

Recommendations of experts from the Council of Europe and the OSCE were indeed taken into consideration when media laws were being drawn up. The usual procedure for drawing up laws is that experts from the CE make expert evaluations of drafts of legal regulations and participate in round table conferences organised as part of public debate about the draft law. Furthermore, before draft laws are submitted to the Government of the Republic of Serbia for consideration, it is necessary to obtain a positive opinion from the Government's EU Integration Office with respect to the law's conformity to the *acquis communautaire*.

80. Is the media legislation aligned to European standards? Please provide information on the new media law.

Media laws of the Republic of Serbia were passed based on European regulations and standards and follow European regulations and standards in this field. While the Law on Broadcasting (*Official Gazette of RS* No. 42/2002, 97/2004, 76/2005, 79/2005 – other law, 62/2006, 85/2006, 86/2006 - corrigendum and 41/2009 (of 2002), the Law on

Public Information (*Official Gazette of RS*, No. 43/2003, 61/2005 and 71/2009) (of 2003) were being drawn up, including as well subsequent amendments to them, the following legal act were used as their basis:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10);
- European Convention on Transfrontier Television;
- EU Directive on Television without Frontiers;
- Declaration on Freedom of Expression and Information (1982);
- Recommendation No. R (94) 13 on Measures to Promote Media Transparency;
- Recommendation No.(95) 1 on Measures against Sound and Audio-visual Piracy;
- Recommendation No. R (96) 10 on the Guarantee of the Independence of Public Service Broadcasting;
- Recommendation No. R (97) 19 on the Portrayal of Violence in the Electronic Media;
- Recommendation No. R (97) 20 on "Hate Speech";
- Recommendation No. R (97) 21 on the Media and the Promotion of a Culture of Tolerance;
- Recommendation No. R (99) 15 on Measures Concerning Media Coverage of Election Campaigns;
- Recommendation No. R (2000) 7 on the Right of Journalists not to Disclose their Sources of Information;
- Recommendation No. R (2000) 23 on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector;
- Resolution (74) 26 on the Right of Reply and
- other legal acts relevant to the regulation of this field.

The Republic of Serbia has been working hardly, in cooperation with the Delegation of the European Union, at formulating a strategy for the development of public information system in the Republic of Serbia. The plan is that a document outlining the strategy would be finalized and adopted by the Government of the Republic of Serbia in the first half of 2011. Directly after the Strategy for Development of the Public Information System has been adopted, the Government of the Republic of Serbia will, through its competent Ministry, draw up and propose to the National Assembly of the Republic of Serbia laws which will govern this field on the bases established in the Strategy.

81. Describe the libel legislation. What types of penalties are used for libel offences? What is the general trend of the court decisions in the area of freedom of expression (including the number of libel suits and other cases involving representatives of the news media)? Please provide statistics on libel cases and related fines, separating data for suits against media and civil society organisations' representatives.

The Criminal Code of the Republic of Serbia (*Official Gazette of RS*, No. 85/2005, 88/2005 - corrigendum, 107/2005 - corrigendum, 72/2009 and 111/2009) the Chapter 17 Criminal Offences Against Honour and Reputation includes the criminal offences of insult and defamation. Both criminal offences have the prescribed and qualified forms,

while fines in daily amounts and fines in certain amounts are prescribed for the offender of these criminal offences.

Therefore, Article 170 of the Criminal Code prescribes the criminal offence of **insult** as follows: Whoever insults another person shall be punished with a fine ranging from 20 to 100 daily amounts or a fine ranging from RSD 40,000 to 200,000. If the offence specified in paragraph 1 of this Article is committed through the press, radio, television or other media or at a public gathering, the offender shall be punished with a fine ranging from 80 to 240 daily amounts or a fine ranging from RSD 150,000 to 450,000. If the insulted person returns the insult, the court may punish or remit punishment of either parties or one party. There shall be no punishment of the perpetrator for offences specified in paragraphs 1 through 3 of this Article if the statement is given within the framework of serious critique in a scientific, literary or art work, in discharge of official duty, journalist tasks, political activity, in defence of a right or defence of justifiable interests, if it is evident from the manner of expression or other circumstances that it was not done with intent to disparage.

The criminal offence of **defamation** under Art.171 of the CC is described as follows: Whoever expresses or disseminates untruths regarding another person that may harm his honour or reputation, shall be punished with a fine ranging from 30 to 120 daily amounts or a fine ranging from RSD 20,000 to 200,000. If the offence specified in paragraph 1 of this Article is committed through the press, radio, television or other media or at a public gathering, the offender shall be punished with a fine of 60 to 180 daily amounts or a fine ranging from RSD 30,000 to 300,000. If the expressed or disseminated untruths have resulted in serious consequences for the injured party, the offender shall be punished with a fine ranging from 60 to 180 daily amounts or a fine from RSD 30,000 to 300,000.

According to the provision of Art.177 of the Criminal Code, prosecution for these two criminal offences shall be undertaken by private action. For this reason, we do not have the data regarding the sentencing policy for the criminal offences of insult and defamation.

In addition to the criminal liability for defamation and insult, the Law on Contract and Torts (*Official Journal of SFRY* No. 29/78, 39/85, 45/89 - Decision rendered by the Constitutional Court of Yugoslavia and 57/89, *Official Journal of FRY* No. 31 / 93 and *Official Journal of SCG* No. 1 / 2003 - The Constitutional Charter) provides for the non-pecuniary compensation for damages to honour and reputation.

Although the Law on Public Information (*Official Gazette of RS*, No. 43/03, 61/05 and 71/09) does not regulate the institution of defamation, it lays down the rights and obligations of participant in the public information process and regulate the cases of presenting false or misleading information through the media, which might have the character of defamation based on the definition set forth in the Criminal Code. Article 3 of the Law stipulates that a journalist and editor in chief of the public media shall, before publishing information that contain data on an event, phenomenon or personality, be obliged to verify its origin, accuracy and completeness with due diligence. In Chapter VIII under point 2 Right of Reply and Correction of Information (Article 47 through Article 71), the law provides the opportunity for any person referred to inaccurate, incomplete or any other information, to publish a reply or update the

information. If the editor in chief does not publish a reply or update the information, the holder of the right to react against the responsible editor may file a complaint. The right is exercised in the regular court proceedings. In addition, according to Article 79 any person referred to inaccurate, incomplete or other information shall be entitled to compensation for pecuniary and non-pecuniary damages in accordance with general regulations and provisions of this Law, notwithstanding any other remedies which that person may have at disposal. The right is exercised in the regular court proceedings.

In case of violation of Article 37 of the Law on Public Information, whereby the presumption of innocence is regulated, a founder and an editor in chief of the public media in which a person is designated as offender of a punishable act, and/or found guilty or responsible before the final decision of the court or other competent authority, shall be punished for economic offence. For all of these proceedings, the urgency of procedure is prescribed.

Violation of the right to freedom of expression provided for in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was found in four judgments by the European Court of Human Rights regarding applications brought against the Republic of Serbia.

(1) Case of Lepojić v. Serbia, application no. 13909/05:

In case Lepojić v. Serbia, the European Court of Human Rights delivered the judgment on 6 November 2007 and held that domestic courts in case Lepojić violated the right to freedom of expression (Article 10 of the European Convention on Human Rights) because of criminal conviction and subsequent civil judgment rendered against Lepojić.

In this case - the case Lepojić, the Municipal Court in Babušnica in its judgment *K. No. 89/02* of 11 June 2003 found Zoran Lepojić guilty for what he wrote as the author of the text entitled "A Despotic Mayor" published in the newspaper "Narodne dužnicke novine", issue No.1 of August 2002: "... therefore, Petar Jončić in his 'JUL euphoria', in line with the slogan "money talks" and for his own existential needs, has continued with his near-insane spending of the money belonging to the citizens of the Municipality: on sponsorships, gala luncheons..." and so for the plaintiff, the Mayor of Babušnica, stated factually inaccurate statements by press release that might have had damage his honour or reputation and thereby committed the criminal offence of defamation under Article 92, Paragraph 2, in conjunction with paragraph 1 of the Criminal Code of the Republic of Serbia and was sentenced with a suspended sentence by a fine of RSD 15,000.00 while the sentence was not to be enforced unless the applicant committed another criminal offence within a period of one year. The defendant was required to pay a lump sum of RSD 1,000 and the amount of RSD 10,000 to a plaintiff in respect of the costs of the criminal proceedings. In its reasoning of the said judgment, the court of first instance determined that the defendant was clearly expressing untruths that harmed the honour or reputation of the plaintiff, by which the defendant attacked the honour, reputation and dignity of a plaintiff in an extremely harsh manner with words which exceed the limits of social criticism, morals and decent way of behaviour, and even the way of communicating with the public, for which a special responsibility must bear the local politicians on the first place - presidents of local branches of political parties, which was the defendant. In deciding on appeals, the District Court in Pirot by its judgment *Kž. No. 186/04* of 8 October 2004

dismissed the appeal of defendant Zoran Lepojić as unfounded and upheld the first instance judgment, and in the reasoning found that the court of first instance had properly concluded that the defendant had expressed statements whose authenticity did not prove in the newspaper article which he signed only with his name, without noting that it was written in his capacity of president of the local branch of DHSS political party, the contents of which are such that harmed the honour and reputation of the person to whom they relate and that all of that was set forth in an attempt to disparage the plaintiff.

Based on the above mentioned final criminal conviction, the Municipal Court in Babušnica, in its judgment, *P. No. 36/03* of 18 March 2005, ordered the defendant Zoran Lepojić to pay to a plaintiff Peter Jončić the amount of RSD 120,000 for non-pecuniary damages for mental anguish due to damages to honour and reputation with interest accrued, and costs of the proceedings in the amount of RSD 39,000, while in the reasoning of the judgment, the civil court stated that the plaintiff was a well known and respected man- because if he wasn't, the citizens would have never chosen him at the elections to be a Mayor, and that, in addition, the plaintiff was a successful director of a local company for a long period of time which in the most difficult economic conditions successfully operated and the workers received their salaries in times when many companies stopped the work, and that all previously mentioned made a difference to that extent that plaintiff's honour, reputation and dignity had a greater significance than it would with any ordinary citizen. In deciding on the defendant's appeal on the said judgment, the District Court in Pirot in its judgment, *Gz. No. 405/05* of 24 May 2003 upheld the judgment of the Municipal Court in Babušnica and dismissed the defendant's appeal as unfounded.

The European Court of Human Rights in its judgment states that freedom of expression provided for in Article 10 is one of the essential foundations of a democratic society, and pursuant to paragraph 2 it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive, but also to those that offend, shock or disturb. The Court upheld the right to impart, in good faith, information on matters of public interest, even where this involved damaging statements about private individuals and emphasised that the limits of acceptable criticism are still wider where the target is a politician, and further, that while precious for all, freedom of expression is particularly important for political parties and their active members, especially during election campaigns when opinions and information of all kinds should be permitted to circulate freely. The same court reminds us that Governments should always display restraint in resorting to criminal sanctions, particularly where there are other means of redress available. The same court concludes that the final criminal and civil judgments at issue undoubtedly constituted an interference with the applicant's right to freedom of expression. The Court notes that the applicant had clearly written the impugned article in the course of an ongoing election campaign and in his capacity as a politician, notwithstanding the Government's submission concerning the specifics of his signature, that the target of the applicant's criticism was the Mayor, himself a public figure, and the word "insane" was obviously not used to describe the latter's mental state but rather to explain the manner in which he had allegedly been spending the money of the local taxpayers, that the applicant clearly had some reason to believe that the Mayor might have been involved in criminal activity and, also, that his tenure was unlawful. The Court further finds that although the applicant's article contained some strong language, it was not a gratuitous personal attack and focused on issues of public interest rather

than the Mayor's private life. The reasoning of the criminal and civil courts, in ruling against the applicant, was thus "relevant" when they held that the reputation of the Mayor had been affected. It was not, however, "sufficient" given the amount of compensation and costs awarded which were equivalent to approximately eight average monthly salaries in Serbia at the relevant time as well as the suspended fine which could, under certain circumstances, not only have been revoked but could also have been converted into an effective prison term.

The Court further finds that, taking into account everything mentioned above and especially bearing in mind the seriousness of criminal penalties in question, as well as the ambiguous opinion of domestic courts in the sense that the honour, reputation and dignity of the Mayor "are more important than ... the honour, reputation and ... the dignity of an ordinary citizen" and therefore concludes that the interference of domestic courts in the manner in question was not necessary in a democratic society and that consequently there was a violation of Article 10 of the Convention. The applicant was awarded EUR 3,000 for non-pecuniary damages and EUR 250.00 for the costs of the proceedings.

(2) Case of Filipović v. Serbia, application no. 27935/05

The European Court of Human Rights in its second judgment of 20 November 2007 in the case *Filipović v. Serbia* also held that interference of domestic court was not necessary in a democratic society and that provisions of Article 10 of the Convention were also violated.

Namely, in the case *Filipović*, the Municipal Court in Babušnica by its judgment *K. No. 36/01* of 21 October 2002 found the defendant Zoran Filipović guilty, because of the fact that on 8 March 2001 at a public meeting in Babušnica, attended by some members of the Serbian Government and over 80 municipal councillors of Babušnica and managerial personnel from business and social activities of the municipality, he made the untrue statements, that could damage the reputation and honour of a plaintiff Jončić Petar and because of which the plaintiff could have serious consequences as a respected businessman and public servant, saying "he must not be in the position he holds – the Mayor of Babušnica-because he had already embezzled DM 500,000", by which the defendant has committed the criminal offence of defamation under Article 92, paragraph 2 in conjunction with paragraph 1 of the Criminal Code of the RS, and was convicted and ordered to pay a fine in the amount of YUD 6,000 plus an additional YUD 24,000 in costs to the plaintiff. In deciding on appeals, the District Court in Pirot in its judgment *Kž. No. 234/03* of 31 December 2003 delivered a judgment by reversing the first-instance judgment only in terms of legal qualifications and held that the acts of the defendant Zoran Filipovic included the criminal offence of insult under Article 92, paragraph 1 of the Criminal Code of RS, while the rest of the first instance judgment was upheld. Based on the above criminal judgments, the Municipal Court in Babušnica adopted the claim of a plaintiff Jončić Petar and ordered a defendant Zoran Filipović to pay RSD 120,000 in compensation for mental anguish due to damages to honour and reputation, with the interest accrued. In its reasoning, the court noted that the plaintiff was a public figure, both the Mayor of Babušnica and Director of Confection "Liska" in Babusnica and, as such, had contacts with representatives of the Serbian authorities and with other businessmen, that he was announced as the businessman of the year and was receiving awards and acknowledgments at fashion fairs on a regular basis which was

generally known fact. Therefore, making the untrue statements on his account in the presence of the government representatives, businessmen and members of the municipality, with whom the plaintiff was achieving most frequent contacts, constituted a direct attack on his reputation and honour, so his application was admissible. Furthermore, in that civil judgment it was stated that it was very difficult to acquire the honour and prestige in society and therefore awarded to the plaintiff the claim for damages in the amount of RSD 120,000. In deciding on appeals, the District Court in Pirot in its judgment *Gž. No. 695/04* of 20 December 2003 upheld the above-mentioned judgment and dismissed the defendant's appeal, finding that the court of first instance gave the complete, correct and objective reasons for the adoptive part of the judgment.

The European Court of Human Rights found that the final judgment of the civil court undoubtedly constituted an interference with the applicant's right to freedom of expression and that the target of criticism of the applicant was the Mayor - Director of a large state-owned company, himself a public figure, and that both the civil courts and criminal courts concluded that the applicant had publicly accused the representative of the municipality for the crime of embezzlement in the absence of the conviction for the same offence, but that according to the Court's assessment the applicant clearly had a legitimate reason to believe that the Mayor might have been involved in tax evasion, while his statement, despite containing serious allegations, was not a gratuitous personal attack directed against the Mayor. The compensation for non-pecuniary damages was not awarded to the applicant.

(3) Bodrožić v. Serbia, application No. 32550/05:

The judgement of the European Court of Human Rights of 23 June 2009 confirmed the violation of Article 10 of the European Convention.

By the judgment of the Municipal Court in Zrenjanin of 15 December 2004 the applicant was found guilty of criminal offence of insult for publishing the article entitled "The Floor is given to the Fascist" published on 3 October 2003 in the newspaper "Kikindske" in which the plaintiff J.P. was called a fascist and an idiot, because he made controversial statements in a TV show concerning the existence of national minorities in Vojvodina. By the same judgment, the applicant was found guilty for criminal offence of defamation for the statement given at the court hearing on 17 November 2004, that the plaintiff is a member of the fascist movement in Serbia. This judgment was upheld by the District Court in Zrenjanin on 9 March 2005.

The court specifically pointed to the failure of national authorities to determine whether the applicant's statements are subject to a value judgment which is not susceptible of proof, and to the fact that the appropriate analysis was not carried out in respect of the context in which the controversial expressions had been made and that the reasons for the conviction specified by the domestic court were not "relevant and sufficient". The applicant was awarded EUR 500.00 in respect of non-pecuniary damage.

(4) Bodrožić and Vujin, application No. 38435/05

The judgement of the European Court of Human Rights of 23 June 2009 confirmed the violation of Article 10 of the European Convention.

The applicants complained of the violation of the right to freedom of expression under Article 10 of the European Convention, a violation, in their assertion, occurred by the judgment of the Municipal Court in Kikinda of 14 February 2005 by which the applicants were found guilty of criminal offence of insult caused to the plaintiff, in their text "They have not punished us much for what we are?" published in the newspaper "Kikindske" on 9 April 2004. The applicants were fined. In this text, the plaintiff was compared to the "blonde". The District Court in Zrenjanin upheld this judgment on 4 May 2005.

The European Court of Human Rights has once again drawn attention to the need of a higher degree of tolerance when it comes to criticism of public figures and that reasons for the sentence specified by the domestic court were not "relevant and sufficient" for conviction. Compensation was not awarded to the applicants.

The Supreme Court of Serbia has taken a legal position: "The degree of acceptable criticism is much wider for public figures than private individuals. Unlike ordinary citizens, who have no such capacity, public figures are inevitably and knowingly exposed to close scrutiny of every word and deed, both by journalists and the public, and in general, so they must exhibit a higher degree of tolerance." in the process of taking general measures in enforcing the judgment of the European Court of Human Rights in Strasbourg, on the basis of which the Committee of Ministers passed a resolution to lift the judgment Filipovic and Lepojević against Serbia from the list of the Committee of Ministers.

The Ministry of Human and Minority Rights, specifically the Department for Representation Before the European Court of Human Rights by its letter of 22 September 2008 requested from the Supreme Court of Serbia to take the position in principle that domestic courts, in determining the amount of the fine provided for criminal offence of defamation, take into account the position held by the European Court in the case Lepojić, whereby it is pointed to the need for domestic courts of taking into account the difference between the value judgments, which should not fall under the provisions of criminal legislation, as well as to inform the representative of the Department for Representation Before the European Court of Human Rights on eventually taken legal position, who would then notify the Committee of Ministers thereof, and this is because the Division for Enforcement of Judgments pointed out that in the cases Filipović and Lepojić, in which the Court held a violation of Article 10 of the Convention on Human Rights, the Committee of Ministers could adopt the final resolution, since the just satisfaction have been paid and that convictions for criminal offences delivered by the domestic courts have been deleted from the criminal records. President of the Supreme Court of Serbia, Vida Petrović-Škero, who is also a chairman of the Division of Jurisprudence in the Supreme Court of Serbia, proposed that the Criminal Division should take a legal position, with the foregoing contents, because in these cases the criminal convictions of domestic courts have served as a basis for delivering judgments in civil proceedings.

Having regard to the positions of the domestic courts in the above judgments and the position of the European Court of Human Rights in cases Lepojic and Filipovic on such judgments, the Criminal Division at its meeting adopted the proposed legal position, just for the future treatment by domestic courts in similar situations, where the future case-law would align with the positions contained in these judgments of the European

Court of Human Rights in cases Lepojic and Filipovic, that value judgments about public figures generally should not fall under the provisions of criminal legislation because that intervention in such cases is not necessary in a democratic society and that freedom of expression stipulated in Article 10 of the Convention is foundation of a democratic society and individual freedom of expression applies not only to information or ideas that are accepted as or considered to be offensive, but also for what offend, shock or disturb, because it was all focused on issues of public interest and not the private lives of public personalities.

Measures which the Republic of Serbia has taken relating to enforcement of these judgments:

- awarded satisfactions were paid to the applicants;
- judgments were published in English and Serbian language in the Official Gazette;
- the comments of judgments were published on the website www.paragraf.net, in magazine "Paragraph" and in some daily newspapers;
- the Criminal Division of the Supreme Court of Serbia has adopted a legal position on 25 November 2008, which was submitted to all District Courts in Serbia, as follows: "The degree of acceptable criticism is much wider for public figures than private individuals. Unlike ordinary citizens, who have no such capacity, public figures are inevitably and knowingly exposed to close scrutiny of every word and deed, both by journalists and by the public, and in general, so they must exhibit a higher degree of tolerance. " By this legal position, domestic courts have been referred to direct application of the case law of the European Court of Human Rights.
- Legal representative requested for deletion of the conviction from criminal records by the competent courts.

82. Please indicate how laws on telecommunications have been, or will be, amended to take into account international recommendations regarding the freedom of expression. (See also Chapter 10 on Information society and media).

The Law on Electronic Communications (*Official Gazette of RS* No. 44/2010) does not govern the freedom of expression, but it does deal with other matters of importance for the protection of human rights, such as the right to privacy, as mentioned in our reply to question number 69, Sub-group 23 of the EC Questionnaire.

As part of the process of further harmonization with the 2009 EU regulatory framework in the field of electronic communications, a plan has been made to make amendments to the Law on Electronic Communications by adding a provision laying down that a prohibition on Internet access to any user may be imposed only on the basis of a court decision.

83. Provide statistics regarding the number of non-governmental organisations and associations or foundations active in your country? Please present a breakdown per sector/activity.

The Law on Associations (*Official Gazette of the RS*, No 51/09), effective as of 22 October 2009, provides that social organisations, civil associations, and their federations, registered in the Register of Social Organizations, Civil Associations, and

their Federations according to a previous Law on Social Organisations and Civil Associations (*Official Gazette of the SRS*, Nos 24/82, 39/83, 17/84, 50/84, 45/85 and 12/89 and *Official Gazette of the RS*, Nos 53/93, 67/93 and 48/94), and those whose seat is located in Serbia, but are registered in the Register of Associations, Social Organisations, and Political Organisations according to a previously applicable Law on Associations of Citizens in Associations, Social Organisations, and Political Organisations for the Territory of the Socialist Federal Republic of Yugoslavia (*Official Gazette of the SFRY*, No 42/90 and *Official Gazette of the SRY*, Nos 16/93, 31/93, 41/93, 50/93, 24/94, 28/96 and 73/00-additional law), will continue their operation as associations if they harmonise, within 18 months of the date of application of this Law, their statutes and other general acts with the new Law, and file an application for harmonisation at the Registry of Associations kept by the Business Registers Agency. This task is preformed through the Registrar of Associations as an conferred state administration task that falls under the remits of the Ministry of Public Administration and Local Self-Government.

Concerning the number of associations operating in Serbia, it should be noted that the procedure for registering harmonised associations in the Register of Associations is under way. Until the adoption of the new Law the number of civil associations, social organisations and their federations registered in the Register of Associations, Social Organisations and Political Organisations (kept by the Ministry of Public Administration and Local Self-Government) was 13,594, whilst a total of 25,732 civil associations, social organisations and their federations were registered in the Register of Social Organisations and Civil Associations (kept by the Ministry of the Interior).

Up to 1 December 2010, according to the statistics of the Business Registers Agency, a total of 4,968 associations and their federations were registered in the Register of Associations. Of this number, 2,523 associations and 73 federations were registered into the Register by application for harmonisation, whilst 2,349 associations and 23 federations were established following the adoption of the Law on Associations, and they were accordingly registered into the Register under that Law.

Also, it should be highlighted that the Law on Associations provides that the above mentioned social organisations, civil associations and their federations which fail to comply with the law in a specified manner, i.e. if they fail to submit an application for harmonisation and registration in the Register of Associations, they will be deleted from the register and lose the status of a legal entity.

In addition, the Law on Associations provided a normative framework which gives a foreign association (or its representative in the Republic of Serbia) for the first time a possibility to operate in the territory of the Republic of Serbia, if it registers itself into the Register of Foreign Associations kept by the Business Registers Agency through the Registrar of Foreign Associations as an entrusted public administration task within the competence of the Ministry of Public Administration and Local Self-Government. In this respect, according to the data of the Business Registers Agency, until the above mentioned date 53 representative offices of foreign associations were registered in the Register of Foreign Associations.

The data on the number of associations and representative offices of foreign associations registered in the Register of Associations and the Register of Foreign

Associations is available at the official website of the Business Registers Agency (www.apr.gov.rs).

The issues of establishment and legal status of foundations, registration and deletion from the register, their bodies, status changes, and termination of operation, as well as other issues relevant for their operation are regulated in a separate law, namely the Law on Endowments and Foundations (*Official Gazette of the RS*, No 88/10), adopted on 23 November 2010, which will be effective as of 1 March 2011. This law regulates the legal status and operation of the representative offices of foreign foundations in Serbia. As of the date of applicability of this law, the previous Law on Endowments, Foundations, and Funds (*Official Gazette of the FRY*, No 59/89) ceases to be effective except for its part that regulates the legal status of funds whose founder or co-founder is the Republic of Serbia, autonomous province, or unit of local self-government. The procedures of registration of foundations into the register started before the date of application of the Law on Endowments and Foundations, i.e. 1 March 2011, will be completed according to the regulations under which they have been started.

The Law on Endowments and Foundations provides that endowments, foundations and funds established and registered under the Law on Endowments, Foundations and Funds will continue to operate as endowments and foundations, but they are required to harmonise their statutes and other general acts with the new law within 12 months from the date of application of the new law, and to file an application for registration into the Register of Endowments and Foundations kept with the Business Registers Agency as an entrusted task under the remit of the Ministry of Culture. The foundations failing to act in the above specified manner will terminate their operation after the expiry of the time limit. As already mentioned, the funds registered under the previously applicable laws will continue their operation as foundations under their registered name. In this respect, it should be noted that, according to the Law on Endowments, Foundations and Funds, the Register of Endowments, Funds and Foundations was kept by the Ministry of Culture and a total of 692 funds, 79 foundations and 115 endowments were registered therein.

84. What is the legal status of non-governmental organisations and associations or foundations, including their financing, taxation, and restrictions on membership or activities? Specify the rationale of the State funding for NGOs and the mechanism for monitoring of the use of the funds. Is there a process for registering these organisations? Is it obligatory? Please describe the process in detail.

Article 55 of the RS Constitution (*Official Gazette of the RS*, No 98/2006) guarantees the freedom of political, trade union and any other association and the right to remain out of any association, as well as that associations are established without prior consent, and that they are registered into a register kept by a state authority, in accordance with the law.

The establishment and legal status of the **association**, registration and deletion from the Register, its membership and bodies, status modifications and termination of operation, and all other issues relevant for the operation of associations are regulated by the Law on Associations (*Official Gazette of the RS*, No 51/09). This law also regulates the legal status and operation of foreign associations in the Republic of Serbia.

An association, in terms of this Law, is a voluntary and non-governmental, non-profit organisation based on the freedom of association of several natural or legal persons, established for the purpose of achieving and improving a determined joint or common objective and interest that are not prohibited by the Constitution or law.

The association is founded and organised freely and it is autonomous in the achievement of its objectives. It is established by the adoption of a founding act and statute and appointment of the authorised representative, at the founding assembly of the association. In addition, in accordance with the constitutional provision that associations are founded without prior consent, the Law provides that the registration of the association into the register is voluntary. However, it is only upon the registration that the association acquires the status of legal entity. Legal rules on civil partnership are applied to associations that do not register, i.e. do not have the status of legal entity.

The Register of Associations is kept by the Business Registers Agency through the Registrar of Associations, as an entrusted public administration task which falls under the competence of the Ministry of Public Administration and Local Self-Government. The registration is conducted based on an application filed by the association's representative. The following must accompany the application: the founding act, two copies of the statute, and other documents specified in the Rulebook on the Content, Registration Procedure and Keeping of Register of Associations (*Official Gazette of RS*, No 80/09). The Registrar dismisses the application by a decision if the name of the association is identical to the name of another association that is already registered or that has duly applied for registration into the Register of Associations; if the name of the association can be confused with the name of another association, if it causes confusion about the association, its objectives or type of legal person; if the application is filed by an unauthorised person, or if the application is not accompanied by the required documents; or if the application, founding act, or the statute do not contain all data required by law. The Registrar's first-instance decision can be appealed against at the second-instance authority, i.e. the Ministry of Public Administration and Local Self-Government. The Ministry's decision is final, and an administrative dispute may be instituted against it. If the Registrar believes that the association is a secret or paramilitary association or that the Association's objectives are directed towards a violent overthrow of the constitutional order and undermining of the territorial integrity of the Republic of Serbia, violation of guaranteed human or minority rights or instigation or incitement of inequality, hatred or intolerance based on racial, ethnic, religious or any other affiliation or orientation, as well as sex, gender, physical, psychological, or other characteristics or qualities, it will suspend the registration procedure and submit to the Constitutional Court a motion to ban the association's work. No special appeal is allowed against this decision, and upon receiving the ruling of the Constitutional Court, the Registrar will, depending on its content, either dismiss the application in a decision (if the association's operation was banned) or proceed with the registration procedure (if the motion to ban was dismissed by the Constitutional Court). Registration is conducted within 30 days of the date of a duly filed application, based on the decision made by the Registrar of Associations.

In addition, the Law provides that the association may be founded for an indefinite or for a definite period of time, and unless the founding act states otherwise, the association is considered to be founded for an indefinite period of time. In accordance with the Law, the association may form alliances by joining federations and other associations in Serbia and abroad. The operation of associations is public, and transparency of work is regulated in the association's statute. In addition to the above,

it should be particularly noted that the Law liberalises the registration requirements to a considerable extent. Thus, the association may be founded by at least three founders, at least one of which must have permanent residence, or registered seat in the territory of the Republic of Serbia. The association may be founded by natural and/or legal persons having legal capacity. Also, a founder of an association can be a minor with completed 14 years of age, having a statement of consent by his or her legal representative in accordance with the law.

According to the Law on Associations, any person may become a member under equal conditions specified in the statute. A natural person may be a member of an association irrespective of its age, in accordance with the statute, and for a minor up to 14 years of age a validated statement of accession, i.e. membership to the association, is given by his or her legal representative according to the law, whilst in case of a minor with completed 14 years of age the statement is given only by the minor along with a statement of consent by his or her legal representative in accordance with the law.

The association can acquire property from membership fees, voluntary contributions, donations, and gifts (in money or in kind), financial subventions, bequests, interests on deposits, renting, dividends, and otherwise as permitted by the law. Natural and legal persons donating contributions and gifts to associations can be exempted from the relevant tax obligations in accordance with the law introducing the relevant public revenue.

In addition, the association can perform the activities that achieve the objectives laid down in its statute. Namely, the association can perform directly also a business or other proceeds-generating activity in accordance with the law regulating the classification of business activities, but only under the following conditions: the activity should be related to its statutory objectives; it should be provided for in the statute; and the activity should have small volume, i.e. it should be performed in the volume required to achieve the association's objectives. In this case, the business activity is registered into the Register of Business Entities and it is performed in line with the regulations governing the area covering the activities performed. An association may start directly performing the activities only after the business activity has been registered into the Register of Business Entities.

In this respect, the association keeps business books, prepares financial reports and is subject to auditing of financial reports, in accordance with the regulations on accounting and auditing. Annual accounts and reports on the association's activities are submitted to the association's membership in the manner provided for in the statute.

The association is liable for any obligations to the extent of all its assets. Members of the association and association's bodies can be held personally liable for the association's obligations if they use the association's assets as if it were their own, or if they abuse the association as a cover for illicit or fraudulent purposes.

The association's property may only be used for achieving its statutory objectives and may not be shared amongst its members, founders, members of the association's bodies, directors, employees, or any related persons. Disposition of the association's property that is contrary to the law is considered null and void.

Associations can benefit from budgetary funds (of the Republic, autonomous province, and local self-government unit) for the implementation of a programmes of public interest. According to the Law on Associations, programmes of public interest are especially the programmes in the following areas: social welfare, disabled war veterans welfare, disabled persons welfare, social care of the child, protection of internally-displaced persons from Kosovo and Metohija and refugees, natality encouragement, assistance to the elderly, health care, protection and promotion of human and minority rights, education, science, culture, information, protection of environment, sustainable development, protection of animals, consumer protection, fight against corruption, and charity programmes and other programmes where the association exclusively and directly satisfies public needs. Article 38 of this Law provides that the funds for supporting the programme or filling the missing funds for the financing of programmes of public importance implemented by associations are provided in the Budget of the Republic of Serbia. The Government, i.e. the ministry competent for the area in which the association's objectives are implemented will allocate such funds based on a public competition and it concludes contracts for the implementation of approved programmes.

The association is required to use the funds received for the implementation of a programme with public interest exclusively for the implementation of approved programmes. When the association is a beneficiary of the funds, it is required to make a report on its work and volume and procedure of acquiring and use of the funds at publicly available least once a year, and the report is sent to the giver of the funds. The Government specifies the criteria, conditions, volume, manner, allocation procedure, and the manner and procedure of refunding in case the association is found not to use the funds for the implementation of approved programmes. This also applies accordingly to the funds allocated to associations from the budgets of the autonomous provinces and local units of local self-government.

As for the status and operation of foreign associations, i.e. their representative offices in the Republic of Serbia, it should particularly be noted that the Law on Associations provides that a foreign association is, in terms of this law, an association having its seat located in another country; established under the regulations of that country in order to achieve a joint or common interest or objective; and whose operation is not directed at acquisition of profits; it is also an international association or other foreign, or international non-governmental organisation, whose members joined on a voluntary basis to achieve a joint or common non-for-profit interest or objective.

Representative office of a foreign association can operate in territory of the Republic of Serbia following its registration into the Register of Foreign Associations kept by the Business Registers Agency, through the Registrar of Foreign Associations, as an conferred public administration task from the remit of the Ministry of Public Administration and Local Self-Government. The registration into the Register of Foreign Associations is conducted based on an application for registration of a foreign association accompanied by documents specified in the Law on Associations and the Rulebook on the Content, Registration Procedure and Keeping of the Register of Foreign Associations (*Official Gazette of the RS*, No 80/09). The registration into the Register of Foreign Associations is conducted within 30 days of the date of duly filed application, based on a decision made by the Registrar of Associations.

The Law on Associations allows the representative office of a foreign association registered at the Register of Foreign Associations and operating in territory of the Republic of Serbia to transfer from abroad funds needed for the operation of the representative office, and for achievement of their programmes in line with the provisions of the law governing foreign currency operations. After settling all due tax and other obligations in the Republic of Serbia, the representative office of the foreign association can transfer the unspent funds out of Serbia in accordance with the relevant provisions of the law governing foreign currency operations. The representative office of a foreign association can temporarily import objects and equipment required for its operation and take it out of the republic of Serbia, in line with customs regulations and regulations governing foreign-trade operations.

The issues of establishment and legal status of **foundations**, registration and deletion from the register, their bodies, status changes, termination of operation, and other issues relevant for their operation are regulated in a separate law, namely the Law on Endowments and Foundations (*Official Gazette of the RS*, No 88/10), adopted on 23 November 2010, and which will be effective as of 1 March 2011. This law regulates the legal status and operation of the representative offices of foreign foundations in the Republic of Serbia.

In terms of the Law on Endowments and Foundations, a foundation is a non-profit non-governmental organisation established on a voluntary basis, and it is independent in determining its objectives. A foundation can be established by one or more national or foreign persons having legal capacity. When it comes to the restriction of membership in foundations, there are none. The Law introduces another novelty, namely that the funds established and registered in registers according to the Law on Endowments, Foundations and Funds, as of the date of application of this Law, will continue their operation under the name under which they were registered in the Register, as foundations.

Foundations are established to an indefinite or definite time. A foundation is established to an indefinite time unless the founding act provides that it will last up to a specific time, occurrence of a specific event, or achievement of a certain objective. If the founding act does not specifies the time to which it is established, it is deemed that the foundation is established to an indefinite period.

Foundations acquire the capacity of legal entity on the date of registration into the Register of Endowments and Foundations (hereinafter: Register). Foundations can not operate before the entry into the Register. The registration of foundations into the Register is conducted by the Business Registers Agency as an conferred public administration task that is within the remits of the Ministry of Culture. The Business Registers Agency keeps the Register through the Registrar of Endowments and Foundations.

Registration is conducted based on an application for registration.

Registrar of Endowments and Foundations dismisses an application for registration in by a decision, if the application contains any of the deficiencies specified in this Law. An administrative dispute can be initiated against such a decision. If the application for registration has any of the deficiencies, it will not be dismissed if the applicant remedies

the deficiencies found within the time set by the Registrar of Endowments and Foundations, which cannot be less than 15 days.

The Registrar of Endowments and Foundations dismisses in a decision the application for registration of an endowment or foundation only in cases specified in this Law, and an administrative dispute can be initiated against such a decision.

Registration is conducted within 30 days of the date of a duly filed application for registration. The decision on registration into the Register is final and it is possible to initiate an administrative dispute against it.

In addition, the Law provides that a representative office of a foreign foundation can operate in Serbia after it has been registered into the Register of Representative Offices of Foreign Endowments and Foundations. A foreign foundation in the terms of this Law means a legal person without members with seat in a different country, which is organised according to the regulation of that country for implementing a generally beneficial objective, i.e. of an interest that is not prohibited by the constitution and law. As for the registration of representative offices of foreign foundations into the Register of Representative Offices of Endowments and Foundations, provisions concerning the registration of foundations are applied accordingly, unless this or any other law or international treaty provides otherwise. The registration of into the Register of Representative Offices of Foreign Foundations is conducted by the Business Registers Agency as a conferred public administration task that is within the remits of the Ministry of Culture.

The Law on Endowments and Foundations regulates in detail, for the first time, the issue of acquisition of property and performing foundations' activities. According to this Law, a foundation can acquire property from voluntary contributions, gifts, donations, financial subventions, bequests, interests on deposits, renting, copyright, dividends, and otherwise as permitted by the law. A foundation can acquire income by directly performing a business activity, only under the following conditions: the activity should be related to its statutory objectives; it should be provided for in the statute; the activity should be accessory in nature and it should be registered into the register. In this respect, foundations keep business books, make and submit financial statements in line with the accounting and audit regulations.

The foundation's property may be used only for the purposes of the objectives established in the founding act and statute. For any obligations undertaken in its legal transactions, the foundation is liable to the extent of all its assets. By way of exception, if the foundation's founder, manager or governing board member used the foundation's property as their own, or misused the foundation for illegal or fraudulent purposes, they will be held liable too for the obligations undertaken by the foundation in its legal transactions. These persons have joint and unlimited liability for the foundation's obligations.

The foundation does not pay taxes specified in the law in view of the unencumbered acquired assets (voluntary contributions, gifts, donations, financial subventions, bequests, etc).

The assets received as subvention for programmes or to complement the missing part for financing programmes are provided for in the Budget of the Republic of Serbia, autonomous province, or local self-government unit, under the conditions and in the manners provided for in the law regulating the operation of associations and provision of assets to associations for the implementation of programmes of public interest.

The Law on Endowments and Foundations clearly and precisely regulates unacceptable objectives for a foundation. Thus, the objectives and operation of a foundation may not be contrary to the legal order, and especially they may not be directed towards a violent overthrow of the constitutional order and undermining of the territorial integrity of the Republic of Serbia, violation of guaranteed human and minority rights, or instigating and inciting inequality, hatred or intolerance on the grounds of racial, ethnic, religious or any other affiliation or orientation, as well as sex, gender, physical, psychological, or any other characteristics or qualities. In addition, the foundation's objectives may not be directed towards attaining specific interests of political parties.

By the same token, the representative offices of foreign foundations are entitled to operate freely in territory of the Republic of Serbia unless their objectives and operation are contrary to the Constitution, Law on Endowments and Foundations, other laws or international treaties.

If the foundation, or the representative office of a foreign foundation, acts contrary to its established objectives, or performs its activities contrary to the objectives permitted in the Law, or if it joins a foreign or international organisation whose objectives or operation are contrary to the objectives permitted in this Law, the Ministry of Culture, or the body of the Autonomous Province of Vojvodina responsible for culture, must pass a decision revoking the permission to operate.

The Law on Associations (*Official Gazette of RS*, No 51/2009) governs the establishment and legal status of associations, its registration and deletion from the Register, its membership and bodies, status changes and termination of operation, and all other issues relevant for the operation of associations.

An association, in terms of this Law, is a **voluntary and non-governmental, non-profit organisation** based on the freedom of association of more natural or legal persons, established for the purpose of achieving and improving a determined joint or common objective and interest that are not prohibited by the Constitution of law.

The association is founded and organised freely and it is autonomous in the achievement of its objectives.

Registration into the Register of Associations is voluntary.

An association can be founded by at least three founders, at least one of whom must have a permanent residence, or registered seat, in Serbia.

Founders of an association can be natural or legal persons having legal capacity. Any person can become a member of an association under equal conditions, as provided for in the association's statute.

A natural person may be a member of an association irrespective of age, in line with this law and the statute.

A minor can be a founder of an association upon completing 14 years of age and subject to a statement by his or her legal representative granting consent to that effect, in accordance with the law. The statement referred to in paragraph 3 of this Article must contain a note attesting that the signature has been certified in accordance with the law.

An association is established by the adoption of its founding act and statute, and election of the person authorised to represent the association by the founding assembly.

Article 38 of this law stipulates as follows:

The funds intended to support programmes of public interest or funds intended to complement the missing funds for the financing of programmes of public interest (hereinafter: the Programme) that associations are implementing, are provided for in the Budget of the Republic of Serbia.

The Government, i.e. the ministry competent for the area in which the main association's objectives are implemented will allocate the funds referred to in Para 1 of this Article based on a public competition, and it concludes any contracts for the implementation of approved programmes.

The programmes of public interest referred to in paragraph 1 of this Article are in particular the programmes in the following fields: social care; disabled war veterans protection; protection of persons with disabilities; social care for children; security of internally displaced persons from Kosovo and Metohija and refugees; promotion of birth-rate increase; assistance to senior citizens; health care; protection and promotion of human and minority rights; education; science; culture; information dissemination; environmental protection; sustainable development; animal protection; consumer protection; combating corruption; as well as humanitarian aid programmes and other programmes whereby the association pursues public needs exclusively and directly.

The Government specifies the criteria, conditions, scope, manner, allocation procedure, and the refunding manner and procedure in case the association did not use the funds for the purpose of implementation of approved programmes.

The provisions of paragraphs 1 to 4 of this Article also apply accordingly to the funds allocated to the associations from the budgets of the autonomous province and local self-government units.

The associations to which funds from the **budget of the Republic, autonomous province, or a local self-government unit** were allocated in order to implement programmes of public interest, must make work reports at least once a year concerning the scope and manner of acquisition and use of funds, and send it to the provider of the funds.

Associations are obliged to use the funds referred to in Para 1 of this Article only for the purposes of implementing the approved programmes.

Paragraph 6 of this Article also applies accordingly to any association that benefited from tax exemptions and customs benefits in the previous year in accordance with the law.

Article 39 of this Law stipulates that the association must keep business books and make financial reports and be subject to financial report audit in line with the accounting and auditing regulations.

Annual account statements and reports on the association's activity must be submitted to the association's members in the manner laid down in its statute.

Supervision over the implementation of this Law is carried out by the ministry responsible for public administration.

Inspections are carried out by the ministry through its public administration inspectors.

The Law on Endowments and Foundations (*Official Gazette of RS*, No 88/2010) governs the establishment and legal status of **endowments and foundations**, their property, internal organisation, registration and deletion from the register, field of activity, status changes, supervision of their activities, termination of operation, other issues relevant to their operation, as well as the legal status and operation of the representative offices of foreign endowments and foundations.

Endowments and foundations, in terms of this law, mean non-profit, non-governmental organisations.

Endowments and foundations acquire the status of legal persons on the date of entry into the **Register**.

Endowments and foundations can not start operating before the entry into the **Register**.

An endowment established with the aim of achieving an objective of common interest and a foundation do not pay taxes stipulated in the law vis-à-vis the assets they acquire without consideration (voluntary contributions, gifts, donations, financial subventions, bequests, etc).

The funds received as subvention for programmes or funds intended to complement the missing funds for financing the programmes carried out by endowments established for objectives of common interests and foundations are provided for in the **budget of the Republic of Serbia, autonomous province, and local self-government units** under the conditions and in the manner stipulated in the law governing associations and provision of funds for associations for implementing programmes of public interest. .

Endowments and foundations keep business books, make and submit financial statements in line with the accounting and audit regulations.

Supervision over the implementation of this Law is carried out by the ministry responsible for culture.

The Law on Endowments, Foundations and Funds (*Official Gazette of the SRS*, No 59/89), which will cease to effect on 1 March 2011, except in its part regulating the legal status of **funds** whose founder or co-founder is the Republic of Serbia, an autonomous province or a local self-government unit, stipulates that a fund can be established by natural and legal persons using only private or only *socially*-owned funds, or using both private and *socially*-owned funds at the same time. The organisation managing a fund is liable for the obligations stemming from fund management to the appropriate municipal assembly.

The managing body of the endowment of foundation, or the organisation managing the fund whose assets are *socially*-owned must send a report once a year to the municipal administrative body responsible for culture.

Funds belonging to endowments, foundations and funds that are *socially*-owned are allocated and spend based on a financial plan. Endowments, foundations and funds do not pay taxes and contributions stipulated by the regulations of the Republic.

Article 2, Para 1, item 8, of the Budget System Law (*Official Gazette of the RS*, No 54/09 and 73/10) defines the following indirect budget beneficiaries: justice bodies, budget funds; local communities; public enterprises, funds and directorates established by local governments that are financed from public revenue and whose purpose is established in special laws; institutions established by the Republic of Serbia, or local governments, over which their founder, through direct budget beneficiaries, exercise its management and financing rights.

The Rulebook on the Standard Classification Framework and Account Plan for Serbia's budget system stipulates that the funds appropriated for non-governmental organisations are under commercial classification reference 481000 – Donations to non-governmental organisations.

In addition to being subject, pursuant to Article 39 of the Law on Associations, to financial statement audit requirement in line with accounting and auditing regulations, they are subject to supervision, in terms of use of funds, which stipulated in Article 84 of the Budget System Law (*Official Gazette of the RS*, Nos 54/09, 73/09) providing that the Ministry of Finance is responsible for budget supervision including at: legal entities and other subjects that were directly or indirectly allocated budget funds for a specific purpose; legal entities and other subjects participating in an activity that is subject to supervision; and subjects benefiting from budget funds on grounds of crediting, subventions, other state assistance in any form, donations, subsidies, etc.

From the aspect of the Law on Value Added Tax (*Official Gazette of the RS*, No 84/04, 86/04 – *corrigendum*, 61/05 and 61/07 – hereinafter: VAT Law), a tax payer may be any person independently trading in goods and services within their business activity as an ongoing for-profit activity.

The Republic and its bodies, bodies of the territorial autonomy and local self-governments, and legal entities established by law to perform state administration tasks, are not tax payers in terms of the law if they trade in goods and services from the remit of the body, or for the purposes of performing public administration tasks.

However, the Republic and its bodies, bodies of the territorial autonomy and local self-governments, and legal persons established by law to perform state administration tasks, are tax payers if they perform taxable trade in goods and services that does not fall under the remit of the body, or which is not a public administration tasks. A person independently performing trade in goods and services within a business activity as an ongoing non-profit activity is not a VAT payer.

In this respect, non-governmental organisations that perform activities exclusively for the implementation of their objectives, and which are not commercial in nature, are not VAT payers, which means that they have no obligation to calculate and pay VAT. In case of trade in goods and services provided to non-governmental organisations, the VAT payer is required to account and pay VAT (unless in case of a tax exempted trade). Non-governmental organisations are not entitled to deduction of input tax in case of the VAT paid for invoiced goods or services.

However, if an NGOs performs activities too that are commercial in nature (e.g. renting business premises) then they are considered tax payers having all rights and obligations specified in the VAT Law.

From the aspect of the Law on Corporate Income Tax (*Official Gazette of the RS*, No 25/01, 80/02, 43/03, 84/04 and 18/10 - hereinafter: the Law), Article 1, Para 3, stipulates that the payers of corporate income tax are other legal persons too (non-profit organisations) that are not organised as companies or cooperatives, if they make income by selling products on the market or by providing services for a compensation. For the purposes of the Law, income of non-governmental organisations made on the market means income from the sale of goods, products and services; proceeds from renting and proceeds from interest.

In this regard, non-governmental organisations and associations or foundations constitute *other legal persons*, from the point of view of tax regulations, if they make income by selling products on the market or providing services for a compensation, while the surplus of income acquired from the market over expenditure (incurred in relation to the income) constitutes the tax base that is established in the manner stipulated in the Rulebook on the Content of Tax Balance for Other Legal Persons (non-profit organisations) – corporate income tax payers (*Official Gazette of the RS*, No 19/05, 15/06 and 20/08) Tax rate applied to the tax base established in such a manner is the same as for other corporate income tax payers and is set at 10%.

However, according to Article 44, Para 1, of the Law, a non-profit organisation will be exempt from paying corporate income tax if it has RSD 400,000 – 3791,53 € of income surplus over expenditure in the year for which the exemption is approved, under the following conditions: the non-profit organisation should not distribute the surplus generated in such a manner to its founders, members, managers, employees or related persons; personal income paid by the non-governmental organisation to its employees, managers and related persons should not exceed double the average salary valid in the business activity in which the non-governmental organisation is classified; the non-governmental organisation should not distribute its property to the account of its founders, members, directors, employees or related persons.

A non-governmental organisation is not entitled to the exemption if its makes an income surplus exceeding RSD 400,000 - 3791,53 € over expenditure, or if the non-

governmental organisation has monopoly or a dominant position on the market in terms of the law suppressing monopoly or dominant position (Article 44, Para 2, of the Law).

In accordance with the Law, the tax payer is required to submit to the competent tax body a tax return (accompanying the tax balance) containing the accounted tax for the fixed tax period. The fixed tax period for which the income tax is accounted is the business year which is identical to the calendar year, except for the cases stipulated in the Law.

In case of non-profit organisation, the content of a tax return (which is submitted on the *PDN* form – Tax return for advance – final income tax establishing of the corporate income tax for non-profit organisations) is provided for in the Rulebook on the content of the tax return for the calculation of corporate income tax (*Official Gazette of the RS*, Nos 139/04, 19/05, 15/06, and 59/06).

Article 14 of the Law on Property Taxes (*Official Gazette of the RS*, Nos 26/01, 45/02, 80/02, 135/04, 61/07 and 5/09-hereinafter: LIT), stipulates that the tax on inheritance and gifts is paid in case of real estate referred to in Article 2(1), items 1) to 5) of the LIT, inherited or received as a gift. The tax on inheritance is paid also in case of real estate received as inheritance and gift, as referred to in Article 2, Para 1, item 6) of the LIT, irrespective of the surface area of such real estate. Tax on inheritance and gift is paid also for the following assets inherited or received as gift: money, savings deposits, deposits in banks, money claims, intellectual property rights, property rights over the used motor vehicle, used vessel, or used self-driven aircraft except for the state-owned, and other movable assets, except for any shares in legal persons, i.e. securities. Tax on gift is also paid in case of transfer of property of legal persons without compensation.

In terms of the LIT, a used motor vehicle, used vessel, or used aircraft means a motor vehicle, vessel, or aircraft that was at least once was registered, in accordance with the regulations, into the specified Registry, i.e. that were given a permit or certificate on the ability to navigate, i.e. permit to be used in the Republic of Serbia.

A gift, in terms of the LIT, does not include transfer, without a consideration, of the title to real estate and movable assets referred to in Article 14, Para 1 to 4 of the LIT, to which a VAT is paid in line with the regulations governing the VAT, irrespective of the existence of a gift contract.

A gift, in terms of the LIT, does not include income received under the grounds that are exempted from taxation, i.e. on which personal income is not paid, in accordance with the law governing personal income taxation.

Article 2, Para 1, of the LIT enumerates the following rights as subject to taxation: right to property, tenancy right, right to rent a flat or residential building in accordance with the law governing tenancy, for a period longer than one year or for an indefinite period of time; right to use city construction land, or public construction land, or other construction land owned by the State the surface area of which exceeds 1000 square meters.

According to Article 15 of the LIT, the payer of the tax on inheritance and gift is a resident and non-resident of the Republic of Serbia inheriting or receiving as a gift the

right to real estate, referred to in Article 2 of the LIT, located within the territory of the Republic of Serbia.

The payer of the tax to inheritance and gift, inheriting or receiving as a gift a taxable object referred to in Article 14 of the LIT (other than real estate) is a resident of the Republic of Serbia, in case of the object located within the territory of the Republic of Serbia or abroad. The payer of the tax on inheritance and gift inheriting or receiving as a gift a taxable object referred to in Article 14 of the LIT (other than real estate) is a non-resident of the Republic of Serbia in case of an object located in the territory of the Republic of Serbia.

The tax on inheritance and gift is not paid in case of money, rights, or assets referred to in Article 14 of the LIT (other than real estate), if the individual market value or nominal value of the taxable object, or its individual amount, is less than RSD 9,000 – 85,30 € (Article 20 of the LIT).

According to Article 21, Para 1, Items 5), 12) and 13) of the LIT, the tax on inheritance and gift is not paid by:

- a fund and foundation, in case of inherited property or property received as a gift, which exclusively serves the purpose for which the fund and foundation were established;
- the receiver of donation under an international agreement concluded by the Republic of Serbia when such agreement provides that the received money, assets or rights will not be taxable;
- it is not paid in case of property received from the Republic of Serbia, autonomous province, or a local self-government unit.

Thus, when a gift received by a non-governmental organisation is subject to VAT, then the gift tax is not paid.

In case when the VAT for a real estate gift referred to in Article 2 of the LIT, received by a non-governmental organisation, is not paid, then the tax on gift is paid, except in the cases enumerated in Articles 20 and 21, Para 1, items 5), 12) and 13) of the LIT.

In case when VAT is not paid on the gift in the form of money, assets and rights, which are subject to taxation in terms of Article 14 of the LIT (except in case of real estate) received by a non-governmental organisation – resident of Serbia, then the gift tax is paid, except in the cases enumerated under Articles 20 and 21, Para 1, items 5), 12) and 13) of the LIT.

In case when VAT is not paid on a gift in the form of money, assets and rights that are taxable in terms of Article 14 of the LIT (except for real estate) received in Serbia by a non-governmental organisation – non-resident of Serbia, then the gift tax is paid on this gift, except in the cases enumerated in Articles 20 and 21, Para 1, Items 5), 12) and 13) of the LIT.

Public procurement, in terms of the Law on Public Procurement (hereinafter: the Law) means the acquisition of goods and services, or subcontracting by a state authority, organization, institution or other legal persons that are, in terms of this law, considered ordering parties, in the manner and under the conditions specified in the Law. In effect,

this means that non-governmental organisations are required to conduct public procurement under the condition, in the manner and according to the procedure specified in the Law, if they have the status of the ordering party in terms of the Law.

85. Which, if any, justifications are permitted as regards possible restrictions placed on the exercise of these freedoms? Which body may impose such restrictions?

Freedom of association may be restricted for reasons and under conditions as prescribed in the Constitution (*Official Gazette of RS* No.98/2006), and according to the procedure regulated by law. Restrictions applied to the right to exercise freedom of association are regulated by Art. 55 (4) of the Constitution: "The Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of the constitutional order, violation of guaranteed human or minority rights, or instigating racial, national or religious hatred." Jurisdiction of the Constitutional Court to rule on the banning of a political party is laid down by Article 167 of the Constitution.

According to the provision of Article 80 (1) of the Law on Constitutional Court (*Official Gazette of RS* No. 109/2007) the legal capacity for initiating the procedure of prohibition of the activity of political parties, trade union organizations, citizens' associations or religious communities shall have the Government, the Republic Public Prosecutor of the Republic of Serbia or authority in charge of the registration in the relevant register of political parties, trade union organizations, citizens' associations or religious communities.

The Constitutional Court cannot initiate the proceedings for prohibition of the activity on its own initiative, i.e. in this procedure the Court is bound by the existence of proposals by an authorized proposer.

When the Constitutional Court prohibits the activity of the mentioned association, the latter shall be deleted from the appropriate register on the date the decision of the Constitutional Court is served to the competent authority (Article 81 of the Law). It shall be deemed that this decision has a constitutive effect and no appeals against it or any other legal remedy shall exist. The Court's decision shall be binding, final and enforceable.

The Law on Associations further developed these Constitutional provisions by specifying other constitutionally guaranteed rights and freedoms covered by the anti-discrimination norms of the Constitution.

The Law on Endowments and Foundations clearly and precisely lays down the illicit goals of the foundations, both domestic and foreign ones. If the foundation or the representation office of a foreign foundation operates contrary to the established objectives, and/or performs the activity contrary to goals laid down by this law, or if joins a foreign or an international organization whose goals are in conflict with the specified unlawful objectives, the Ministry of Culture, and/or the authority of the Autonomous Province of Vojvodina in charge of cultural affairs, shall render a decision ex officio to revoke the authorization for the activity.

Provisions of the Constitution and the Law on Public Assembly guarantee the freedom of peaceful assembly of citizens. In exceptional cases, Article 9 of the Law on Public Assembly provides that the competent authority shall impose a temporary ban on any

public assembly which is aimed at violent overthrow of the constitutional order, violation of territorial integrity and autonomy of the Republic of Serbia, violation of constitutionally guaranteed rights and freedoms of a man and citizen, incitement and instigation of national, racial and religious enmity and hatred. Also, in accordance with Article 11 of the mentioned law, the competent authority may impose a ban on any public assembly to prevent obstruction of traffic, endangering public health, public morality or safety of persons and property.

The employees are constitutionally guaranteed the right to free trade union's assembly and organizing. The Law on Labor stipulates that employees join a trade union in order to protect their trade union rights. The condition for the operation of trade unions is that the trade union is registered in the register within the Ministry of Labor. Restrictions on trade union organizing in the public sector do not exist. On the day of registration in the register, the trade union acquires legal personality. Employer's permission for establishing the trade unions is not required, but it is necessary to inform the employer that the trade union is established.

The employer shall have the obligation of providing the spatial and technical conditions for the operation of trade unions. In addition, the employer may not terminate the employment contract to the employee because of his activities in the trade union.

The right to collective bargaining with an employer shall have the representative trade unions.

One of the basic methods of trade union action and pressure on employers is a strike. Within the services of public interest, the strike is limited to compliance with the minimum work process.

Trade unions shall sign collective agreements with the employer by which detailed relations of employer and employee are stipulated.

Trade unions, professional and other associations and activities of police officers are governed by Article 134 of the Law on Police, which states that police officers shall be entitled to organize in trade unions, professional and other associations and activities in accordance with the law.

Also, police officers shall not organize in political parties or be politically active within the Ministry.

Police officers shall not attend party meetings or other political gatherings in uniform, unless on duty.

Trade unions organizing within the Ministry of Interior is completely free and currently there are several registered and active trade unions.

86. What are the provisions on dissolution of political parties? Is there any case law in this field?

The Law on Political Parties (Official Gazette of the RS, No 36/09) provides that the operation of a political party may not be directed towards the violent overthrow of the constitutional order and violation of the territorial integrity of the Republic of Serbia,

violation of guaranteed human or minority rights, or instigation and incitement of racial, ethnic, or religious hatred.

The Constitutional Court decides on the prohibition of operation of a political party, and the operation of a political party will be prohibited if it is contrary to the above mentioned legal restrictions, or if it is affiliated in wider political affiliations in Serbia or abroad, or if it joins a political party whose operation is contrary to the above mentioned legal restrictions.

The procedure of prohibition of the operation of a political party is instituted at the proposal of the Government, Public Prosecutor's Office of the Republic, or the ministry responsible for public administration. When the Constitutional Court prohibits the operation of a political party, such political party is deleted from the Register of Political Parties on the date of the delivery of the decision by the Constitutional Court to the Ministry for Public Administration and Local Self-Government.

To date, no remarks have been recorded in the Register of Political Parties regarding any prohibition of a political party, or in the previously maintained Register of Political Organisations, and Register of Associations, Social Organisations, and Political Organisations.

Political parties are a form of association which are founded and which operate within certain constitutional legal framework that is designated in terms of territory and time. Article 5, Para 3, of the RS Constitution (*Official Gazette of the RS*, No 98/2006) enumerates the reasons for restriction of freedom of association that relate to the operation of political parties: "Operation of political parties directed towards a violent overthrow of the constitutional order, violation of guaranteed human or minority rights, or instigation of racial, ethnical, or religious hatred".

The reasons specified in the Constitution that constitute the grounds for the prohibition of associations referred to in Article 55, Para 4, of the RS Constitution, and reasons that render inadmissible the operation of political parties referred to in Article 5, Para 3, are identical and they include as follows: violent overthrow of the constitutional order, violation of guaranteed human or minority rights, instigation of racial, national, and religious hatred.

- Practice of the Constitutional Court of Serbia in cases relating to banning of political parties:

– In 1993, the *Komitski četnički pokret* (Guerrilla Chetnik Movement) from Kragujevac requested from the Constitutional Court to ban several political parties (*Srpska radikalna stranka* [Serbian Radical Party], *Srpski pokret obnove* [Serbian Renewal Movement], *Hrvatska demokratska zajednica* [Croatian Democratic Community], *Demokratski savez Kosova* [Democratic Union of Kosovo] and *Demokratska akcija za Sandžak* [Party of Democratic Action for Sandžak]). At its session of 8 July 1993, the Constitutional Court adopted the Conclusion IY-203/93 rejecting the request to ban these political parties. The Court assessed that the *Komitski četnički pokret* (Guerrilla Chetnik Movement) was not authorised to submit a proposal for banning a political party, i.e. that it had no active legitimacy for initiation of proceedings as Article 30 of the Law on the Procedure before the Constitutional Court

and the Legal Effect of its Decisions (*Official Gazette of RS*, Nos. 32/91, 67/93 and 101/05) envisaged that the proposal for banning a political party may be submitted to the Constitutional Court only by the Government, Public Prosecutor of the Republic and an authority responsible for registration of political parties.

- On proposal of the Public Prosecutor of the Republic of 3 June 1993, the decision procedure on banning the political party Serbian Renewal Movement was initiated before the Constitutional Court on the grounds that this party “infringed by its political activity the constitutional freedoms of political organisation and operation”. In regard to this matter, the Court adopted the Decision IY-196/93 of 4 June 1998, suspending the decision procedure on banning the above political party due to the cessation of procedural assumptions for conducting the procedure as the Public Prosecutor of the Republic dropped the proposal submitted.

- *Svesrpski narodni pokret* (Pan-Serbian People's Movement) launched an initiative before the Constitutional Court requesting the assessment of constitutionality and legality of operation of the political party Liga Socijaldemokrata Vojvodine (League of Vojvodina Social Democrats) from Novi Sad. As the initiator did not have the status of an authorised proponent of the initiation of proceedings to ban a political party, the Constitutional Court rejected the initiative by its Conclusion IY 102/2004 of 4 April 2004.

- In 1991, the Public Prosecutor of the Republic submitted to the Constitutional Court the proposal to ban the *Stranka demokratske akcije* (Party of Democratic Action) from Novi Pazar, in the case IY-636/91. At its session of 15 January 2009, the Court adopted the Conclusion rejecting the proposal for banning the above party. The Conclusion contained the following explanation: the Constitution and the Law on the Procedure before the Constitutional Court and the Legal Effect of its Decisions were repealed by the Constitution of 8 November 2006 and the Law on the Constitutional Court; the Constitutional Court invited by its letters the proponent to state within 30 days of the receipt of letters whether it stands by the request submitted and to state the constitutional-legal grounds why, under the 2006 Constitution, the Party of Democratic Action should be banned. As the prosecution failed to act upon these letters and thus disabled the Court to act upon the matter, the Constitutional Court rejected the proposal for banning the above party.

- Towards the end of 2008, the Constitutional Court received the proposal of the Public Prosecutor of the Republic to ban the secret political party (political organisation) *Nacionalni stroj* (National Alignment). Based on this proposal, the Court formed the case VIY-171/2008. According to the Public Prosecutor of the Republic, “the National Alignment's declaration on political action implies this is a secret organisation”. It was also stated that based on the “National Alignment's Statute, Programme and Declaration it can be clearly determined that this organisation was established with the aim to destroy the constitutional freedoms and rights of Serbian citizens, the principles of civil democracy, human and minority rights and freedoms and attachment to European principles and values, acting in contravention of Article 21 of the Constitution of the Republic of Serbia that prohibits discrimination and Article 55 of the Constitution on the freedom of association.” The proponent emphasises that the validity of the proposal for banning this secret organisation is further corroborated by criminal proceedings before the District Court in Novi Sad, in case K. No. 1/06 under which a non-enforceable judgment was pronounced against the National Alignment's activists, and by the report of the Ministry of Interior. The Constitutional Court did not adopt a decision on the proposal of the Public Prosecutor of the Republic.

Under Article 80, paragraph 1 of the Law on the Constitutional Court (Official Gazette of RS, No. 109/07), the Constitutional Court decides on banning political parties, trade union organisations, citizens' associations or religious communities based on the proposal of the Government, the Public Prosecutor of the Republic or an authority responsible for registration of political parties, trade union organisations, citizens' associations or religious communities. Apart from the above proponents, no legal or natural person has active legitimacy for the submission of proposals for banning political parties.

Having received several proposals (both initiatives and requests) from unauthorised proponents, in 2010 the Court adopted conclusions rejecting the proposals (initiatives or requests) for banning political parties due to the non-existence of active legitimacy for initiation of proceedings, as follows:

- in case VIYY-166/2008, the Court adopted the Conclusion on 4 November 2010 rejecting the natural person's proposal to ban the *Demokratska stranka* (Democratic Party), headquartered in Belgrade;
- in case VIYY-1277/2010, the Court adopted the Conclusion on 4 November 2010 rejecting the natural person's request to ban the *Liberalno demokratska partija* (Liberal Democratic Party), headquartered in Belgrade;
- in case VIYY-1420/2010, the Court adopted the Conclusion on 4 November 2010 rejecting the natural person's initiative to ban the political party League of Vojvodina Social Democrats, headquartered in Novi Sad;
- in case VIYY-1393/2010, the Court adopted the Conclusion on 18 November 2010 rejecting the natural person's request to ban the political party Democratic Alliance of Croats in Vojvodina, headquartered in Subotica;
- in case VIYY-1418/2010, the Court adopted the Conclusion on 18 November 2010 rejecting the natural person's initiative to ban the political party *Savez Vojvodanskih Mađara* (Alliance of Vojvodina Hungarians), headquartered in Subotica;
- in case VIYY-1419/2010, the Court adopted the Conclusion on 18 November 2010 rejecting the natural person's initiative to ban the political party *Nova Srbija* (New Serbia), headquartered in Belgrade.

87. Provide information on legislation covering the treatment of socially vulnerable and persons with disabilities and the principle of non-discrimination.

Constitution of the Republic of Serbia (OJ of RS No. 98/2006) provides that all are equal under the Constitution and before the law and are entitled without any discrimination to equal protection of the law. Any discrimination, either direct or indirect, based on any grounds whatsoever is prohibited, in particular on the grounds of race, sex, national affiliation, social origin, birth, religion, political or other beliefs, economic status, culture, age and mental or physical disability (Article 21, paragraph 1, 2 and 3). Furthermore, Article 23 of the Constitution establishes that human dignity is inviolable and that everyone is obliged to respect and protect it. Everyone is entitled to develop freely their personality, provided that this does not violate the rights of others guaranteed under the Constitution.

Legislation governing the treatment of socially vulnerable groups and individuals in this field includes:

The Law on Social Protection and Providing Security of Citizens (*Official Gazette of RS* No. 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/2001, 84/2004, 101/005-28 and 115/05-06), The Law on Financial Support to Families with Children (*Official Gazette of RS*, No. 16/02, 115/05 and 107/09).

The Law on the Prohibition of Discrimination (*Official Gazette of RS* No. 22/09) provides for general prohibition of discrimination, forms and cases thereof, as well as for anti-discrimination measures (Article 1) and establishes the Commissioner for the Protection of Equality as an autonomous state body, acting independently in the performance of activities assigned to it under the said law.

Under the Law on the Prohibition of Discrimination the notions of “discrimination” and “discriminatory treatment” are understood to mean any kind of unjustified differentiation or inequitable treatment, i.e. an act of omission (exclusion, limitation or giving precedence to) in relation to persons or groups as well as members of their families or persons close to them which is performed, given or done in an overt or veiled manner and which is based on the grounds of race, skin colour, descent, citizenship, national affiliation or ethnic origin, language, religious beliefs, political convictions, sex, gender identity, sexual orientation, economic status, birth, genetic characteristics, health, disability, marital or family status, previous convictions, age, physical appearance, membership in political, trade union and other organizations and other actual or imputed personal characteristics (Article 2, paragraph 1, point 1).

The Law on the Prohibition of Discrimination establishes the following forms of discrimination: direct and indirect discrimination, as well as the violation of the principle of equal rights and obligations, calling to account, forming associations in order to commit discrimination, hate speech and harassment and degrading treatment (Article 5). Severe forms of discrimination are laid down as follows, *inter alia*: inciting to and instigating inequality, hatred and intolerance on the grounds of national, racial or religious affiliation, political affiliation, sex, gender identity, sexual orientation and disability; slavery, human trafficking, apartheid, genocide, ethnic cleansing and advocacy thereof or actual discrimination committed by public authorities and in proceedings before public authorities (Article 13).

The Law on the Prohibition of Discrimination provides for judiciary protection from discrimination and everyone who has been a victim of discrimination is entitled to lodge a complaint with a court of law. Proceedings arising out of such complaints are handled as urgent (Article 41 to 46). Ministry competent for human and minority rights exercises control over the enforcement of the Law on the Prohibition of Discrimination (Article 47).

Provisions contained in the Criminal Code (*Official Gazette of RS* No. 85/2005, 88/2005 – corrigendum, 107/2009 and 111/2009):

The criminal offence of violation of equality is proscribed under provision contained in Article 128 of the Criminal Code of the Republic of Serbia, Chapter Fourteen that defines criminal offences against freedoms and rights of the man and citizen. Under this criminal offence, any denial or restriction of the rights of the man and citizen established under the Constitution, laws and other regulations or general acts or ratified international treaties on the grounds of national or ethnic affiliation, race or religion or

due to absence of such affiliation or on the grounds of differences in terms of political or other convictions, sex, language, education, social status, social origin, economic status or some personal characteristic or granting another privileges or benefits based on any such distinction is criminalized. Imprisonment for up to 3 years is provided for as a punishment. Should an official in the performance of his duty commit the above offence, it constitutes an aggravated offence thereof, for which the prescribed punishment is imprisonment from three months up to five years.

The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (*Official Gazette of RS* No. 85/2005). This Law incorporates provisions that are applied to juvenile perpetrators of criminal offences (hereinafter: juveniles). Provisions contained in the Law pertain to substantive criminal law, authorities that implement it, criminal proceedings and enforcement of criminal sanctions against these offenders. Provisions contained in this Law apply as well to persons of legal age when tried for criminal offences they perpetrated as juveniles, provided that requirements set forth in this Law have been fulfilled, as well as to persons who committed criminal offences as young adults. The Law includes as well special provisions on protection of children and minors (hereinafter: minors) as victims in criminal proceedings (Article 1).

Under the Law on the Foundations of Education and Upbringing System (*Official Gazette of RS* No. 72/09) the concept of inclusive pre-school, primary and secondary upbringing and education for children and the youth with disability is strongly promoted. All the activities that threaten to or belittle groups or individuals based on their racial, national, linguistic or religious affiliation are prohibited under Article 46, including as well inciting to such activities. This Law provides for pecuniary punishments for persons who threaten or belittle groups or individuals based on their racial, national, linguistic or religious affiliation or sex. Discrimination against a child or a pupil is understood to mean any direct or indirect differentiation, approbation, exclusion or limitation with a view of preventing them from exercising the rights of children, i.e. pupils. Physical violence, insulting the personality of children, pupils and employees is prohibited and it is not allowed either to organize around political parties.

Pursuant to the Law on Refugees (*Official Gazette of RS* No. 18/92, OJ of FRY No. 42/2001- decision of the Federal Constitutional Court and OJ of RS No. 30/2010) and regulations governing care programmes for refugees and displaced persons, refugees have full freedom of movement and taking up residence in the territory of the Republic of Serbia. Internally displaced persons, as citizens of the Republic of Serbia, also have the freedom of movement and taking up residence.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities (*Official Gazette of RS* No. 36/09) is founded on the principles of respect for human rights and dignity of persons with disabilities and inclusion of persons with disabilities in all the spheres of social life on an equal footing. This Law, aside from a quota-based system of employment, establishes a more comprehensive typology of persons with disabilities that may be employed under general and special conditions (Article 4 of the Law), which by all means gives a positive picture that persons with disabilities can work. Rights established under this Law may be exercised by a person with a disability whose status of a person with disability has been established (Article 4, paragraph 1). Capacity for work of persons with disabilities who have not had their capacity for work evaluated shall be evaluated in accordance with this Law (Article 8) in order to

determine their employment possibilities or their possibilities to retain employment. When capacity for work of persons with disabilities who did not enjoy such status has been evaluated, by acquiring such a status, they also attain a possibility to be appointed sponsors of disabled persons with regard to employment and changing professional careers.

Pursuant to provisions contained in Article 18 of the Labour Law (*Official Gazette of RS* No. 24/05 and 61/05) both direct and indirect discrimination is prohibited against persons seeking employment, as well as against employees on the grounds of their sex, birth, race, language, skin colour, age, pregnancy, health status or disability, national affiliation, religion, marital status, familial commitments, sexual orientation, political or other beliefs, social origin, economic status, membership in political organizations, trade unions or any on other personal quality. Under Article 20 of the said Law, discrimination is prohibited in respect of employment conditions and selection of candidates for certain jobs, working conditions and all the rights arising from the employment, education, training and further training, promotion at work, termination of the employment contract. Provisions contained in any contract of employment that establish discrimination based on any of those grounds are null and void.

One of the basic principles of the Law on Health Care (*Official Gazette of RS* No. 107/05) is included in Article 20 thereof, and it is the principle of health care fairness, which is achieved by prohibition of discrimination on the grounds of race, national affiliation, religion, culture and language, to name a few, when providing health care.

Provision contained in Article 7 of the Law on Civil Servants (*Official Gazette of RS* No. 79/05) prohibits preferential treatment of or discrimination against a civil servant with regard to his rights and obligations, in particular based on his racial, religious, sexual, national or political affiliation or based on some other personal characteristic.

The prohibition of religious discrimination is established under the Law on Churches and Religious Communities (*Official Gazette of RS* No. 61/06). Provisions contained in this Article prescribe that no person may be subjected to coercion which may threaten their freedom of religion, nor may they be coerced into declaring their religion and religious beliefs or absence thereof. No person may be harassed, discriminated against or privileged on the basis of his religious beliefs, affiliation or non-affiliation to a religious community, participation or non-participation in public worship and religious rites and exercising or not exercising his religious freedoms and rights (Article 2).

The Law on Prevention of Discrimination Against Persons with Disabilities (*Official Gazette of RS* No. 33/06, Article 1) governs general regulations concerning prohibition of discrimination on the grounds of disability, individual cases of discrimination against persons with disabilities, procedure for protecting persons exposed to discrimination and measures to be taken for promoting equality and social inclusion of persons with disabilities. This Law prescribes special rules of civil procedure in actions brought in order to enforce protection against discrimination on the grounds of disability. Proceedings in disputes brought in order to enforce protection against discrimination are initiated by means of complaints which may be lodged either by persons with disabilities who have been discriminated against or by their legal representatives. Such a complaint may, under certain conditions provided for under the law, be filed as well by the attendant of a person with a disability. A complaint filed in order to enforce

protection against discrimination based on disability may ask: prohibition of actions constituting discrimination, prohibition of any further acts of discrimination or prohibition of repetition of acts of discrimination; actions to be taken in order to remedy the consequences of discriminatory treatment; adjudicative ruling that the defendant had discriminated against the complainant; award of material and moral damages. Reviews are always allowed in cases of civil lawsuits filed to enforce protection from discrimination on the grounds of disability (Articles 39 to 45).

The Law on Gender Equality (*Official Gazette of RS* No. 104/09) provides for creating equal opportunities for exercising rights and obligations, taking special measures for preventing and eliminating discrimination on the grounds of sex and gender and legal protection procedures for persons exposed to discrimination (Article 1).

The Law on Public Procurement (*Official Gazette of RS* No. 116/08) provides that when submitting their bids in response to open tenders, bidders are obliged to include therein evidence to the effect that they have plans to apply the standard of accessibility to their products and services.

The Law on Planning and Construction (*Official Gazette of RS* No. 72/09, 81/09 – corrigendum, 64/10) in detail provides for obligation to adhere to the standard of accessibility when designing and constructing new high-rise buildings intended for public and residential purposes and prescribes penalties for violators.

The Law on Higher Education (*Official Gazette of RS* No. 76/05, 100/07 – other regulation, 97/08, 44/10) provides for measures for putting on an even footing opportunities of students with disabilities for reading for their degrees.

National Assembly of the Republic of Serbia passed on 29 May 2009 the Law on Ratification of the Convention on the Rights of Persons with Disabilities and the Law on Ratification of the Optional Protocol along with the Convention on the Rights of Persons with Disabilities (*Official Gazette of RS*, No. 42/09), whereby this international document has become an integral part of domestic law of our country.

In the implementing regulation of the Family Law, the Rulebook on the Organization Criteria and Standards of Work for Social Service Centres (*Official Gazette of RS* No. 59/08), in its Chapter Protection against Discrimination, Article 7, paragraph 1 lays down that any social service centre shall be obliged to represent the interests and rights of its beneficiaries and to provide equal access to services that come within their competence to all the citizens, notwithstanding their ethnic, cultural, religious, gender or socioeconomic distinctions, disability and sexual orientation. Paragraph 2 prescribes that, when dealing with beneficiaries, either directly or by means of contracts with other services, *no centre shall*, based on any affiliation referred to in paragraph 1 of the said Article restrict any person in any way whatsoever in making use of services, information, aid and legal protection provided for by social service centres; treat differently any person when determining whether they meet the criteria for beneficiaries or for the exercise of rights; limit any individual with regard to their opportunity to take part in centre's programmes or enable their participation therein in a manner different to that applied to other individuals, nor shall it provide for or restrict any individual's opportunity to participate in the work of groups, commissions and advisory committees which form an integral part of the work of any social service centre. Paragraph 3 makes a stipulation that activities of a centre shall not be deemed discrimination if they result

in removing or remedying a disadvantage of certain groups of beneficiaries or in providing services in relation to a specific manner of satisfying needs, which represents the measure of affirmative action towards especially disadvantaged groups that is grounded in the Constitution of the Republic of Serbia.

In addition to Strategy for Improvement of the Position of Persons with Disabilities in the Republic of Serbia 2007 – 2015, the issue of position of persons with disabilities has been incorporated in the majority of general strategic documents of Serbia: Strategy for Reduction of Poverty in Serbia, Strategy for Development of Social Protection, National Employment Strategy, National Strategy for Young People, Strategy for Protection of Women against Violence.

88. What steps have been taken to prevent discrimination based on membership of a national minority, ethnic or social origin, sex, race, colour, genetic features, language, religion or belief, political or any other opinion, property, birth, disability, age or sexual orientation? Has Serbia established specialised services to combat discrimination? If so, which legislative framework, institutional context, composition, functions and powers pertain to these services? Has a general anti-discrimination law been adopted and when? (See also Chapter 19 on Social policy and employment)

A significant anti-discrimination effect was achieved by adoption of the Law on Prohibition of Discrimination (Official Gazette of RS, No. 22/09) in March 2009. The Law prescribes that everyone shall enjoy equal status and equal legal protection regardless of personal characteristics, and that everyone shall respect the principle of equality, i.e. prohibition of discrimination.

The Law distinguishes among particular personal characteristics depending on the gravity of consequences of causing and inciting hatred, divisions or enmity based on such characteristics.

Such personal characteristics are highlighted as, historically speaking, the incitement of hatred, divisions or enmity on these grounds produced the severest consequences for the society and state.

In addition, the Law on Prohibition of Discrimination contributed to awareness raising of citizens about the harmfulness of discrimination and the promotion of tolerance. However, one should not underestimate the importance of penalties prescribed by this Law for all potential perpetrators of discrimination acts.

The Law on Prohibition of Discrimination introduced into the legal system a new institution – the commissioner for the protection of equality, as an autonomous and independent government body elected by the National Assembly of the Republic of Serbia. In May 2010, prof. dr Nevena Petrušić was elected the first commissioner for the protection of equality.

The commissioner has an expert service helping him/her in the performance of duties. The commissioner passed an act, approved by the National Assembly, regulating the organisation and work of his/her expert service. The commissioner has three assistants, each of them managing an entire field of work.

The commissioner for the protection of equality has the following authorities: he/she receives and reviews complaints pertaining to violations of provisions of the Law on Prohibition of Discrimination; gives opinions and recommendations in specific cases and pronounces measures; provides information to the person lodging a complaint on

his/her rights and the possibility of initiating court or other proceedings for the purpose of protection. The commissioner has also been entrusted with active procedural legitimacy, i.e. the right to lodge complaints, with the consent of the person who suffered discrimination. With the parties' consent, the commissioner proposes a reconciliation procedure; submits to the National Assembly the annual report on infringements of this Law and informs thereof the public; warns the public of the most frequent, typical and severe cases of discrimination via public means of information or otherwise; monitors the implementation of laws and other regulations, initiates the adoption of or amendments to regulations for the purpose of implementing and promoting the protection against discrimination and gives opinions on provisions of draft laws and other regulations pertaining to the prohibition of discrimination; establishes and maintains cooperation with independent authorities in charge of ensuring equality and protection of human rights at the level of local government and territorial autonomy; recommends to public administration bodies and other persons measures aimed at ensuring equality.

Commissioner's actions are broadly regulated by the Law on Prohibition of Discrimination. More detailed rules are contained in the Rules of Procedure, while rules of general administrative procedure apply accordingly to proceedings.

For more information on the composition, functions and authorities of the commissioner for the protection of equality please see the answer to question 124 on political criteria.

89. How do you ensure legally and in practice the respect of the principle of nondiscrimination on the basis of sexual orientation? Please name the NGOs active in the field of fighting against discrimination in sexual orientation, age and disability. Has the Freedom of Assembly been exercised freely and without problems for instance in the organisation of gay prides or similar events?

Under the Law on Prohibition of Discrimination (Official Gazette of the Republic of Serbia, No. 22/09), sexual orientation is a private matter and anyone may declare his/her sexual orientation, whereas the discriminatory treatment on account of such declaration is forbidden.

In view of the authorities of the commissioner for the protection of equality (stated in answer to question 124 on political criteria) as an independent body established by the Law on Prohibition of Discrimination, it is clear that the commissioner fights against all forms of discrimination, including discrimination against persons of different sexual orientation.

In the Republic of Serbia, a great number of NGOs (civil society organisations) are registered and active in the field of protection of human rights. Among the most renowned NGOs are the following:

- Belgrade Center for Human Rights
- Civic Initiatives
- Lawyers' Committee for Human Rights – YUCOM
- Humanitarian Law Center
- Helsinki Committee for Human Rights in Serbia

- Group 484
- Fund for an Open Society, Serbia.

In regard to the fight against discrimination on all forbidden grounds, worth mentioning is the Coalition against Discrimination that consists of the following NGOs:

- Anti Trafficking Center – ATC
- Center for the Promotion of Legal Studies
- Civil Rights Defenders
- CHRIS – Network of Committees for Human Rights, consisting of:
 - Committee for Human Rights Valjevo
 - Committee for Human Rights Niš
 - Committee for Human Rights Negotin
 - Vojvodina Center for Human Rights
 - Civic Forum Novi Pazar
 - Committee for Human Rights Vranje
- Gay Straight Alliance
- Gayten LGBT
- Initiative for Inclusion VelikiMali
- Labris – Lesbian Human Right Organisation
- Association of Students with Disabilities.

In regard to organisations focused primarily on the fight against discrimination on the basis of sexual orientation, apart from the above organisations (Gay Straight Alliance, Gayten LGBT and Labris – Lesbian Human Right Organisation), there are also the following:

- Queeria Center
- Gay Lesbian Info Center
- Duga Association – Šabac
- Safe Pulse of Youth – SPY
- LAMBDA – Center for Promotion and Advancement of LGTB Human Rights and Queer Culture, Niš
- QUEER BELGRADE
- Novi Sad Lesbian Organization.

Activities of organisations of pensioners' associations, Red Cross organisations (Red Cross of Serbia, Red Cross organisations at the city and municipal level), religious communities organisations, Roma and other civil society organisations contribute to a higher level of exercising of human rights of elderly persons.

HumanaS – for Humane Old Age is a network of civil society organisations, dedicated to humanisation of life and life conditions in old age and supporting the accomplishment of a more important and active role of the elderly in social development for all generations in the Republic of Serbia.

The network was founded in May 2004 and has 16 members whose programmes express clear commitment to the fight against discrimination based on age. The

members include: (1) Red Cross of Serbia, (2) Lastavica Association, (3) Socio-humanitarian organisation Amity, (4) Gerontological Society of Serbia, (5) Circle of Serbian Sisters, (6) Viktorija Association, (7) Caritas of Serbia and Montenegro, (8) Pensioners' Union of Serbia, (9) Christian Humanitarian Association Bread of Life, (10) University for Third Age Đuro Salaj, (11) Society for Care about the Elderly, (12) National Foundation for Human Ageing, (13) Humanitarian Society Moka, (14) Charitable Fund of the Serbian Orthodox Church Philanthropy, and (15) Female Association Rosa.

In regard to organisations active in the field of fighting against discrimination on the basis of disability, the Ministry of Labour and Social Policy provides professional and financial support to close to 500 organisations of persons with disabilities in the territory of the whole Serbia by financing programmes that they implement. These organisations are united under the National Organisation of Persons with Disabilities of Serbia and are divided into Republic associations depending on the type of disability, while there are also organisations that act independently.

Some of the organisations combating discrimination against persons with disabilities are the following:

- National Organisation of Persons with Disabilities of Serbia, established in June 2007. Organisations that founded the National Organisation of Persons with Disabilities of Serbia are:

- Association of Deaf and Hard of Hearing of Serbia
- Association of the Blind of Serbia
- Dystrophy Association of Serbia
- Association of Paraplegics and Quadriplegics of Serbia
- Association of Societies for Support to Mentally Insufficiently Developed Persons of Serbia

- Association of Persons with Labour Disabilities of Serbia
- Association for Cerebral and Child Palsy Serbia
- Multiple Sclerosis Society of Serbia
- Republic Society for Helping Persons with Autism
- Association for Assistance to Persons with Down Syndrome
- Center for Independent Living of Persons with Disabilities Serbia.

Cross Disability Network of Serbia consists of the Inclusive Society Development Center dealing with accessibility and employment, Association of Students with Disabilities with branches in Niš and Kragujevac, Youth with Disabilities Forum with committees for Vojvodina, central and south Serbia and Organisation IZ KRUGA – Serbia (composed of branches IZ KRUGA – Vojvodina, Kragujevac, Niš).

The Mental Disability Rights Initiative of Serbia was founded in 2008, consisting of organisations VelikiMali from Pančevo, Association for Assistance to Persons with Developmental Handicaps OUR HOME, Autonomous Women's Center and Centre "Living Upright". The president of the Initiative is the director of Mental Disability Rights International for Serbia.

Under the Law on Police (Official Gazette of RS, Nos. 101/2005 и 63/2009 – decision of the Constitutional Court), law enforcement functions are performed so as to protect

the safety, rights and freedoms of all, to enforce the law and uphold the rule of law. These functions are performed according to the principles of professionalism, cooperation, legality and proportionality in the use of public powers, as well as on the principle of subsidiarity (Article 11).

Furthermore, in exercising police powers, police officers act impartially, extending the same protection under the law to all, without discrimination on any grounds (Article 35 of the Law on Police).

Police officers are guided by the principle of impartiality in the enforcement of law regardless of the national or ethnic origin, race, language and the social status of the person concerned, and regardless of his/her political, religious and philosophical beliefs, age, marital status, gender or a physical or psychological handicap (Article 36 of the Police Code of Ethics).

Any citizen has the right to file a complaint to the Ministry of Interior against a law enforcement officer if the citizen believes that the officer has violated his/her rights and freedoms by unlawful or improper action (Article 180 of the Law on Police).

Authorised officers from the Department for Internal Police Oversight within the Ministry of Interior monitor the legality of police work, respect and protection of human rights while performing police tasks and implementing police powers (Article 172 of the Law on Police).

External oversight of the police work is performed by the National Assembly, Government of the Republic of Serbia, competent judicial authorities, state administration bodies responsible for oversight duties, the Protector of Citizens and other legally authorised bodies (Article 170 of the Law on Police).

In addition, representatives of the criminal police from the Office for the Suppression of Crime and Police Administrations attended training on police work and improvement of communication with members of minority, marginalised and socially vulnerable groups, including persons from the LGBT population, organised by the Ministry of Interior Police Administration in cooperation with representatives of the Kent Police College, UK.

In the Republic of Serbia, the freedom of assembly of citizens is exercised freely and without problems on different grounds. As regards the organisation of gay prides, there are no legal or factual obstacles imposed by government bodies. Moreover, in their public appearances, government representatives gave support to holding of a gay pride and pleaded with citizens to be tolerant. This led to the organisation of a gay pride in Belgrade, in October 2010.

90. Has Serbia established specialised services to combat discrimination? If so, which legislative framework, institutional context, composition, functions and powers pertain to these services?

Institutional framework for the implementation of the policy on combating discrimination:

a) Government bodies for the promotion and protection of human rights

The Government's **Council for Children's Rights** was established in 2002. The Council's authority and role include: proposing a coherent and holistic policy on children in accordance with the UN Convention on the Rights of the Child and with the priorities established under the UN Millennium Development Goals, UN Declaration "World Fit for Children" and other relevant international documents; proposing measures for harmonizing the Government's policy with the European Union's legislation and international standards in the field of children's rights protection; raising awareness about the children's rights in the Republic of Serbia, with special emphasis on children's rights to protection from all forms of abuse, neglect, exploitation, and children's right to inclusive education; promoting children's participation in formulating and applying policies concerning the protection of their rights; performing an analysis of the impact of measures taken by relevant Government bodies/institutions regarding the protection of children, the youth, families with children and child-birth and overseeing the implementation and protection of children's rights in the Republic of Serbia. The Council had adopted a document named "Overview of Implementation of the National Action Plan for Children for the period 2004 – 2009", based on which a Draft of National Action Plan for Children for the period 2010 to 2015 was prepared. At the moment, the Children's Rights Council is conducting activities with the view of furthering a consultative process that entails harmonization of the Draft Plan with local action plans for children.

The Republic of Serbia's **Council for Gender Equality**, established for the first time in 2003, is an expert and advisory body dealing with the equality of sexes, enhancing the status of women and the monitoring of implementation of projects in this field. The new inaugural meeting of the Council was held on 8 December 2009. Representatives of relevant Ministries, representatives of the civil society and academic circles and women experts for the area of equality between the sexes were elected to the Council. Strategic priorities of the Council are: fostering democracy by way of supervising gender sensitivity of the entire legislative system and meeting international obligations pertaining to gender equality; providing support to state institutions in charge of equality policies by means of a National Strategy for Improving the Position of Women and Promoting Gender Equality, whereby additional emphasis is placed on measures aimed at their financial strengthening and gender budgeting; raising public awareness about the importance of equality between the sexes and combating gender-based stereotypes, as well as building capacities for the work of the Council.

Council for Combating Human Trafficking of the Government of the Republic of Serbia was formed in 2005 as an expert advisory body of the Government. The Council was founded with a view to coordinating activities for fighting human trafficking on the national and regional level, analysing reports on human trafficking produced by relevant bodies of the international community, as well as to taking stands and proposing measures for implementing recommendations by international bodies that regard the combat of human trafficking. Council members are Ministers of the Interior, Education and Sports, Finance, Labour and Social Policy, Health and Justice.

Council for the Improvement of the Status of Roma of the Government of the Republic of Serbia was formed in 2008 and it has 22 members, among whom there are representatives from the Ministry of Finance, Health, Education, Public Administration

and Local Self-government, as well as from other ministries which could have an impact on the improvement of the status of the Roma minority.

Republic of Serbia's Council for National Minorities was founded in July 2009 and it is composed of the Prime Minister, who is at the same time the Council President, Ministers from six relevant Ministries, Presidents of National Councils and President of the Federation of Jewish Municipalities of Serbia, who has the status of the President. The Council is responsible for preserving, fostering and protecting national, ethnic, religious, linguistic and cultural specificities of national minorities in the Republic of Serbia. At the inaugural meeting of the Council, in October 2009, national holidays and symbols were confirmed based on the requests submitted by National Councils: coat of arms, flag and holidays – of the Macedonian, Romanian, Bulgarian, Ukrainian, Ruthenian, Vlach, Greek and German national minority, and the coat of arms and the flag of the Slovakian national minority. Furthermore, it has been agreed that the state would organize and promote the registration of national minorities in separate electoral register, since thus support is lent to national minorities in exercising one of the freedoms guaranteed under the Constitution, whereby they acquire a right to elect their national councils directly.

b) Ministry of Human and Minority Rights

The Ministry of Human and Minority Rights, established in mid-2008, performs activities from the purview of public administration that pertain to: general matters concerning the status of members of national minorities; maintaining the Register of National Councils of National Minorities; electing Councils of national minorities; protection and fostering of human and minority rights; drafting of legislation covering human and minority rights; monitoring harmonization of national legislation with international legislation; representing the Republic of Serbia before the European Court of Human Rights; the position of members of national minorities living in the territory of the Republic Serbia and the exercise of minority rights; fostering relations between national minorities and their mother countries; anti-discriminatory policy; status of National Councils of national minorities and the exercise of their powers; coordination of work of public administration bodies in the field of human rights protection and other activities provided for under the law.

c) Ministry of Labour and Social Policy

Directorate of Gender Equality was established within the Ministry of Labour and Social Policy in 2008. Directorate of Gender Equality performs the activities that pertain to analysing the situation and recommending measures in the field of enhancing gender equality; drafting of laws and other regulations in this field; improvement of the position of women and promotion of gender equality as well as of equal opportunity policy by implementing recommendations of the Committee on Elimination of Discrimination against Women.

d) The Commissariat for Refugees

The Commissariat for Refugees is a special institution established under the Law on Refugees in 1992. The Commissariat for Refugees performs activities that relate to the establishment of refugee status, refugee care, maintaining records established under the aforementioned Law, coordinating the provision of humanitarian aid for refugees by other bodies and organizations in the country and abroad and making sure that such aid is provided in an even and timely manner, providing refugees with accommodation, i.e.

their relocation within territorial units, providing conditions for the return of refugees to the areas they had left or to other areas determined by the Commissariat for Refugees, that is, until they have been permanently provided for in some other manner and performs other activities from its purview established under this law.

Pursuant to the recommendations given in 2005 by the Special Rapporteur of the Secretary-General on human rights of internally displaced persons, the Government has rendered a Conclusion to adopt “Measures and Activities for Creating Conditions for Sustainable Return to Kosovo and Metohija”, whereby the Commissariat for Refugees was instructed to establish a special organizational unit therein that would deal with the matters of care provision and protection of rights of internally displaced persons. The Commissariat for Refugees registers internally displaced persons from Kosovo and Metohija and issues them with identity cards for displaced persons; within the scope of accommodation and sheltering, provides internally displaced persons with living and accommodation in collective centres in the Republic of Serbia, the AP Kosovo and Metohija excluded, and in 17 collective centres in the AP Kosovo and Metohija; provides, within its capacities, individual humanitarian aid to internally displaced persons as well as to their associations; proposes and implements measures aimed at the improvement of living conditions of internally displaced persons.

e) Provincial Secretariat for Regulations, Administration and National Communities

Provincial Secretariat for Regulations, Administration and National Communities was founded in 2002, as part of the Executive Council of the AP Vojvodina. Activities performed in the Secretariat in the field of promotion of national minorities’ rights include drafting rules and regulations, conducting research and analysis, statistical, recording and documenting tasks that pertain, first and foremost, to the exercise of collective and individual rights of national minorities in the AP Vojvodina. The Provincial Secretariat is in charge of supervising the enforcement of regulations governing the official use of languages and scripts in the AP Vojvodina. The project launched by the AP Vojvodina’s Executive Council called “Promoting Multiculturalism and Tolerance in Vojvodina”, which has been running since 2005, is aimed at fostering the spirit of multi-ethnic tolerance, mutual respect and trust among citizens of the AP Vojvodina.

f) Provincial Secretariat for Labour, Employment and Gender Equality

Provincial Secretariat for Labour, Employment and Gender Equality was set up in 2002 as part of the AP Vojvodina’s Executive Council; Secretariat is mainly focused on monitoring and improving conditions in the field of labour, employment and gender equality in the territory of AP Vojvodina; pursuant to a decision rendered by the Provincial Secretariat, the Council for Gender Equality of the said Secretariat was formed with the view to providing advisory assistance in defining activities in the area of gender equality.

g) Roma Inclusion Office

Pursuant to the Decision the Assembly of AP Vojvodina passed in 2006, Roma Inclusion Office was established for the purpose of implementing action plans for integration of Roma and developing and implementing programmes for the

improvement of the position of Roma in the fields of education, health care, employment, housing, human and other rights. Council for the Integration of Roman in AP Vojvodina was established in 2005 as a working group of the Executive Council of AP Vojvodina, its task being: proposing measures and activities aimed at integrating Roma in the AP Vojvodina; giving opinions concerning measures and activities that have been taken; cooperating with the National Council of the Roma national minority and carrying out other activities with the view to improving general position of Roma in the AP Vojvodina.

In addition, there are **independent state institutions for the protection of human rights**, the composition, functions and powers of which are described in detail in the answer to question 108 in the section “Political Criteria”.

The most important role is performed by the **Commissioner for the Protection of Equality**, which was established under the Law on the Prohibition of Discrimination (“Official Gazette of RS”, no. 22/09). The National Assembly appointed the Commissioner for the Protection of Equality in May 2010. Detailed overview of the powers vested in the Commissioner for the Protection of Equality may be found in the answer to question 124 contained in the Section “Political Criteria”.

Legislative framework

Constitution of the Republic of Serbia provides that all are equal under the Constitution and before the law and are entitled without any discrimination to equal protection of the law. All direct or indirect discrimination on any grounds whatsoever, particularly on the grounds of race, sex, national affiliation, social origin, birth, religion, political or other conviction, financial status, culture, language, age, mental or physical disability shall be prohibited (Article 21 (1, 2 and 3)). In addition, Article 23 of the Constitution provides that human dignity is inviolable and that everyone shall be obliged to respect and protect it. Everyone is entitled to freely develop their personality, provided that this does not violate the rights of others guaranteed under the Constitution.

The Republic of Serbia has ratified the International Convention on the Elimination of All Forms of Racial Discrimination. The Initial Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination was submitted to the Committee on the Elimination of Racial Discrimination in June 2009.

The Law on the Prohibition of Discrimination provides for general prohibition of discrimination, forms and cases thereof, as well as for anti-discrimination measures (Article 1) and establishes the Commissioner for the Protection of Equality as an autonomous state body, independent in the performance of activities set out by the said law.

Under the Law on the Prohibition of Discrimination the notions of “discrimination” and “discriminatory treatment” are taken to mean any kind of unjustified differentiation or unequal treatment, i.e. an act of omission (exclusion, limitation or giving precedence to) in relation to persons or groups as well as members of their families or persons close to them which is performed, given or done in an overt or concealed manner and which is based on the grounds of race, skin colour, descent, citizenship, national affiliation or ethnic origin, language, religious beliefs, political convictions, sex, gender identity,

sexual orientation, economic status, birth, genetic characteristics, health status, disability, marital or family status, previous convictions record, age, physical appearance, membership in political, trade union and other organizations and other actual or imputed personal characteristics (Article 2, paragraph 1, point 1).

Under the Law on the Prohibition of Discrimination calling to account, associating for the purpose of committing discrimination, hate speech, harassment and humiliating treatment have been identified as indirect or direct discrimination, as well as the violation of the principle of equal rights and obligations (Article 5). Inter alia, the following shall be considered to constitute severe forms of discrimination: instigating and inciting inequality, hatred and intolerance on the grounds of national, racial or religious affiliation, political convictions, sex, gender identity, sexual orientation or disability; slavery, human trafficking, apartheid, genocide, ethnic cleansing, as well as advocating any of the above, as well as advocating or exercising discrimination on the part of public authorities or in the course of proceedings before public authorities (Article 13).

The Law on the Prohibition of Discrimination provides for judiciary protection from discrimination and every person who has been a victim of discrimination is entitled to filing charges before a court of law. The proceedings arising out of these charges are handled as urgent (Articles 41 to 46). Ministry competent for human and minority rights oversees the enforcement of the Law on the Prohibition of Discrimination (Article 47).

Criminal Code Provisions:

The criminal offence of **violation of equality** is set out under the provision contained in Article 128 of the Criminal Code of the Republic of Serbia, Chapter Fourteen that defines criminal offences against freedoms and rights of the man and citizen.

Under this criminal offence, any denial or restriction of the rights of the man and citizen guaranteed by the Constitution, laws or other legislation or general acts or ratified international treaties, as well as giving preference or privileges on the grounds of national or ethnic affiliation, race or religion or due to the absence of such affiliation or differences in political or other conviction, sex, language, education, social status, social origin, financial status or some other personal characteristic is incriminated. The prescribed penalty is imprisonment of up to three years. A more severe form of this criminal offence is if the act specified above is committed by an official in discharge of duty, in which case the prescribed penalty is imprisonment from three months to up to five years.

- The provision of Article 174 within the same Chapter of the Criminal Code provides for the criminal offence of **tarnishing reputation due to racial, religious, national or other affiliation**. It criminalizes exposing to derision a person or a group on the grounds of their affiliation to a certain race or based on their skin colour, religion, nationality, ethnic origin or some other personal characteristic. The prescribed penalty is a fine or imprisonment of up to one year.

- Within Chapter Twenty Eight of the Criminal Code, which defines criminal offences against constitutional order and security of the Republic of Serbia, the provision of Article 317 provides for the criminal offence of **instigating national, racial and religious hatred and enmity**.

The basic form of this criminal offence is instigating or exacerbating national, racial or religious hatred or enmity among the peoples and ethnic communities living in Serbia.

The prescribed penalty for this criminal offence is six months to five years imprisonment.

If the offence is committed by coercion, abuse, compromising security, exposing to derision of national, ethnic or religious symbols, damaging another persons' belongings, desecration of monuments, memorials or graves, the prescribed penalty is imprisonment of one to eight years.

In case the offences are committed by abuse of position or authority, or if they result in riots, violence or other grave consequences for the coexistence of peoples, national minorities or ethnic groups living in Serbia, the prescribed punishment is imprisonment - one to eight years for the former and two to ten years for the latter form of the offence.

- Furthermore, within Chapter Thirty One, which comprises criminal offences against public peace and order, the provision of Article 344a foresees the criminal offence of **violent behaviour at sporting events or public meetings**.

Under this criminal offence, a range of acts of violent behaviour that can occur at sporting events or public meetings are criminalized, one of them being instigating national, racial, religious or other form of hatred or enmity by one's behaviour or slogans, on some discriminatory grounds, which results in violence or engaging in an affray with other participants. The prescribed penalty is imprisonment of six months to five years and a fine. The ringleader of the group shall be punished by imprisonment of three to twelve years.

In case the offence is committed by a group, the prescribed penalty is imprisonment of one to eight years, whereas if the offence results in riots in which someone suffers serious bodily injuries or damage to property of considerable value has been caused, the prescribed penalty is imprisonment for two to ten years.

In cases when an official or responsible person fails to implement security measures aimed at preventing or stopping riots during organization of sporting events and public meetings and therefore endangers the lives or bodies of a larger number of people or property of considerable value, a penalty of imprisonment of three months to three years and a fine are foreseen.

- Within Chapter Thirty Six which includes criminal offences against humanity and other values protected by the international law, criminal offence of **racial and other forms of discrimination** is foreseen, as stipulated under Article 387 of the Criminal Code.

Violation of basic human rights and freedoms guaranteed by generally accepted rules of the international law and ratified international treaties, on the grounds of difference in race, skin colour, religious affiliation, nationality, ethnic origin or some other personal characteristic, as well as persecution of organisations or individuals because of their commitment to the equality of people are criminalized. The prescribed penalty for these two forms of the same offence is imprisonment for six months to five years.

The Law also criminalizes propagating the idea of superiority of one race over another, and propagating of racial hatred and inciting to racial discrimination are criminalized, as are propagating and other ways of publicising texts and pictures or other forms of presentation of ideas or theories advocating or instigating hatred, discrimination or violence against any person or group of persons on the grounds of race, skin colour, religious affiliation, nationality, ethnic origin or some other personal characteristic, as well as public threatening to a person or a group of persons on the same grounds by committing criminal offences penalised by the sentence of imprisonment of over 4 years. The prescribed penalty for these is imprisonment for three months to three years.

- It should be mentioned that this Chapter of the Criminal Code also covers the criminal offences of **genocide** and **crimes against humanity** (Articles 370 and 371), for which

the sentence of imprisonment of no less than five years or imprisonment of thirty to forty years is prescribed.

Law on the Fundamentals of the Education System (“Official Gazette of RS”, No. 72/09) in its Article 46 prohibits activities that threaten or belittle groups or individuals based on their racial, national, linguistic or religious affiliation, as well as inciting to such activities. This Law prescribes fines for persons who threaten or belittle groups or individuals on the grounds of race, national, linguistic and religious affiliation and sex. Discrimination against a child or a pupil is taken to mean any direct or indirect differentiation, approbation, exclusion or limitation in order to prevent them from exercising the rights of children and pupils. Physical violence, insulting the personality of children, students and employees are prohibited, as is the organisation of political parties.

Pursuant to the provisions contained in Article 18 of the *Law on Labour* (“Official Gazette of RS”, no. 24/05 and 61/05) both direct and indirect discrimination is prohibited against persons seeking employment, as well as against employees on the grounds of their sex, birth, race, language, skin colour, age, pregnancy, health status or disability, national affiliation, religion, marital status, family commitments, sexual orientation, political or other beliefs, social origin, economic status, membership in political organizations, trade unions or any other personal quality. In accordance with Article 20 of the said Law, discrimination is prohibited in respect of employment conditions and selection of candidates for certain jobs, working conditions and all the rights arising from the employment, education, training and further training, promotion at work, termination of the employment contract. Provisions of the employment contract establishing discrimination on any of these grounds shall be considered null and void.

In the filed of public information, the *Law on Broadcasting* (“Official Gazette of RS,” no. 43/03 and 61/05) provides in its Article 3, point 6 that relations in the field of broadcasting are governed based on, inter alia, the principles of objectivity, prohibition of discrimination and publicity of the procedure for issuing broadcasting licences. The prohibition of discrimination is regulated in more detail by a range of other provisions of this Law. Pursuant to Article 38 (2), licences for broadcasting radio and TV programmes are issued under equal conditions. Provisions of Article 77, (3) of the said Law stipulate that general interest in the field of public broadcasting service is achieved by ensuring that programmes produced and broadcasted by the Public Broadcasting Service maintain diversity and mutual compliance of contents that uphold democratic values of the modern society, in particular, the respect of human rights and cultural, national, ethnic and political pluralism. Provisions of Article 78 of this Law stipulate that public broadcasting service institutions are, inter alia, obliged to produce and broadcast programmes intended for all segments of the society, without discrimination, taking into consideration, in particular, specific social groups, such as children and the youth, minority and ethnic groups, persons with disabilities, socially and physically vulnerable groups.

The Law on Public Information (“Official Gazette of RS”, no. 43/03 and 61/05) in its Article 16 stipulates that discrimination regarding the distribution of the public media shall be prohibited, that is to say, it stipulates that a person engaged in distribution of the public media shall not refuse to distribute someone's public media without a valid

commercial reason, nor impose conditions contrary to market principles for the distribution.

Under provision contained in Article 6 of the *Law on Free Access to Information of Public Importance* (“Official Gazette of RS”, no. 120/04) everyone shall be entitled to exercise the rights established under this Law under equal conditions, regardless of their citizenship, temporary or permanent residence or seat, or some personal characteristic such as race, religion, national and ethnic affiliation, sex, etc.

One of the basic principles of the *Law on Health Care* (“Official Gazette of RS, no. 107/05) contained in Article 20 thereof is the principle of health care fairness, which is achieved through prohibition of discrimination in health care provision, *inter alia*, on the grounds of race, national affiliation, religion, culture and language.

Provision of Article 7 of the *Law on Civil Servants* (“Official Gazette of RS”, no. 79/05) prohibits preferential treatment or discrimination against a civil servant with regard to his rights and duties, particularly on the grounds of racial, religious, sexual, national or political affiliation or on account of some other personal characteristic.

The prohibition of religious discrimination is established under the Law on Churches and Religious Communities (“Official Gazette of RS”, no. 36/06). Provisions contained in the aforementioned Article prescribe that no person may be subjected to coercion which may threaten their freedom of religion, nor may they be forced into declaring their religion and religious beliefs or absence thereof. No one shall be harassed, discriminated or privileged due to his/her religious convictions, affiliation or non-affiliation to a religious community, participation or non-participation in religious service and observance, or due to practicing or not practicing religious freedoms and rights that are guaranteed (Article 2).

The Law on the Prevention of Discrimination against Persons with Disabilities (“Official Gazette of RS”, no. 33/06, Article 1) governs general regulations concerning prohibition of discrimination on the grounds of disability, special cases of discrimination against persons with disabilities, the procedure for protecting persons exposed to discrimination and measures to be taken for promoting equality and social inclusion of persons with disabilities. This Law prescribes special rules of legal proceedings in disputes initiated in order to enforce protection against discrimination on the grounds of disability. Proceedings in disputes taken in order to enforce protection against discrimination on account of disability are initiated by means of filing charges which may be filed either by persons with disabilities who have been discriminated against or by their legal representatives. Under certain conditions as prescribed by law, these charges may be filed by the attendant of a person with a disability. By filing charges in order to enforce protection against discrimination based on disability, the following may be requested: prohibition of actions constituting discrimination, prohibition of any further acts of discrimination or prohibition of repetition of acts of discrimination; taking actions to alleviate the consequences of discriminatory treatment; determining that the defendant had discriminated against the plaintiff; award of material and moral damages. Revision shall always be allowed in a dispute for protection against discrimination on the grounds of disability (Articles 39. through 45).

The Law on Gender Equality (“Official Gazette of RS”, No. 104/09) governs the creation of equal opportunities for exercising rights and responsibilities, taking special measures for the prevention and elimination of discrimination on the grounds of sex and gender and legal protection of persons exposed to discrimination (Article 1).

Article 12 of the *Law on Police* (“Official Gazette of RS”, no. 101/05) stipulates that when performing police tasks, the police shall comply, inter alia, with international treaties and conventions adopted by the Republic of Serbia, international standards of police conduct and requirements laid down by international acts that refer to the exercising of human rights and non-discrimination in performing police tasks. Pursuant to the provision of Article 35, when exercising police powers, the authorised officer shall act impartially, providing everyone with equal legal protection, without exercising discrimination against any person on any grounds.

By adopting the Law on Ratification of the Additional Protocol to the Convention on Cyber Crime (“Official Gazette of RS”, no. 19/09) regarding the criminalization of acts of racist and xenophobic nature committed through computer systems, the use of computer systems for the promotion of ideas or theories advocating, promoting or exacerbating hatred, discrimination or violence against individuals or groups, on the grounds of race, skin colour, hereditary, national or ethnic origin and religion has become prohibited in Serbia.

Prohibition of organisations and activities inciting to discrimination

The *Constitution of the Republic of Serbia* prohibits the activities of political parties aimed at violent overthrow of the constitutional system, violation of guaranteed human or minority rights, or instigating racial, national or religious hatred (Article 5, paragraph 3). The Constitutional Court may ban only such associations the activity of which is aimed at the violent overthrow of constitutional order, violation of guaranteed human or minority rights, or instigating racial, national or religious hatred (Article 55, paragraph 4). The Constitutional Court shall render decisions on the prohibition of the work of any political party, trade union organization, citizens associations or religious community based on a proposal of the Republic of Serbia’s Government, the Republic Public Prosecutor or an authority in charge of registering political parties, trade union organizations, citizens associations or religious communities (“Official Gazette of RS”, no. 109/2007, Article 80, paragraph 1). So far, the Constitutional Court has not prohibited the activity of any of the several organisations which called to violence.

The Law on Public Assembly (“Official Gazette of RS”, no. 51/1992, 53/1993, 67/1993, 48/1994, 12/1997, 21/2001 and 101/2005; Articles 9 and 10) provides that the relevant authority shall impose a temporary ban on any public assembly aimed at violent overthrow of the constitutional order, violation of territorial integrity and autonomy of the Republic of Serbia, violation of freedoms and rights of man and citizen guaranteed under the Constitution, instigating and inciting to national, racial and religious enmity and hatred. Decisions to impose temporary bans or bans on public assemblies are made by District Courts.

Under the *Law on Political Parties* (Article 37, paragraph 2), the activity of a political party may not be aimed at the violent overthrow of the constitutional order and violation of territorial integrity of the Republic of Serbia, violation of guaranteed human and minority rights or at instigating and inciting to racial, national or religious hatred.

Law on the Prohibition of Events Staged by Neo-Nazi and Fascist Organisations and Associations and Prohibition of the Use of Neo-Nazi and Fascist Symbols and Paraphernalia ("Official Gazette of RS", No. 41/09), Article 1) governs the prohibition of events staged by neo-Nazi and fascist organisations and associations, display of symbols or paraphernalia or any other activity thereof, which in any manner violate the constitutional rights and freedoms of citizens and prescribes sanctions for the violation of this Law.

91. Is there specific legislative protection for the rights of the elderly? How is it implemented?

The most important regulations and documents in the area of social protection related to protection of the rights of the elderly are: Social Welfare Development Strategy ("Official Gazette of the RS" No 0.108/05), National Strategy on Ageing ("Official Gazette of RS" No. 76/06) and the applicable Law on Social Protection and Provision of Social Security of Citizens ("OG of RS" No. 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/2001, 84/2004, 101/2005 – state law and 115/2005).

Based on the data from the Republic Statistical Office for the period from 1992 to 2003, the demographic trends in Serbia show that over 22% of the population of the Republic of Serbia is older than 60 and that the Republic has had a negative population growth rate for many years which is far beyond the need for basic population renewal. The processes that present the causes of vulnerability are: the elderly are under a greater risk of life below poverty threshold (9.6% of the elderly live below the poverty threshold, and 8% receives social protection transfers or use the services donated by the Republic or the local administration¹⁷).

The group size data in the area of social protection: In 2009 99,938 elderly persons were recorded by social welfare centres.

Elderly users – social protection system¹⁸	
Without family care	9.110
Without means for life	30.208
With serious chronic diseases and with disability	47.992
Other	12.628
	total 99,938

Based on the total number of beneficiaries of social welfare centres there are 99,938 persons in the group of elderly persons (women older than 60 and men older than 65). This number is slightly higher than in 2008 when it was 93,588. In 2009 29,978 elderly persons applied for the use of social protection services for the first time. The most commonly reported feature for them is as follows:

- serious chronic disease and disability present in 47,992 persons or 48.0% of the elderly beneficiaries followed by

¹⁷ The data of the Republic Statistical Office.

¹⁸ The data of the Ministry of Labour and Social Policy – annual reports on the work of social welfare centres for 2009.

- financial and social vulnerability that is a feature for 30.2% or 30,208 persons (from 28.44% or 26,617 persons in 2008),
- lack of family care that is a feature for 9.1% of elderly beneficiaries or 9,110 persons (from 9.1% or 8,514 in 2008),
- victims of family violence is a feature for 783 elderly persons (0.8% of the elderly beneficiaries) including 569 women and 214 men (from 0.79% or 736 elderly persons in 2008),
- victims of human trafficking is a feature for only 2 elderly persons (2 also in 2008).

Trends in the number of social protection services provided to the elderly in the period 2005-2009.

Measures and services	2005.	2006.	2007 ¹⁹ .	2008.	2009.
guardianship	3.019	2.962	2.643	2.601	2.906
temporary guardianship	1.487	1.724	1.754	1.980	2.202
assistance and care allowance	12.560	14.197	13.482	14.097	14.778
increased assistance and care allowance	-	-	8.441	9.104	10.480
financial aid	13.918	15.095	36.155	15.054	15.982
placement in an institution	10.235	10.119	9.276	9.728	10.122
placement in other family	233	264	390	481	219
one-off financial allowance	14.580	14.835	12.642	14.579	15956
one-off in kind allowance	3.191	2.900	5.377	5.199	4574
free meal	1.915	2.279	-	-	-
day care	623	1.056	1.612	1.873	1798
home assistance	2.944	3.779	5.489	6.829	8548
shelter	-	-	114	177	234

The following measures within social protection are being applied in regard to this group:

The rights of the elderly in the social protection system are laid down by the Law on Social Protection and Provisions of Social Security of Citizens. The Law lists the social protection rights without specifying the age category of potential beneficiaries:

1. Right to financial aid (welfare)
2. Right to allowance for assistance and care of other person and increased allowance for assistance and care of other person;
3. Right to placement in a social protection institution or placement in other family;
4. Right to home assistance;
5. Right to day care;
6. Right to supplies for placement in a social protection institution or placement in other family;
7. Right to one-off financial or in-kind allowances;
8. Right to social welfare services (diagnostics, mediation, counselling, information, etc.).

¹⁹ From 2006 the reporting form of the social welfare centre does not record the number of the elderly who use free meal but it records the total number of adult and elderly persons.

Special parts of the law regulating the content of the rights, the way they are exercised and who may be entitled to them, sets out a special category of beneficiaries - elderly and retired persons who are not able to live in family, i.e. household due to unfavourable health, social, housing and family situation and who may be entitled to the right to placement in a social protection institution or other family. The total of 43 institutions providing social protection services to the elderly have been established by the government, while 46 institutions have been established by natural persons (so called private nursing homes for the elderly²⁰). The Law also prescribes protection of the elderly through rights funded by municipality, city or local community budget and the elderly use these rights in their household or surrounding, i.e. open protection. These are the right to day care, home assistance, services of the clubs for the elderly, right to one-off allowance (either financial or in-kind), and other rights and services prescribed by the municipality, i.e. city by issuing decision on expanded rights and allocating funds for these rights necessary for the population in their territory.

Day care is provided to the elderly who are not able to take care of themselves during the day and in addition to several hours of care these services include meals, hygiene, working and occupational therapy, cultural, entertaining and recreational activities and other services depending on the needs of beneficiaries.

Home assistance is provided by services of home caregivers and includes taking care of necessary household chores and provision of care at the beneficiary's household.

Clubs for the elderly and the retired are considered to be the broadest service aiming at providing activities that enable the elderly to live at their homes as long and as actively as possible. The services of clubs, home assistance and care and day care are also provided by different nongovernmental organisations.

The financial allowance program in the social protection system in Serbia is defined by the Law on Social Protection and Provision of Social Security of Citizens. The funding is provided from the budget of the Ministry of Labour and Social Policy through social welfare centres. Local authorities may fund additional allowances or higher amounts of allowances if funds are provided for this in the municipal budget. At the moment 90% of the total funds for social protection are provided from the Republic budget.

Parties are entitled to lodge an appeal, i.e. complaint to a competent authority against decisions on the right to financial aid and decisions on the right to increased allowance for assistance and care of other.

The following measures within individual policies are being applied in regard to this group: the Council for the Issues of Aging and Age has been established as a governmental body in charge of monitoring implementation of the National Strategy on Aging as defined therein. The Ministry of Labour and Social Policy developed the Draft Law on Social Protection promoting establishment of community services and pluralism of service providers (both mechanisms encompass improvement of the position of the elderly in the Republic of Serbia).

²⁰ Data of the Ministry of Labour and Social Policy.

A system of accrediting training programs for employees has been established in the area of social protection in order to increase professional competence and thus protect the rights of beneficiaries more adequately and provide better quality services. The Register of Accredited Training Programs includes 8 programs intended for protection of adult and elderly persons.

Rights of the elderly in the system of mandatory pension and invalidity insurance are laid down by the Law on the Pension and Disability Insurance (“OG of RS” No. 34/2003, 64/2004 – decision of the Constitutional Court of the Republic of Serbia, 84/2004-other law, 85/2005, 101/2005 – other law, 63/2006 – decision of the Constitutional Court of the Republic of Serbia, 5/2009 and 107/2009). The Republic Fund for Pension and Disability Insurance is in charge of insurance administration. The Law lists the rights that may be exercised from the pension and disability insurance:

- Right to old-age pension;
- Right to disability pension;
- Right to family pension;
- Right to allowance for assistance and care of other person;
- Right to allowance for physical damage caused by injury at work or occupational disease;
- Right to refund of burial costs.

The elderly may exercise these rights if they meet appropriate conditions.

The most important regulations in the area of health care that are also related to protection of the rights of the elderly are:

- Strategy for Continuous Improvement of the Quality of Health Protection and Security of Patients (“Official Gazette of RS” No. 15/2009);
- Strategy for Palliative Care (“Official Gazette of RS” No. 17/2009);
- Law on Health Care (“Official Gazette of RS” No. 107/05, 72/09 - other law and 88/10).
- Law on Health Insurance (“Official Gazette of RS” No. 107/05 and 109/05).
- Law on Medicines and Medical Products (“Official Gazette of RS” No. 84/04 and 85/05).
- Law on Protection of Population from Communicable Diseases (“Official Gazette of the RS” No. 125/04).

The Strategy for Palliative Care is a document of national importance regulating the comprehensive and harmonised policy of the state aiming at development of health care system in the Republic of Serbia.

The Strategy for Palliative Care laid down organisation on all levels of health care (primary, secondary, and tertiary). The Strategy for Palliative Care on the primary health care level provides for organised and personnel strengthening of the home care and treatment service. Normative for city municipalities should remain one doctor and four nurses, and for health centres in the wider city area one doctor and five nurses on 35,000 inhabitants.

Establishment of the centre for coordination of home care and treatment service within the City Gerontology Centre Belgrade has been envisaged. On the territory of the City

of Belgrade the City Gerontology Institute Belgrade as a specialised institution provides home treatment and palliative care (general hospitals) for around 1,500 elderly and seriously ill persons per day.

Establishing special palliative care units within departments for prolonged treatment and care is envisaged on the secondary level of health protection.

Establishment of a consulting team in health care institutions such as the Clinical Centre of Serbia, Clinical Centre of Vojvodina, Novi Sad, Clinical Centre Nis, Clinical Centre Kragujevac has been envisaged for the tertiary health care. The consulting team includes a medical doctor, specialist in certain field of medicine and a medical nurse with university or two-year college degree. It is envisaged that a Centre for Development of Palliative Care should be developed in the Oncology and Radiology Institute of Serbia.

Palliative care is a concern of the entire community and presents engagement and establishment of intersectoral cooperation, including authorities of local self-government, educational and social institutions and involvement of associations, church and international organisations.

The Law on Health Care ensures social care for the health of the population which is provided on the level of the Republic, Autonomous Province, municipality or city, employer or individual, and includes measures of economic and social policy and provides conditions for implementation of health care in order to preserve and improve the health of people and provides measures for harmonisation of actions and development of the health care system.

Social care for health on level of the territory of the Republic is realised under equal conditions by provision of health care to the population group that is at greater risk of developing diseases by health protection of persons in relation to prevention, fighting, early detection and treatment of diseases of greater social and medical importance and by health protection of socially vulnerable population. These categories include persons older than 65 and other persons as provided for by the law.

The Law on Health Insurance regulates the rights from mandatory health insurance of the employed and other citizens, organisations, funding mandatory health insurance, voluntary health insurance and other issues of importance for the health insurance system.

Insured persons are natural persons with mandatory insurance in accordance with the law and include pension beneficiaries and beneficiaries of the right to financial allowances exercising this right on the basis of regulations on pension and disability insurance. Furthermore, pursuant to the Law on Health Insurance insured persons are also persons who belong to the population group exposed to a greater risk of developing diseases, health protection in relation to prevention, fighting, early detection and treatment of diseases of greater social and medical importance and health protection of socially vulnerable population. These categories include persons older than 65, as well as other reasons provided for by the law. The same Law provides for examination and treatment of dental diseases in clinics, polyclinics and dispensaries for persons older than 65, as well as provision of acrylic total and subtotal dentures and immunisation.

92. Please provide information on how, and to what extent, the right to education is guaranteed in legislative and practical terms. Please comment on the allocation of resources and institutional framework in place to facilitate the exercise of this right.

(Please see the answer to question 127 under Political Criteria)

The right to education is regulated by the Constitution of the Republic of Serbia (Article 71, “Official Gazette of RS” No. 98/2006), Law on the Foundations of the Education System (Article 6, “Official Gazette of RS” No.72/2009), Law on Higher Education (Article 8, “Official Gazette of RS” No. 76/2005, 100/2007, 97/2008, 44/2010) and by special laws.

Pursuant to the Constitution, everyone shall have the right to education. Primary education is mandatory and free of charge, whereas secondary education is free of charge. All citizens shall have access to higher education under equal conditions.

The citizens of the Republic of Serbia shall be equal in exercising their right to education, regardless of their gender, race, national, religious and language background, status acquired by birth, social and cultural origin, financial status, age, physical and psychological constitution, developmental impairments, existence of sensory or motor disability, political affiliation or other personal trait.

Persons with developmental impairments and disabilities shall be entitled to education which takes into consideration their educational needs within the regular education system, within the regular system with individual or group assistance or in a preschool group or school.

Persons with exceptional abilities shall be entitled to education which takes into consideration their special educational needs, within the regular system, in special classes or in a special school for gifted students.

Foreign nationals and stateless persons shall have the right to education under the same conditions and in the manner prescribed for the citizens of the Republic of Serbia.

For the exiled and displaced persons who are not familiar with the language in which the educational programme is carried out, or with certain curricula with relevance to further education, the school shall organize language training, or preparation for classes and additional classes, in accordance with special guidelines.

All persons who acquired a secondary school diploma are entitled to higher education, while even persons without a secondary school diploma are entitled to enrol in the art study programmes under conditions laid down in the statutes of a particular higher education institution. The Republic of Serbia provides free higher education for successful and gifted students living under unfavourable conditions.

Additional conditions for more available, efficient and better quality education of pupils and students are provided through activities of pupils’ and students’ standard. The Law on Pupils’ and Students’ Standard (“Official Gazette of RS” No. 18/2010) laid down that pupils’ and students’ standard aims at creating financial, cultural, social, health and

other conditions promoting education acquiring, social inclusion and versatile personality development of pupils and students.

Pupils, i.e. students, exercise rights (personal and non-transferable) from this law in the institutions of pupils' and students' standard. These rights are: right to accommodation and meals, pupils also have the right to pedagogical activities (pupils' dormitories, pupils'/students' centre), rest and recovery (pupils'/students' resorts), cultural, art, sport and recreational activities and information (pupils'/students' cultural centre).

The rights in the area of pupils' and students' standard are provided for by the budget of the Republic of Serbia and also include the right to: pupils'/students' scholarship, scholarship for gifted pupils/students; students' loan. These incomes may not be subject to enforcement or ensuring of claims.

Pupils, i.e. students from sensitive social groups (financially vulnerable families, children without parental care, single parent families, Roma national minority, persons with disabilities, persons with chronic diseases, children of the missing persons or kidnapped on the territory of Kosovo and Metohija or on the territory of republics of former SFRY, refugees and displaced persons, returnees upon readmission agreements and deported pupils and students, etc.) may be entitled to the listed rights with application of milder criteria prescribed by the Minister of Education in accordance with the powers from this law.

Pupils, i.e. students with special needs are entitled to educational work, i.e. accommodation in an institution of pupils' or students' standard with taking into account their special needs.

The rights in the area of pupils' and students' standard belong to citizens of the Republic of Serbia, pupils of secondary schools, i.e. students of institutions of higher education founded by the Republic of Serbia, Autonomous Province or local self government unit who have for the first time enrolled in a certain grade or studies of first, second or third level in the current school year and whose education is funded from the budget of the Republic of Serbia. In accordance with an international treaty and reciprocity principle, pupils or students who are foreign citizens may also be entitled to these rights.

The Ministry of Finance, in accordance with the Government policy, prepares the Budget of the Republic of Serbia based on the proposal of financial plans of all direct and indirect budget beneficiaries.

In accordance with the Law on Budgetary System and the adopted budget, the Ministry of Education (as a direct budget beneficiary) prepares a financial plan, allocates funds for programs and indirect beneficiaries (pre school, primary school, secondary school and higher education institutions and institutions of pupils' and students' standard) on the basis of their financial plans and informs them on the amount of funding granted for certain programmes. After that, the indirect budget beneficiaries have to pass financial plans and harmonise their activities with the granted funding. The funds are transferred to institutions for strictly set purposes defined by laws. Each institution has following accounts opened at the Treasury Administration – Ministry of Finance:

- registration accounts are intended for transfer of funds for salaries of employees;

- accounts for everyday work intended for transfer of funds for material costs;
- donor sub accounts, accounts of own revenues, accounts for parents' contributions, etc.

In addition to the budget of the Republic, activities of preschool, primary and secondary education are funded by the funds of the Autonomous Province of Vojvodina (material costs and investments) and local self governments.

The total budget of the Ministry of Education for 2010 totals RSD106.9 billion, whilst RSD27.4 billion is expected from the following sources:

- Own revenues of indirect beneficiaries – RSD 13.1 billion,
- Donations from foreign countries – RSD88 million,
- Donations from international organisations – RSD95 million,
- Donations from other levels of authorities – RSD12.7 billion,
- Donations from non-governmental organisations and individuals– RSD172 million,
- Revenues from sale of non-financial assets – RSD64 million,
- Revenues from foreign debts – RSD1 billion,
- Revenues from repayment of granted loans – RSD202 million,

Undistributed revenue surplus from previous years - RSD17 million.

93. Please provide information on how, and to what extent, the right of ownership is guaranteed in legislative and practical terms. Is there any limitation for certain categories of persons (e.g. foreigners, EU citizens) or for certain types of property (e.g. agricultural land)? How is the right to property assured? What are the justifications permitted for restrictions placed on the exercise of this right and which body or bodies may impose such restrictions? Provide information on the main elements of the expropriation legislation (*See also Chapter 4 on Free movement of capital.*)

Pursuant to Article 58 Paragraphs 1 to 4 of The Constitution of the Republic of Serbia ("Official Gazette of RS", no. 98/06), in the second section: Human and minority rights and freedoms, provides that the peaceful tenure of a person's own property and other property rights acquired by the law shall be guaranteed (paragraph 1). The right of property may be revoked or restricted only in public interest established by the law and with compensation which can not be less than market value (paragraph 2). The law may restrict the manner of using the property. (Paragraph 3). Seizure or restriction of property in order to collect taxes and other levies or fines shall be permitted only in accordance with the law (paragraph 4).

Therefore, the property right is guaranteed as one of the fundamental human rights.

Pursuant to Article 86 of the Constitution, contained in Section Three: Economic system and public finance, private, cooperative and public assets shall be guaranteed and all forms of assets shall have equal legal protection. The protection against any form of violation of the property right may be claimed, in principle, in proceedings before a competent court of law, and in some cases by applying other legal remedies in the administrative proceedings. The protection of property right as one of the

fundamental human rights guaranteed by the Constitution may also be claimed by means of constitutional appeal under conditions for its lodgement prescribed in Article 170 of the Constitution.

According to Article 84 of the Constitution of the Republic of Serbia, foreign nationals may acquire ownership of real estate in line with the law and international agreements. The Law on Property Rights prescribes that foreign nationals may acquire property rights in real estate if there is reciprocity with the country they are from.

By adopting the Constitution of the Republic of Serbia a legal possibility for changing the ownership regime for municipal building land was created and for the first time since 1958 it was possible to have private property on this land, and since the Law on Planning and Construction entered into force, it is possible to have ownership right to building land. Consequently, acquiring ownership of building land under conditions prescribed by law is not limited to domestic persons and it can be obtained under general conditions and other special laws, and primarily by applying the principle of reciprocity.

Rights of foreign nationals in Serbia are stipulated in provisions governing certain legal areas (property relations, inheritance, marriage, etc).

Multilateral agreements

The Former SFR Yugoslavia (The Republic of Serbia is its legal successor) has ratified several international conventions ensuring property right of foreigners, such as the Universal Declaration of Human Rights adopted on 10 December 1948, International Covenant on Civil and Political Rights of 19 December 1966, UN Convention on the Rights of the Child adopted on 20 November 1986, Convention for the Protection of Human Rights and Fundamental Freedoms adopted on 4 November 1950, etc.

Bilateral agreements

International bilateral agreements for the most part do not have provisions regarding legal status of foreigners, except in the case of inheritance rights.

Inheritance rights of citizens of contracting parties are guaranteed by the agreements on legal aid signed with Austria (Article 29), Bulgaria (Article 19), Czech Republic and Slovak Republic (Article 35), Hungary (Article 34), Russia (Article 36), Great Britain (Articles 5 and 24), The Netherlands (Article 1), Spain (Article 2), Sweden (Article 1), and with a number of non-EU Member States.

Domestic regulations

Foreign persons may inherit movable and immovable property based on legal and testamentary inheritance. Inheriting immovable property is conditioned on reciprocity stipulated in Article 826 of the Law on Property Rights ("Official Journal of SFRY", from 6/80 to 115/2005, Section 6 – Rights of Foreign Persons, Articles 82-856).

With regard to countries whom reciprocity to inheritance has not been agreed, the principle of assumed real reciprocity is used (which has been the case since 1957). The

basic assumption is that domestic person in a foreign country may, under the same conditions and to the same extent as the citizens of that country inherit property, whereas other persons and the court itself may rebut that assumption.

Foreign persons in the Republic of Serbia may acquire ownership right on property in the same manner as Serbian nationals do. Exception from the above is that a foreign person cannot have ownership right on immovable property of special significance (mines and other natural resources, goods in general use, state-owned agricultural land etc).

Foreign natural person may, under reciprocity condition, acquire ownership rights on apartments and residential buildings in the same manner a domestic person does. Foreign natural persons may also acquire other immovable property (such as business premises and buildings, land, industrial buildings, etc.), if, in addition to the reciprocity condition, they perform certain business activity in Serbia, and the immovable property is required for the conduct of the said business activities (Article 82a of the Law on Property Rights).

Reciprocity in this area has been established with around 100 world countries, including 27 EU States (except Slovenia, due to its Constitutional Law).

Seizure or restriction of property right in public interest is regulated by the Law on Expropriation (“Official Gazette of RS”, no. 53/95, 23/01 and 20/09). The public interest for seizure or restriction of property right according to this law is determined by the Government on the proposal of the Ministry of Finance. Upon the proposal of the qualified person, and after finding that all preconditions are met, the Ministry of Finance prepares the proposal of the Government decision on determination of public interest. An administrative dispute may be instituted against such decision before the Administrative Court. After adopting the Government decision on determination of public interest, the expropriation procedure between the owner of an immovable property and the user of expropriation, in which the compensation for expropriated immovable property shall also be determined, shall be carried out before the authority of local self-government unit under the rules of administrative procedure. Against the decision of the authority of a local self-government unit, adopted in the procedure of expropriation an appeal may be lodged to the Ministry of Finance, and against the second instance decision administrative dispute proceedings may be instituted before the Administrative Court in Belgrade.

The manner of using the property may be restricted only by the law, depending on the nature of the matter in question. Pursuant to Article 88 Paragraphs (1) and (2) of the Constitution, the use and disposition of agricultural land, forest land and municipal building land in private ownership shall be permitted. The law may restrict the forms and stipulate conditions of utilisation and disposition, in order to eliminate the risk of causing damage to the environment or prevent violation of rights and legally based interests of other persons.

The right to protection of property has been laid down in Article 1 of the Protocol 1 of the European Convention. The violation of this right has been found in the following

judgements of the European Court of Human Rights delivered with regard to the applications against the Republic of Serbia:

The EVT Company against Serbia, application no. 3102/05

- The judgement was delivered on 21 June 2007.
- the applicant complained about the violation of Article 6 (1) (the right to a fair hearing) and Article 1 of the Protocol 1 of the European Convention on account of not executing the final judgement reached in his favour on 7 May 1996 by the Commercial Court in Leskovac.
- the judgement of the European Court of Human Rights found that there was a violation of Article 6 (1) and Article 1 of the Protocol 1 of the European Convention by way of which the state was obliged to ensure full execution of the judgement in question, within 3 months from the date on which the judgement of the Court became final.
- The applicant was awarded EUR 2,500 in respect of non-pecuniary damage.

Marcic and others against Serbia, application no. 17556/05

- The judgement was delivered on 30 October 2007.
- the applicants complained about the violation of Article 6 (1) (the right to a fair hearing) and Article 1 of the Protocol 1 of the European Convention on account of not executing the final judgement reached in his favour of 21 December 1990 by the Commercial Court in Leskovac. By way of this judgement the exact amounts of applicants' claim for compensation on the ground of salaries earned while working on a project in Iraq for OOUR "Mehanizacija", within the "Erozija" enterprise in Vladicin Han were established.
- the judgement of the European Court of Human Rights found there was a violation of Article 1 of the Protocol 1 of the European Convention and the state was obliged to ensure full execution of the judgement in question, within 3 months from the date on which the judgement of the Court became final.

The ZIT company against Serbia, application no. 37343/05

- The judgement was delivered on 27 November 2007.
- The applicant complained about the violation of Article 6 (1) (the right to a fair hearing) and Article 1 of the Protocol 1 of the European Convention on account of prolonged duration of the executive proceedings conducted before the Municipal Court in Backa Palanka.
- The judgement of the European Court of Human Rights found there was a violation of Article 6 (1), Article 13 (the right to an efficient legal remedy) and article 1 of the Protocol 1 of the European Convention.
- The applicant was awarded of EUR 2,500 in respect of non-pecuniary damage.

Kacapor and others against Serbia, application no. 2269/06

- The judgement was delivered on 15 January 2008.
- The applicants (six persons) complained about the violation of Article 6 (1) (the right to a fair hearing) on account of not executing final decisions reached in their favour. These were the decisions which established the amounts of their claims for

compensation of salaries earned during their paid leave of absence and contributions for pension and disability insurance. The question of not executing these decisions was posed again in relation to the bankruptcy proceedings which were meanwhile instituted over the debtor, a socially-owned company.

- The judgement of the European Court of Human Rights found there was a violation of Article 6 (1) and Article 1 of the Protocol 1 of the European Convention by which the state was obliged to pay the applicants the amounts awarded by the final judgement within 3 months from the date on which the judgement of the Court became final.
- Each applicant was awarded legal costs of EUR 300, while compensation in respect of the non-pecuniary damage ranged from EUR 800 to EUR 1,600 per applicant.

Kostic against Serbia, application no. 41760/04

- The judgement was delivered on 25 November 2008.
- The applicants complained about the violation of Article 1 of Protocol 1 of the European Convention on account of not executing the conclusion of the Vozdovac Municipality of 2 September 1998 ordering the demolition of the part of the building erected without the construction permit by a person who co-owned the house together with the applicant.
- the judgement of the European Court of Human Rights found there was a violation of Article 1 of Protocol 1 of the European Convention. The state was obliged to execute the conclusion on demolition within 6 months from the date on which the judgement of the Court became final.
- The applicants were awarded of EUR 4,000 in respect of the non-pecuniary damage.

Vlahovic against Serbia, application no. 42619/04

- The judgement was delivered on 16 December 2008.
- The applicant complained about the violation of Article 6 (1) (the right to a fair hearing) and Article 1 of the Protocol 1 of the European Convention on account of not executing the decision of the Municipal Court of Nis made in his favour which determined the amount of the applicant's claims from the debtor, a socially-owned company.
- The judgement of the European Court of Human Rights found that there was a violation of Article 6 (1), and Article 1 of the Protocol 1 of the European Convention.
- The applicant was awarded EUR 1,000 in respect of the non-pecuniary damage and legal costs of EUR 700.

Crnisanin and others against Serbia, application no. 35835/05

- The judgement was delivered on 13 January 2009.
- The applicants (four persons) complained about the violation of Article 6 (1) (the right to a fair hearing) on account of not executing final decisions made in their favour by the Municipal Court of Novi Pazar. These were the decisions which established the amounts of their claims for compensation of salaries earned during their paid leave and contributions for pension and disability insurance.
- the judgement of the European Court of Human Rights found there was a violation of Article 6 (1) and Article 1 of the Protocol 1 of the European Convention by which the state was obliged to pay the applicants the amounts awarded by the final judgement within 3 months from the date on which the judgement of the Court became final.

- Each applicant was awarded legal costs of EUR 300, while compensation in respect of the non-pecuniary damage ranged from EUR 1,300 to EUR 1,800 per applicant.

Grisevic and others against Serbia, application no. 16909/06

- The judgement was delivered on 21 July 2009.
- the applicants complained about the violation of Article 6 (1) and article 1 of Protocol 1 on account of prolonged duration of the execution of the final decisions adopted in their favour by the Municipal Court of Novi Pazar. These are the decisions determining the amount of their claims from various socially-owned companies.
- the judgement of the European Court of Human Rights found there was a violation of Article 6 (1) and Article 1 of the Protocol 1 of the European Convention by which the state was obliged to pay the applicants the amounts awarded by the final judgements within 3 months from the date on which the judgement of the Court became final.
- The applicants were awarded of EUR 1,800 to EUR 2,000 per applicant in respect of the non-pecuniary damage.

Molnar-Gabor against Serbia, application no. 22762/05

- The judgement was delivered on 8 December 2009.
- the applicant complained about the violation of Article 6 (1) (the right to a fair hearing) and Article 1 of the Protocol 1 of the European Convention on account of inability of executing the final decision of the Municipal Court of Subotica which obliged “Vojvodjanska Banka” bank to pay the applicant the established amount with interest on the grounds of foreign currency savings as well as legal costs.
- the judgement of the European Court of Human Rights found there was a violation of Article 6 (1) and Article 1 of the Protocol 1 of the European Convention. The Court observed that the Republic of Serbia faced with the economic crises of great proportions adopted the Act on the Settlement of Obligations Arising from the Citizens’ Foreign Currency Savings in 1998 and the Act on the Settlement of the Public Debt in 2002, which restricted the disposition of old savings and established the mechanism of its repayment to their owners. In the opinion of the Court these Laws were adopted with the legitimate aim of protecting public interest, therefore no violation of the right to which the applicant referred was found.

Majkic and KIN STIB against Serbia, application no. 123127/05

- The judgement was delivered on 20 April 2010.
- the applicants complained about the violation of Article 6 (1) and Article 13 of the Convention, as well as the violation of Article 1 of Protocol 1 on account of partial non-execution of the arbitrary decision reached in the favour of the applicants.
- the judgement of the European Court of Human Rights found there was a violation of Article 1 of Protocol 1, whereas the other part of the application was proclaimed inadmissible.
- The applicants were awarded general damages EUR 8,000 in respect of the non-pecuniary damage and 30,000 for legal expenses. - In addition, the Court instructed the payment of the sums awarded by the Supreme Court of Serbia in 2002 and 2005 to the applicant from the funds of the Republic of Serbia as well as the amount awarded by the decision of the Commercial Court adopted in 2005, decreased for the amounts paid in the meantime.

The measures the Republic of Serbia has taken regarding the execution of these judgements are as follows:

It is important to stress that the European Court of Human Rights in the judgement concerning the application Kacapor against Serbia, recognised the responsibility of the state for debts incurred by socially-owned companies, irrespective of the fact if there were bankruptcy proceedings over these companies. The explanation of this opinion was given in paragraph 98 of the judgement, where it is explicitly stipulated that socially-owned companies do not enjoy “sufficient institutional and operational independence in relation to the state” in order to release the state of its obligation as set out in the Convention.

- The judgements were published in the Official Gazette and on the Agent’s website
- the damages awarded were paid to applicants;
- the amendments of the legislation, especially the Law on Executive Procedure in order to prevent future violations of rights with regard to the non-execution of final judgements, are expected.
- The process of establishment of the working group to deal with this issue has been in progress..
- The Agent reported to the Government regarding the issue of the responsibility of the state for debts incurred by socially-owned companies.

94. Which body is responsible for maintaining an urban and land cadastre and property register? Please provide information on the existing cadastre and land registry. Are there any plans for modernisations in the land registration and cadastre areas? Please explain.

The Republic Geodetic Institute as a special organisation on the Republic level, in accordance with the Law on Ministries (*Official Gazette of RS* No. 65/08, 36/09 – other laws and 73/10 – other laws) and Law on State Survey and Cadastre (*Official Gazette of RS* No. 72/09 and 18/10) is in charge of establishing and maintaining the real estate cadastre which presents a single register of real estates and property rights thereon.

The real estates that are entered in the real estate cadastre are: land (plots of agricultural, forest, construction and other land), buildings (buildings and other construction facilities), and special parts of buildings (apartments, business premises, garages, etc.).

Establishing the real estate cadastre that started in 1993 consolidated in a single register maintained by a single authority the information on real estates and property rights thereon.

Prior to establishing the real estate cadastre, the information on real estates had been maintained in different registers and by different authorities (land cadastre, land register, title register, encumbrance register and register of sold state owned flats with mortgages) that ceased to be valid by establishment of the real estate cadastre.

Modernisation of the real estate cadastre started in 2005 by implementation of the Real Estate Cadastre and Registration Project funded by a World Bank loan. The

modernisation plans defined in this project foresee that by the end of 2011, when the project will end, a cadastre of real estates will have been established for the entire territory of Serbia, 80% of cadastre plans will have been transferred to a digital form, a new information system of the real estate cadastre will have been established, information and communication technologies will have been improved and the time necessary for registering property rights on real estates will have been shortened to 5 days on average.

In 2005, the Republic Geodetic Institute implemented a web application that provides users with an Internet access to the Central Register of Mortgages that includes all information on real estate mortgages. Furthermore, from 2007 the state authorities and authorities of the local self government have been provided with an access to information of the real estate cadastre through a web application and web services. Since 2009, the Republic Geodetic Institute has improved the process of request receipt by introducing a web service for request submission.

95. Please provide details on legislative measures which ensure equality between men and women, commenting particularly on equality in areas such as employment, work and pay.

The Constitution of the Republic of Serbia ("Official Gazette of RS", No. 98/2006, the Labour Law ("Official Gazette of RS", No. 24/2005, 61/2005 and 54/2009) and the Gender Equality Law ("Official Gazette of RS", No. 104/09), guarantee the equality of women and men and equal opportunities policy.

The employer is obliged to provide employees irrespective of their sex with equal opportunities regarding the exercise of their rights resulting from and based on the employment relationship: equality during job advertising and the recruitment process, equal availability of jobs and positions, equality in professional development and training and equal pay for the same work performed or the work of the equivalent value.

The Labour Law prescribes that employees are guaranteed equal pay for the same work or the work of the equivalent value performed for the employer, implying that the work of the equivalent value is the work that requires the same level of education, the same work ability, responsibility, and physical and intellectual engagement. This is one of the basic principles of discrimination prohibition, particularly concerning the work of women and men.

The Law on Employment and Unemployment Insurance ("Official Gazette of RS", no.36/09) does not regulate special measures for promoting the employment of certain categories of unemployed persons, including women. However, the said Law stipulates that the annual active employment policy is regulated by the action plan for employment. Thus, equalisation of the status of women and men on the labour market has been defined as one of the objectives of the National Employment Action Plan ("Official Gazette of RS", no. 7/10) to be achieved through implementation of the following measures: creating system prerequisites for equal opportunities policy, budgeting that is gender responsible at the state level, promotion of flexible work forms that enable harmonization of work and family life and creating prerequisites for greater integration of women, as well as the promotion of female entrepreneurship and selfemployment initiatives.

96. Give an overview of possible incentives which exist for both the public and private sectors to refrain from discriminatory employment practices.

The main instrument for implementation of an active employment policy is the National Employment Action Plan that defines goals and priorities of the employment policy, as well as programmes and measures of the active employment policy. The National Employment Action Plan defines the hard-to-employ persons as especially vulnerable groups on the labour market that have priority in inclusion in the active employment policy measures.

The active employment policy measures and programmes are implemented by the National Employment Service.

- The First Chance Apprentice Programme is a programme that encourages formal employment in the private sector and decrease of the unemployment of the youth, especially persons struck by the reduced employment opportunities. The programme is intended for employers who belong to the private sector and who are entitled to wage subsidies for each hired apprentice (without prior work experience) younger than 30 who is provided with an opportunity for vocational education and acquiring practical knowledge required on the open labour market.

- Employment subsidies – employers who belong to the private sector and who employ the unemployed on the newly created jobs may exercise the right to job creation subsidies. The subsidy is paid in a single payment for employment of up to 50 unemployed persons registered in the National Employment Service. The subsidy may be granted for employment of more than 50 unemployed persons in order to level the regional development, remove labour market disparities and enable higher employment rate within Greenfield and Brownfield investments. If persons with disability are employed at the newly created jobs, public sector employers may also be entitled to the subsidy. The subsidy amount per employee depends on the development level of a local self-government unit where the hiring employer does his/her business.

- Self-employment subsidy means subsidy for self-employment and provision of technical assistance to an unemployed person who is getting self-employed. Self-employment funds are granted as a subsidy for a shop, cooperative, or another form of entrepreneurship that is being established by an unemployed person or jointly by several unemployed persons, and for establishing a corporation if the founder will be employed at that corporation. The subsidy is granted as a single payment. An allowance beneficiary may be paid a single allowance for self-employment. Technical assistance for self-employment is provided to the unemployed through information and consulting services in business centres and through entrepreneurship trainings, whilst support for entrepreneurs in the initial years of doing business is provided through organisation of mentoring and specialised trainings.

- Public works are organized in order to employ hard-to-employ unemployed persons and the unemployed in need and to preserve and improve working ability of the unemployed and to achieve certain social interest. The following are entitled to participating in the procedure of organisation of public works: authorities of autonomous territory and authorities of local self government units; public establishments and public companies; corporations; entrepreneurs; cooperatives; social

organisations; citizens' associations. The funds allocated for organisation of public works are provided in the budget of the Republic of Serbia and used for wages of the unemployed persons involved in public works, for refunding costs for coming to and going from work and for the costs of implementation of public works.

- The employer who, pursuant to the social insurance regulations, employs an apprentice up to 30 years old or a person younger than 30, persons older than 45 and 50 and a person with disability is for a certain period exempted from paying benefits for mandatory social insurance paid by the employer.

- The employer who for an indefinite period of time employs a person with disability without prior work experience has the right to wage subsidy for that person for a period of 12 months.

Since 2007 the Commercial Chamber of Serbia has been awarding the National Award for Socially Responsible Business Operation. The National Award for Socially Responsible Business Operation defines the contribution to social responsibility by corporations and aims at identifying the best programmes and initiatives in Serbia for a two-year period. What differs this award is a unique methodology, strictly defined procedure of implementation of the entire process, layered review, checking in stages, trained verification team, objectivity, and independence of the jury. The award methodology is such that it gives equal importance to all areas of socially responsible behaviour: employees and management, market, environment, community/society and assets/capital.

In December 2009, the Council for Socially Responsible Behaviour of the Chamber of Commerce of Serbia was established by the decision of the Management Board of the Chamber of Commerce of Serbia. The Council is a consultative body of the Chamber of Commerce of Serbia whose task is to use the authority and activities of its members to affirm topics and importance of socially responsible business operation in the economy of Serbia and to establish a continuous dialogue with representatives of institutions of the Republic of Serbia in this area. The Council makes appropriate initiatives on the issues of current strategies and policies, education, promotion, development in the area of socially responsible business operation and international integration of the economy of the Republic of Serbia in accordance with the principles of socially responsible business operation. The Council consists of seventeen members – eleven members from large corporations, three from SME sector, and three representatives of universities, non-governmental organisations and business associations.

97. How is gender-based violence and domestic violence treated in your legislation and in judicial practice in terms of prevention, victim support and prosecution?

Strategic framework for protection from gender-based and domestic violence:

- Social Welfare Development Strategy (*Official Gazette of the RS*, No. 108/05)
- National Strategy on Improved Status of Women and Gender Equality Promotion for the period 2009-2015 (*Official Gazette of the RS*, No. 15/09)
- National Strategy on Sustainable Development (*Official Gazette of the RS*, No. 57/08)
- General Protocol on Protection of Children from Abuse and Neglect (2005) and Special Protocols on Child Protection from Abuse: Special Protocol for the Protection

of Children against Abuse and Neglect in Social Care Institutions (2006), Special Protocol on Conduct of Police Officers in Protection of Minors from Abuse and Neglect (2006), Special Protocol on Protection of Children and Pupils from Violence, Abuse and Neglect in Educational and Pedagogical Institutions (2007), Special Protocol on Health Protection System for Child Protection from Abuse and Neglect (2009), and Special Protocol on Conduct of Judiciary System in Protection of Minors from Abuse and Neglect (2009).

- National Strategy for the Prevention and Protection of Children from Violence (*Official Gazette of the RS*, No. 122/08)
- National Strategy on Ageing (*Official Gazette of the RS*, No. 76/06)
- Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia (*Official Gazette RS* No. 1/07)
- Strategy on Fighting against Human Trafficking (*Official Gazette of the RS*, No. 111/06)
- Strategy for Improvement of the Status of Roma in the Republic of Serbia (*Official Gazette of the RS*, No. 27/09)
- Official Statistics Development Strategy (*Official Gazette of the RS*, No. 7/09)
- National Youth Strategy (*Official Gazette of the RS*, No. 55/08);
- Youth Health Development Strategy in the Republic of Serbia (*Official Gazette of the RS*, No. 104/06)
- Mental Health Protection Development Strategy (*Official Gazette of the RS*, No. 8/07)
- National Millennium Development Goals in the Republic of Serbia
- Strategy on Protection from Domestic Violence and Other Forms of Gender-Based Violence in the Autonomous Province of Vojvodina for the Period 2008-2012 (*Official Journal of the APV*, No. 20/08)

The procedure of adoption of the National Strategy for Prevention and Suppression of Violence over Women and Children and Domestic Violence and General Protocol on Conduct and Cooperation of Institutions in Cases of Domestic Violence. Both documents are adopted by the Government.

Institutional Mechanisms:

- **Gender Equality Council of the Government of the Republic of Serbia** is the Government's advisory entity, and was established in 2004.
- **Ombudsman** is a public authority established in 2007. Within the institution of Ombudsman, a special area of work is represented by work on establishing gender equality, lead by the Deputy Ombudsman. A Provincial Ombudsman was established in the Autonomous Province of Vojvodina, where a special area of work is also represented by work on establishing gender equality, lead by the Deputy Provincial Ombudsman for Gender Equality. Besides, there is also the Provincial Secretariat for Labour, Employment and Gender Equality, as well as the Provincial Bureau for Gender Equality. The decision on City Ombudsman (City of Belgrade) – (*Off. Journal of the City of Belgrade*, No. 34/09, 41/09 – *corrigendum*, 41/10) prescribes that the city ombudsman appoints his/her Deputy specialized for performing of tasks related to gender equality.
- **Line ministries** for the area of social policy, health system, education system, internal affairs, judiciary, youth and sport, culture, and local self-government respectively represent significant mechanisms for protection of victims of violence, every one of them within the scope of its competence, as well as in cooperation of non-governmental

and governmental organisations in forming local networks and shelters for protection of victims of violence (network of trust against violence based on gender, safe houses for women and children victims of violence, and other. A need for holistic approach in creating policy and planning protection of victims of domestic violence and for networking and coordination of work of authorities and services in charge of taking measures with a view to timely and efficient protection of victims has been determined by strategic documents of the Government and other documents regulating this area.

- **Republic Statistical Office** represents an institution of special importance which gathers data at the national level; reformation of this area and application of the concept of gender-sensitive statistics are in progress.

- **National Mechanism for Coordination of Activities and Creation of Policy of Fighting against Human Trafficking** was formed in 2003. It consists of the Council for Fighting against Human Trafficking, the Coordinator for Fighting against Human Trafficking, the Republic Team for Fighting against Human Trafficking (strategic level) and the Service for Coordination of Protection of Human Trafficking Victims (established in 2004) together with the police and judiciary authorities (operative level).

- **Gender Equality Directorate** of the Ministry of Labour and Social Policy was established in 2008, and its competences are the following: analysis of the situation and proposing of measures in the area of promotion of gender equality; making and enforcement of the National Strategy for Improved Status of Women and Gender Equality Promotion; making of draft laws and other regulations in this area; cooperation with other state authorities, authorities of the autonomous provinces and authorities of local self-government units in this area; international cooperation; coordination of work and rendering professional and administrative-technical support to the Gender Equality Council; improvement of the position of women and promotion of gender equality and equal opportunities policy; integration of gender equality principles in all the areas of action of the system institutions; monitoring of the enforcement of the UN Committee recommendations for elimination of discrimination of women, as well as other tasks in accordance with the law.

- **Social care services, healthcare institutions, police, educational institutions, and judiciary system** also make part of the institutional mechanisms for protection from violence, including the protection of victims of domestic violence.

Projects:

With the conclusion of the Republic of Serbia, No. 018-5539/2008 of 11 December 2008, the project **Fighting against Sex- and Gender-Based Violence (SGBV)**. The realization of the project envisaged for the three-year-period is financed by the Government of the Kingdom of Norway. The goal of the project is strengthening of capacities of the Gender Equality Administration within the Ministry of Labour and Social Policy for development and introduction of systemic solutions in the area of SGBV, strengthening of capacities of the institutions dealing with protection of victims of violence, establishing and application of the mechanisms which will provide acting in accordance with the standards related to human rights. The project has an objective of strengthening of legislative framework in the area of protection of victims of violence, standard procedures and protocols on acting of relevant institutions, development of coherent system for gathering data on SGBV and raising of awareness of public and citizens on unacceptability of violence as model of behaviour with a view to contribution to creating social environment which would have a preventive function.

Legal framework for protection from domestic violence:

The **Constitution of the Republic of Serbia** (*Official Gazette of the RS*, No. 98/2006), envisages that the state: guarantees equality of men and women and develops equal opportunities policy (Article 15); prohibits direct and indirect discrimination on any basis, and especially on gender basis (Article 21(3)); guarantees a right to equal legal protection (Article 21), legal aid (Article 6), right to rehabilitation and indemnification for material or non-material damage caused by illegal or irregular work of state or other authorities (Article 35), legal protection of human and minority rights guaranteed by the Constitution, including addressing international institutions for protection of freedoms and rights guaranteed by the Constitution (Article 22); guarantees physical and psychical integrity (Article 25(1)); prohibits slavery and position similar to slavery, as well as any form of human trafficking (Article 26(1)(2)); guarantees protection of children from psychical, physical, economic and any other exploitation or abuse (Article 64(3), special protection of family, mothers, single parents and children, children without parental care, and children with psychical or physical developmental difficulties (Article 66); orders securing of equality and equal representation of genders in the National Assembly, in accordance with the law (Article 100(2)), etc.

Legislative framework:

Family Law Protection from Domestic Violence

The **Family Law** (*Official Gazette of the RS*, No. 18/05) introduces, for the first time in the family law area, in special part, the provisions on domestic violence and family legal protection of victims of violence. Domestic violence is a new notion in domestic family law, and a significant advance has been made with its special civil sanctioning in the Family Law in the area of protection of victims of domestic violence (most frequently women, children, older people - so the most vulnerable members of the society).

The Family Law explicitly prescribes that domestic violence is prohibited and that everybody has a right to protection from domestic violence, in accordance to the law (Art. 10). Also, the state is obliged to undertake all the necessary measures to protect children from neglect, from physical, sexual and emotional abuse, and from every form of exploitation (Article 6(2)). Besides, this law also contains other material and procedural provisions of protection from domestic violence related to notion, manner and measures of protection from domestic violence, as well as the procedure in which such protection is realized (Art. 197, 198, 199, 200, 283, 284, 285, 286, 287 and 288).

The Family Law defines domestic violence as any behaviour by which a family member endangers physical integrity, mental health, or tranquillity of another family member, and states the actions especially considered as violent: infliction or attempt of infliction of physical injury, provoking of fear by threatened murder or infliction of physical injury, forcing to sexual intercourse, inducement to sexual intercourse or sexual intercourse with the person under 14 years of age or helpless person, limitation of freedom of movement, insulting, impertinent and ruthless behaviour, etc. (Article 197). Only for the needs of this legal institute, the following persons are considered family members: spouses or former spouses; children and parents; blood and adoptive relatives and the in-laws; persons bound by foster care, common law marriage or living in the

same family household, as well as all the persons who mutually were or still are in emotional or sexual relationship or having a mutual child, or expect a mutual child, although they have never lived in the same family household (Article 197(3)).

Pursuant to the Family Law, it is possible to determine one or more measures of protection against the violent family member. Legal measures of protection from domestic violence are: issuance of order for moving out of the family flat or house or moving in the family flat or house, regardless of the proprietary right or rent of real estate; restraining order from the family member for a certain distance; restraining order from the area around the place of living or place of work of the family member; prohibition of further harassing of the family member. Their goal is either to totally prohibit or only to limit keeping of personal relations with another family member. A measure of protection from domestic violence may last for a maximum of one year, but it may be extended until the reasons for which it has been determined cease to exist, and it may end prior to the expiration of time for which it has been determined if the reasons having conditioned it cease to exist. A measure of protection from domestic violence is pronounced in separate civil proceedings.

Pursuant to the Family Law (Article 263) in case of domestic violence, all childcare, health, educational, or social care institutions, judicial and other state authorities, associations and citizens, have the right and duty to inform the public prosecutor or the curatorship authority thereof, for protection of the children's rights. A claim for determination or extension of the measure of protection from domestic violence may be filed by the family member over whom the act of violence has been performed, his/her legal representative, public prosecutor and curatorship authority, and the claim for cessation of such measure may be filed only by the family member against whom such measure has been determined. Beside the court of general territorial jurisdiction, the court at whose territory the family member, over whom the act of violence has been performed, has a domicile or residence, also has a territorial jurisdiction for deciding on a measure of protection from domestic violence. The proceedings in the dispute for protection from domestic violence has several additional specific characteristics: the proceedings is especially urgent, meaning that the first session is to be held within 8 days from the claim being received in the court, and the second-instance court is obligated to take decision within 15 days from the delivery of the appeal; the court is not bound by the limitations of claim, so it may determine a measure which has not been requested if it estimates that the best protection from violence is achieved by such measure; finally, the appeal does not keep the ruling on determination or extension of the measure of protection from domestic violence from enforcement. Violation of the measure of protection from domestic violence by the person to whom the court determined it based on the law, represents a criminal act, and is punished by prison sanction in duration from three months to three years and pecuniary sanction (Article 194(5) of the Criminal Code).

In the proceedings for protection from domestic violence, the curatorship authority may have either a position of actively identified subject or a position of specific expert, who may be requested by the court to assist in obtaining necessary evidence, as well as to present its opinion on the appropriateness of the requested measure. The curatorship authority is also obligated to keep the records and documents of the persons over whom the acts of violence have been performed as well as of the persons against whom the measure of protection has been determined.

According to the Rulebook on Organisation, Criteria, and Professional Work Standards of Centres for Social Work (*Official Gazette of the RS*, No. 59/08, 37/10), the social service centre is obligated, directly and in cooperation with other services and authorities in local community, to render **services of urgent intervention**, when it is necessary to protect a child, an adult or an older person and to take measures for securing safety, or when there are justified reasons to believe that non-taking of urgent measures and services from the competence of the centre would lead to endangering of life, health, and development of the person who needs the protection.

The Family Law introduced a mandatory specialization for the judges acting in family matters from the area of the child protection (Article 204), and the very programme of specialization is prescribed by the Rulebook on Programme and Manner of Acquiring Special Knowledge from the Area of Children's Rights for the Judges Judging in the Proceedings Related to the Family Relations (*Official Gazette of the RS*, No. 44/06). The Rulebook prescribes an obligation of the Judiciary Centre for Training and Vocational Improvement to hold and organize the training for acquiring of certificates (Article 10). This programme includes a specific training from the area of children's rights, legal consequences of cessation of marriage and common law marriage, child's opinion and domestic violence. From entering into force of the Family Law in July 2006 to April 2009, the Judiciary Academy organized 18 seminars attended by 525 judges of all courts which also obtained the prescribed certificates, and 45 one-day seminars with the topic "Principles of the Family Law", attended by 735 judges. In the period from June 2006 to April 2009, within the Department for Civil and Criminal Law of the Ministry of Justice, 74 one-day seminars were organised with the topic "Domestic Violence – Civil and Criminal Aspect and Enforcement in Family Matters", which was attended by 987 judges and public prosecutors and their deputies.

Criminal Protection from Domestic Violence

The Criminal Code (*Official Gazette of the RS*, No. 85/05, 88/05, 107/05, 72/09, and 111/09) prescribes a separate criminal offence of *domestic violence* within the group of criminal offences against marriage and family (Article 194). This criminal offence is committed by anyone who by application of violence, threatening of attacking life or body, impertinent or ruthless behaviour, endangers tranquillity or mental state of his/her family member. The circumstances which aggravate the basic offence are use of weapons, dangerous tools or other means adequate to inflict serious harm to the body or to seriously endanger health; occurrence of severe physical injury or serious endangering of health; committing of the offense over the minor; death of the family member.

The Criminal Code determines that the following persons are considered as family members: spouses, their children, forefathers of the spouses in direct lineage of blood relation, common law marriage partners and their children, adoptive parent and adopted child, foster parent and foster child, as well as brothers and sisters, their spouses and children, former spouses and their children and parents of former spouses, if they live in the joint household, while the persons having or expecting a mutual child are considered as family members although they have never lived in the joint household.

Criminal Offences against Life and the Body

Comparing to protection of women victims of violence suffered by the persons who are not considered as family members, the provisions of the Criminal Code which incriminate deprivation and endangering of life and physical integrity are very important. It is about classical criminal offences from the Chapter thirteen of the Criminal Code - Criminal Offences against Life and the Body: murder and different forms of qualified murder (Art. 113, 114, 115, 116, 117, and 118 of the CC), causing one to commit a suicide and helping in suicide (Article 119 of the CC), illegal abortion (Article 120 of the CC), severe and light physical injury (Art. 121 and 122 of the CC), participation in fight (Art. 123), endangering with dangerous tools at fight and quarrel (Art. 124 of the CC), exposing to danger (Art. 125 of the CC), leaving of helpless person (Art. 126 of the CC) and refusal to provide assistance (Art. 127 of the CC).

Criminal Offences against Sexual Freedom

Among the criminal offences which endanger personal integrity and sexual freedom of women, the criminal offences from the group of criminal offences against sexual freedom are especially important (Chapter eighteen of the CC): rape (Art. 178), sexual intercourse with helpless person (Art. 179), sexual intercourse with child (Art. 180), illegal sexual intercourse through abuse of position (Art. 181), illegal sexual acts (Art. 182), soliciting (Art. 184), showing of pornographic material and use of children for pornography (Article 185). For all these offences, prosecution is undertaken *ex officio*, except for the criminal offences of rape and sexual intercourse with helpless person if they have been committed towards a spouse, when the prosecution is undertaken by the claim of the aggrieved person.

According to the statistical data available to the public prosecutor's office in 2009, for the criminal offence of rape from Art. 178 of the CC, a total of 191 people were reported. There were also reports for 14 persons carried over from the previous period in process, so that the reports for 205 persons in total were in process. The reports for 41 persons were rejected. A total of 97 persons were accused. 70 sentences to prison sanction were pronounced. 16 persons were acquitted. A total of 68 appeals were reported by the public prosecutor, out of which 40 due to decision on the sanction. A total of 12 appeals were accepted, out of which 5 due to decision on the sanction, and 18 appeals were rejected, out of which 11 due to decision on the sanction.

Criminal Offences against Marriage and Family

Beside domestic violence (Art. 194), the provisions of the CC also incriminate other forms of illegal behaviour, classified by the legislator under the group of criminal offences against marriage and family (Chapter nineteen): bigamy (Art. 187 of the CC), entering into void marriage (Art. 188 of the CC), enabling of entering into prohibited marriage (Article 189 of the CC), common law marriage with a minor (Art. 190 of the CC), taking away of a minor (Art. 191 of the CC), change of family status (Art. 192 of the CC), neglect and abuse of a minor (Art. 193 of the CC), withholding of alimony (Art. 195 of the CC), violation of family obligations (Art. 196 of the CC), incest (Art. 197 of the CC). Although some of these criminal offences, such as taking away of a

minor or withholding of alimony are directly pointed towards the child and its rights, committing of these criminal offences is often a form of special psychical violence towards a mother of the child.

According to the statistical data of the public prosecutor's offices, 4.428 persons were reported in 2006 for criminal offence of domestic violence. There were reports for 1313 persons from the previous period in process, so that 5.741 person in total was reported for this criminal offence. Out of this number, criminal charges against 1.288 persons were rejected. A total of 2.562 persons were accused. 201 persons were sentenced to the prison sanction, 1343 persons were sentenced to conditional sentence, a measure of warning – was pronounced to 25 persons, the proceedings were suspended upon accusing for 99 persons, an acquittal was pronounced for 85 persons, and the sentence was rejected for 47 persons. The safety measure was pronounced for 46 persons. Public prosecutors lodged a total of 472 appeals, out of which 353 due to the sanction. 101 appeals was accepted, out of which 70 due to decision on the sanction, 180 appeals were rejected, out of which 127 due to the sanction.

Besides offering criminal protection to the victims of sexual and domestic violence, such protection was offered at domestic violence in the shelters in form of safe houses as well.

Special Protection of Victims, Witnesses, and Other Participants in Criminal Procedure

Legal solutions related to special protection of victims or aggrieved parties and witnesses during criminal procedure are very important for promotion of protection of victims from violence, considering that, during the criminal procedure against the perpetrators of violation against women, women are exposed to great risk and pressures, which contributes to their secondary victimization. The provisions of Art. 109 of the Code on Criminal Proceedings envisage an obligation of the court to protect the witness and the aggrieved party from insult, threat, and every other attack. The court is obligated to warn or declare a fine to the participant of the proceedings or any other person insulting the witness or the aggrieved party, threatens them or endangers their safety before the court, and in case of violence and serious threat, the court is obligated to inform the public prosecutor for undertaking of criminal prosecution. At the proposal of the investigative judge or the president of the court chamber, the president of the court or the public prosecutor may request that the authorities of the internal affairs undertake special measures of protection of witness and the aggrieved party.

Human Trafficking

The Criminal Code incriminates *human trafficking* in Article 388. This criminal offence is committed by anybody who by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person's labour, forced labour, commission of offences, prostitution or other form of sexual exploitation, mendacity, use for pornographic purposes, establishing of slave or similar relation, for removal of organs or body parts or service in armed conflicts. The circumstances which aggravate the

basic criminal offence are minor age of the passive subject, severe physical injuries or death of one, or more persons at execution of human trafficking.

The review of the mentioned norms of the Criminal Code, as well as relevant norms from the Criminal Procedure Code²¹ shows that there has been certain advancement in harmonization of the national legislation with the standards envisaged in the international law in the past ten years. This above all concerns the incrimination of the criminal offence of domestic violence (Art. 194 of the Criminal Code) and prosecution of offenders by the public prosecutor *ex officio*. The modifications of the criminal-procedural law (from 2009) improved procedural-legal position of victims of sexual violence (e.g. possibility of exclusion of facing the defendant with the victim/s, special manner of interrogation of sensitive categories of victims and/or witnesses, measure of protection of minor-age victims of sexual violence with a view to reduction of secondary victimization). The protection of victims of sexual violence regardless of gender, stricter sanctions when the victim is under 14 years of age or is in a special dependency relationship with the perpetrator of the offence, expansion of actions of majority of these criminal offences from illegal sexual intercourse to other equalled acts; change of criminal-procedural provisions, focused to reduction of secondary victimization of victims, represent a progress.

Other laws:

The **Law on Public Peace and Order** (*Official Gazette of the RS*, No. 51/92, 53/93, 67/93, 48/94, 101/2005) prescribes that the person who, by insulting and abusing other person, by performing violence on other persons, by provoking a fight or by participating in fight, endangers tranquillity of citizens or disturbs public peace and order (Article 6(3)) will be punished for the offence. The Law also prescribes behaviour of a person who provides a minor with the premises for prostitution as an offence. (Article 14 (2)) By virtue of Article 20 of the same law, a parent or a guardian of a minor who commits the offence from this Law (insulting or violence over other persons, inducement to mendacity or vagrancy, unauthorised circulation of alcoholic beverages to minors under 16 years of age, gambling and inducement of minors to gamble) shall be punished, if the offence committed by the minor is the consequence of failure in supervision over a minor by any of the mentioned persons, who are able to carry out such supervision.

The Gender Equality Law (*Official Gazette of the RS*, No. 104/2009) prescribes that violence based on gender is a behaviour which endangers physical integrity, mental health, or tranquillity, or inflicts material damage to the person, as well as serious threat by such behaviour, which prevents or limits a person in enjoying rights and freedoms based on gender equality principle. Harassment means every unwanted verbal, non-verbal, or physical act, committed with intention or having as a consequence violation of dignity and provoking of fear, or creation of enemy, degrading or offensive environment, based on gender. Sexual harassment means every unwanted verbal, non-verbal, or physical act of sexual nature, committed with intention or having as a consequence violation of personal dignity, creation of intimidating, enemy, degrading or offensive environment, based on gender. Sexual blackmailing means every behaviour of a responsible person who, intending to request the services of sexual nature,

²¹ Criminal Procedure Code (*Official Journal of the FRY*, No. 70/01 and 68/02 and *Official Gazette of the RS*, No. 58/04, 85/05, 115/05, 49/07, 20/09, and 72/09).

blackmails another person that, in case of refusal of rendering of the requested services, he/she will reveal something on him/her or a person close to him/her which might harm his/her honour or reputation (Article 18).

Harassment, sexual harassment or sexual blackmail at work or related to work committed by the employee towards the other employee is considered as violation of labour obligation which represents a basis for cancellation of the labour contract, or for pronouncing of the measure of cessation of labour relation, as well as a basis for removal of the employee from work (Article 10).

All family members have an equal right to protection from domestic violence, and the public authorities are obligated to plan, organise, enforce and finance the measures intended for raising awareness of the need for prevention of domestic violence (Article 29).

Every person whose right or freedom are violated due to his/her gender may launch the proceedings before the competent court and to request: 1) determination of the violation performed by discriminatory acting; 2) prohibition of performing of the actions threatening with violation; 3) prohibition of further undertaking, or repeating of the actions having provoked the violation; 4) putting out of circulation of the means, or objects which have provoked the violation (textbooks which present the gender in discriminatory or stereotypical manner, printed media, advertising, promotional material, and other); 5) elimination of violation and establishing of the position or status preceding the violation performed; 6) indemnification for material and non-material damage (Article 43).

The Law on Prohibition of Discrimination (*Off. Gazette of the RS*, No. 22/09) prohibits gender/based discrimination. By virtue of Article 20, physical and other forms of violence, exploitation, expression of hatred, disparagement, blackmail and harassment pertaining to gender, as well as public advocating, support and acting in accordance with the prejudices, customs, and other social models of behaviour based on the idea of gender inferiority or superiority, or stereotypical gender roles, are also prohibited.

The Law on Prevention of Discrimination against Persons with Disabilities (*Official Gazette of the RS*, No. 33/06) prohibits all forms of direct and indirect discrimination, as well as violation of principles of equal rights and obligations (Article 6).

The Law on Social Protection and Provision of Social Security of the Citizens (*Off. Gazette of the RS*, No. 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/01 and 84/04, 115/05) prescribes that the social protection in terms of this Law, as organized social activity, provides assistance to citizens and their families when they are in the state of social needfulness and takes measures for prevention of occurrence of and elimination of occurrence of such situation. The state of social needfulness means the state in which a citizen or a family necessitates a social aid with a view to overcoming social and living difficulties and to creating conditions for satisfying basic living needs, if such needs cannot be satisfied in any other way based on humanism and respect for human dignity.

The Labour Law (*Official Gazette of the RS*, No. 24/05, 61/05, 54/09) prescribes that the harassment, i.e. any unwanted behaviour having as an objective or representing violation of the dignity of the person looking for employment, as well as the employee, which provokes fear or creates enemy, degrading or offensive environment, as well as sexual harassment, which, in terms of this Law, means every verbal, non-verbal or physical behaviour, having as an objective violation of the dignity of the person looking for employment, as well as the employee, in the area of sexual life, which provokes fear, or creates enemy, degrading or offensive environment, is prohibited.

Law on Police (*Official Gazette of the RS*, No. 101/05, 63/09). In their work, the officers of the Ministry of Internal Affairs, working on shedding light on criminal offences in the area of sexual offences, cooperate with health institutions, social service centres and non-governmental organisations with a view to rendering necessary medical assistance to the aggrieved person, as well as assistance in establishing normal functioning and overcoming a traumatic experience through counselling, support, psychotherapeutic treatments, health and legal aid, or by placing them in safe houses.

Data from the Practice of Curatorship Authorities

Table: Review of number of children and young persons victims of violence, registered by the SSC, by regions in Serbia²²

<i>Area of Serbia</i>	Children and young persons - victims of violence				
	2005	2006	2007	2008	2009
Central Serbia	1.225	1.556	1.401	1452	1561
Vojvodina	709	968	528	889	869
Kosovo	48	54	50	6	26
Belgrade	293	193	281	811	865
Total Serbia	2.275	2.771	2.260	3.158	3.321
Growth Index	100,0	121,8	99,3	138,8	145,9

Table: Review of number of adults and older persons victims of violence, registered by the SSC, by regions in Serbia²³

Area of Serbia	Adults and older persons - victims of violence				
	2005	2006	2007	2008	2009
Central Serbia	374	1.078	1.964	1.973	3.382
Vojvodina	195	1.176	962	1.119	2.028
Kosovo	19	34	43	4	39
Belgrade	82	155	145	1.458	2.071
Total Serbia	670	2.443	3.114	4.554	7.520
Growth Index	100,0	364,6	464,8	679,7	1122,4

A total number of reported victims of violence during 2009 was 7520, and the majority of this number are adults, and women and female children jointly more than two thirds.

Table: **Total number of reported family members victims of violence and their structure by gender**²⁴

²² Republic Institute for Social Protection, *Analysis of Reports on Work of Social Service Centres in Serbia, 2009*. Republic Institute for Social Protection, Belgrade, 2010, p. 60
²³ Idem

Members - victims of violence	Female	Male	Total
Children	1.707	1.419	3.126
Adults	3270	341	3.611
Old persons	569	214	783

In the period 2006-2009, according to total number of cases of domestic violence, (including violence over children), partners dominate in the structure of offenders.

Table: **Number of families** in which the violence was reported by offender²⁵

<i>Offender</i>	No. of families			
	2006	2007	2008	2009
father	976	863	1211	1281
mother	432	219	316	274
both parents	605	193	244	200
brother/sister	119	608	837	115
marital/common law marital partner	133	1.496	2434	2310
other	18	93	191	898
Reported families - total	2.283	3.472	5.133	5.078

Only as an illustration, the analysis of work of the social care centres states that the cases of violence reported by the MIA make the majority of ones reported to the social care centres in 2008 and 2009.

Table: **Structure of reported families** by manner of discovering domestic violence (2008-2009)

<i>Manner of discovering</i>	No. of families	
	2008	2009
Reported by the MIA	1.908	1.924
Reported by family member	1.791	1.681
Court order	517	478
Reported by institution (school, clinic, kindergarten, etc)	360	296
Reported by another person outside of the family	341	338
Curatorship Authority <i>ex officio</i>	258	274
Reported by non-governmental organization	30	28
Total number of families	5.205	5.019

Table: Number and structure of pronounced **court measures of protection from domestic violence** in 2009

<i>Type of pronounced court measure</i>	No. of measures
Restraining order for family member at a certain distance	307
Prohibition of further harassing family member	258
Prohibition of access in the area around the place of living or work	151
Issuance of order for moving out of the flat or house	95

²⁴ Idem
²⁵ Idem

Issuance of order for moving in the family flat or house	12
Total number of measures pronounced	823

Data of the Ministry of Internal Affairs:

According to the data of the Ministry of Internal Affairs, in the period from 1 January 2008 to 31 December 2009, related to the committed criminal offences with elements of sexual harassment and violence, some criminal offences against sexual freedom and criminal offences against marriage and family have been singled out:⁹

criminal offence	01.01.-31.12.2008	01.01.-31.12.2009
rape	160	139
sexual intercourse with helpless person	22	20
sexual intercourse with child	63	83
prohibited sexual acts	115	120
domestic violence	2.980	3.396

The analysis of court files for cases of domestic violence, in Belgrade, for the period 2006-2008, shows that in 43% cases a prohibition of further harassment, in 22% cases a restraining order, and in 18% cases a measure of moving out were pronounced.⁶

98. Please elaborate on the legislative, administrative, and institutional framework in place to ensure effective protection of the rights of the child.

LEGAL AND INSTITUTIONAL FRAMEWORK

Confirmed international instruments on human rights and rights of the child.

Serbia confirmed (ratified) several conventions of the United Nations Organization, which are vital for exercise and protection of the rights of the child. These include: Universal Declaration of Human Rights; International Covenant on Civil and Political Rights, including both of the Optional Protocols; International Covenant on Economic, Social and Cultural Rights; The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Elimination of all Forms of Racial Discrimination; Convention on the Elimination of all Forms of Discrimination against Women and the accompanying Optional Protocol; UN Convention on the Rights of the Child, both of the Optional Protocols; The United Nations Convention against Transnational Organized Crime (2000) and the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; Convention on the Civil Aspects of International Child Abduction; Convention on the Suppression and Punishment of the Crime of Apartheid; Convention against Apartheid in Sports; Convention Relating to the Status of Refugees; the Convention relating to the Status of Stateless Persons; the Geneva Convention; International Convention on the Protection of the Rights of All Migrant Workers; Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment with two accompanying

⁹ Idem

⁶ Data from the Second and Third Periodical Report on Application of the Convention on Elimination of All Forms of Discrimination of Women (2010), composed by the Ministry for Human and Minority Rights, and adopted by conclusion by the Government of the Republic of Serbia.

Protocols; Convention for the Protection of All Persons from Enforced Disappearance; Convention on the Rights of Persons with Disabilities with accompanying Optional Protocol on the Rights of Persons with Disabilities. Serbia has confirmed the following conventions of the Council of Europe: Convention for the Protection of Human Rights and Fundamental Freedoms and the accompanying Protocols; the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children; the European Convention on Action against Trafficking in Human Beings and the European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. Serbia is a signatory to the following conventions of the Council of Europe: The European Convention on the Exercise of Children's Rights, the European Convention on the Adoption of Children (revised).

Children's rights under the Constitution of the Republic of Serbia

Provision of Article 16 (2) of the Constitution of the Republic of Serbia stipulates that: "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 shall directly apply. Ratified international treaties must be in accordance with the Constitution."

Protection the rights and interests of the child is prescribed by the following Articles of the Constitution: 37, 38, 60, 64, 65, 66, 68, 69.

National strategy documents and Action plans

The Government of the Republic of Serbia adopted several strategies and action plans in various fields, which are vital for exercise and protection of child rights. These include:

- National Plan of Action for Children (2004-2015)
- Social Welfare Development Strategy (*Official Gazette of RS* No. 108/05)
- General Protocol on Protection of Children from Abuse and Neglect (2005) with the accompanying special protocols:
- National Youth Strategy (*Official Gazette of RS* No. 55/08) and the Action Plan for implementation thereof (*Official Gazette of RS* No. 7/09)
- Strategy for Mental Health Protection Development (*Official Gazette of RS* No. 8/07)
- Strategy for Youth Health Development in the Republic of Serbia (*Official Gazette of RS* No. 104/06)
- National Strategy for the Prevention and Protection of Children from Violence (*Official Gazette of RS* No. 122/08) and the Action Plan for implementation thereof.
- Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia (*Official Gazette of RS* No. 1/07)
- Strategy to Combat Trafficking in Human Beings (*Official Gazette of RS* No. 111/06)
- Strategy for the Improvement of the Status of Roma in the Republic of Serbia (*Official Gazette of RS* No. 27/09) and the Action Plan for implementation thereof (*Official Gazette of RS* No. 57/09)
- Strategy for the Development of Official Statistics (*Official Gazette of RS* No. 7/09)
- Strategy for fighting drugs and the Action plan for implementation thereof (*Official Gazette of RS* No. 24/09)

- Sports Development Strategy (*Official Gazette of RS* No. 110/08) and the Action Plan for implementation thereof (*Official Gazette of RS* No. 80/09)
- Returnee Reintegration Strategy under the Readmission Agreement (*Official Gazette of RS* No. 15/09) and the Action Plan for implementation thereof (*Official Gazette of RS* No.28/09)
- National Strategy for Improved Status of Women and Gender Equality Promotion for the period 2009-2015 (*Official Gazette of RS* No. 15/09)
- National Sustainable Development Strategy (*Official Gazette of RS* No.57/08).

Institutional protection

The Council for Child Rights of the Government of the Republic of Serbia - the Council for Child Rights is Government advisory body, institutionalized in 2002.

The Council has the following duties: initiating measures for harmonization of the policies of the Government of the Republic of Serbia in the areas relating to children and young people (health, education, culture, social welfare); initiating measures for development of integral and coherent policy towards children and the young; defining recommendations for implementation of important social indicators in the field of child care and proposing the policy of exercise of child rights in accordance with the UN Convention on the Rights of the Child, analyzing the effects of the measures taken by the competent authorities, relating to children, the young, families with children and birthrate, monitoring exercise and protection of child rights in our country.

Committee on the Rights of the Child of the National Assembly – at the 4th Extraordinary Session in 2010, held on 28 July 2010, the National Assembly of the Republic of Serbia adopted the Rules of Procedure, thus setting up the Committee on the Rights of the Child as a special permanent working group of the National Assembly. Committee Chairperson is the Speaker of the National Assembly. Besides the Speaker of the National Assembly, the Committee consists of: Deputy Speakers, representatives of parliamentary groups in the National Assembly and Chairman of the Committee on Labour, Social Welfare, Social Inclusion and Poverty Reduction. The Committee on the Rights of the Child, as a permanent working body, considers proposals of laws from the aspect of children's rights, monitors the implementation of the adopted laws and other acts that regulate the position and protection of child rights, monitors harmonization of national legislation with international standards of child rights; cooperates with national and international institutions and bodies, as well as local authorities; initiates amendments to legislation and proposes adoption of certain acts and measures to be taken for protection of child rights, promotes child rights; discusses other issues relevant to child rights.

Ombudsman - Deputy for the Rights of the Child

Protector of Citizens (Ombudsman) is a state authority which was established in 2007 under the Law on the Protector of Citizens (*Official Gazette of RS* No 79/05 and 54/07). The Ombudsman is an independent body that protects the rights of citizens and controls the work of public administration, as well as other bodies and organisations, companies and institutions which have been delegated public authorities. Within the institution of the Ombudsman, a special area of work includes the protection of child rights, managed by the Deputy Ombudsman, whereby the Republic of Serbia implemented the

recommendation of the United Nations Committee on the Rights of the Child of June 2008. The Ombudsman is appointed by the Assembly and the Ombudsman's Office has a specialized division responsible for issues of the protection of child rights.

The Ombudsman, through his Deputy, implements the procedures, prepares legislative initiatives, delivers opinions, recommendations, and other acts pertaining to the rights of the child, but is also engaged in research and promotion of the protection of child rights.

Moreover, the Ombudsman has set up the "Panel of Young Advisors", composed of thirty children chosen on the basis of an open application procedure, to advise on matters related to their core problems. The Ombudsman also uses mediation procedure in resolving complaints of children.

In the Autonomous Province of Vojvodina, the independent supervision over the protection of child rights is also conducted by a specialized Deputy Ombudsman for the Rights of the Child. In addition, Decision on the City Ombudsman (the City of Belgrade) - (OJ of the City Belgrade No. 34/09, 41/09 – corrigendum, 41/10), provides that the city ombudsman shall determine his deputy who is specialized in performing tasks related to the protection of child rights.

The Proposal of the Law on Ombudsman for the Child Rights is in parliamentary procedure, and is envisaged to establish an independent institution at the republic level for the promotion and supervision over the implementation of the Convention on the Rights of the Child in terms of promoting, advancing and protecting child rights in the Republic of Serbia. However, the National Ombudsman argued against having special national ombudsman for children, and the Commissioner for Human Rights of the Council of Europe in his latest report on Serbia concurred with the Ombudsman's opinion.

Line Ministries

In accordance with the Law on Ministries (*OG of RS* No. 65/08, 36/09 – other law, 73/10 –other law) line ministries responsible for social policy, health, education, interior, judiciary, youth and sports, culture, local self-government within their scope of work and competences, stand for relevant mechanisms for the protection and promotion of child rights.

Protection issues and institutional support to families and children lie within the competence of the Ministry of Labour and Social Policy. The Department for Child Care and Social Protection works within the Ministry of Labour and Social Policy and deals with integral issues of family and children protection, starting from the delivering of recommendations for overall policy, developing instruments for implementation of policies, action plans, drafting of laws, providing funds for the functioning of system institutions, providing material resources for tangible benefits to citizens who live below the level of social protection, carrying out the work on improvement of labour standards in social protection institutions, particularly centres for social work, performing supervision over professional work and inspection over the legality of work of the centres for housing institutions of social protection.

The guardianship authority – within the institutional system of family protection, under the law, the provision of assistance and support to families lies within the competence of the centres for social work, established in each local self-government unit. Pursuant to the Family Law, this authority performs duties in relation to family protection, family support and guardianship. The guardianship authority, counting at present 139 units in Serbia, performs the said duties as delegated public powers, and is established for the territory of the municipality or city. The guardianship authority exercises legal protection of children and family within the Family Law, but also in criminal, civil, social and administrative law. The guardianship powers are particularly important in court proceedings, where this authority can act in the position of a party, representative, intervener and expert opinion provider. In conducting operations to assist and support families and children, the authority, provides psycho-social counselling, supervises the exercise of parental rights, decides on protective measures and initiates court proceedings. When deciding upon the measures within its jurisdiction (adoption, guardianship, foster care, supervision over the exercise of parental rights, determination and change of the personal name) and the implementation thereof, the guardianship authority also applies methods of professional social work and social protection. Centre for Social Work decides on the rights of families and children, regulated by Law on Social Protection and Provision of Social Security of the Citizens.

Courts

According to Article 203 of the Family Law, judges and lay judges who proceed in family disputes must have expertise in the field of child rights. Implementation of the Programme for acquiring special knowledge in the field of child rights, for judges who adjudicate in the proceedings regarding family relations, is organized by the Judicial Academy. According to Article 44 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, a juvenile judge, juvenile bench judges, defence attorneys and prosecutors, must be persons who have acquired special qualifications in the field of the rights of the child and juvenile delinquency, and lay judges are elected from the ranks of teachers, professors, educators and other qualified persons experienced in work with children and youth.

Non-governmental organizations

In the Republic of Serbia, the role of *associations of citizens* is important for formulation and implementation of the policy of assistance and support to families and children. As one of the examples, it should be mentioned that non-governmental organizations which dealt with the problem of domestic violence, child abuse and neglect by developing non-institutional forms of protection of children and youth without parental care (Victimology Society of Serbia, Child Rights Centre, Incest Trauma Centre, Shelter for Women Victims of Violence, etc.), took active participation in development of a new Family Law which was adopted in February 2005, and enforced as of 1 July 2005. In addition, non-governmental organizations play an important role in the development of extra-institutional forms of protection at the local level that are included in the system of assistance and support to families and children through the provision of day care centres and clubs for disabled children and children developmental impairments, persons with disabilities, shelters for “street children”, shelters for women and children victims of human trafficking, shelters for women and children victims of violence, housing with support of children with disabilities to

promote and organize foster care, as well as implementation of various programmes of support to target groups of children, etc.

DEFINITION OF A CHILD

Pursuant to the Constitution of the Republic of Serbia, a child is a person who has not attained the age of eighteen years, which is aligned with the definition contained in the Convention on the Rights of the Child. This definition is also adopted by the Family Law (*Official Gazette of RS* No.18/05), the Law on the Fundamentals of the Educational System (*Official Gazette of RS* No. 72/09), the Labour Law (OG of RS No. 24/05, 61/05, 54/09), the Law on Health Care (OG of RS No. 107/05, 72/09 – other law, 88/10) and the Law on Prevention of Discrimination against Persons with Disabilities (OG of RS No. 33/06). Pursuant to criminal legislation, a child is a person under the age of 14, and the minor is a person aged between 14-18 years.

Majority is obtained by reaching 18 years of age. Full legal capacity is obtained by reaching the age of majority or by concluding a marriage with court permission before reaching the age of majority. The court may also permit a minor to obtain full legal capacity if he/she has reached 16 years of age, has become a parent and has reached the physical and mental maturity to provide independently for his/her own personality, rights and interests (Article 11 of the Family Law).

A man who has reached sixteen years of age and who is able to reason may acknowledge paternity (Article 46 of the Family Law). A child has to give consent to acknowledgment of paternity if he/she has reached 16 years of age (Article 49 of the Family Law).

A child who has reached 10 years of age has to give his/her consent to adoption (Articles 98 and 116 of the Family Law).

A child who has reached the age of 15 and who is able to reason has the right to inspect the register of births and other documentation related to his/her origin (Article 59 of the Family Law).

A child who has reached the age of 15 and who is able to reason has the right to decide which parent he/she is going to live with (Article 60 of the Family Law).

A child who has reached the age of 15 and who is able to reason has the right to decide on maintaining personal relations with the parent he/she does not live with. (Article 61 of the Family Law).

A child who has reached the age of 15 and who is able to reason may give consent to conducting medical intervention (Article 62 of the Family Law).

A child has the right to education in accordance with his/her abilities, wishes and inclinations. A child who has reached the age of 15 and who is able to reason may decide which secondary school he/she will attend (Article 63 of the Family Law).

A child who has not reached 14 years of age (a young minor) may undertake legal operations whereby he/she acquires exclusively rights, legal operations whereby he/she

does not acquire either rights or obligations and legal operations of small significance. A child who has reached 14 years of age (senior minor) may undertake, in addition to the said legal operations, all other legal operations with the prior or subsequent consent of his/her parents, or the consent of the guardianship authority for legal operations set out in Article 193(3) of this Law. A child who has reached the age of 15 may undertake legal operations whereby he/she manages and disposes of his/her income or property acquired through his/her own work. A child may undertake other legal operations when provided so by law (Article 64 of the Family Law).

A child who has reached 10 years of age may address the court or an administrative authority, by himself/herself or through another person or institution, and request assistance in realization of his/her right to free expression of opinion (Article 65 of the Family Law).

Pursuant to Article 23 of the Family Law, marriage may not be concluded by a person who has not reached 18 years of age. A court may, for justified reasons, permit a minor who has reached 16 years of age, and who has reached the physical and mental maturity necessary to exercise the rights and duties of marriage, to conclude a marriage.

The right to inheritance is acquired by birth, but also the conceived child (*nasciturus*) shall be considered an heir, if born alive. A person who has reached 15 years of age and who is able to reason, may make a will (Article 79 of the Inheritance Law – OG of RS No. 46/95 , 101/03-CC (Constitutional Court).

The Labour Law stipulates that the minimum age for entering into employment relationship with a minor is 15. Special conditions are prescribed for entering into employment relationship with a minor: written approval of the parents, under the condition that such work does not jeopardize his/her health, moral or education, and is not prohibited by the law. A person below the age of 18 (a minor) can enter into employment relationship only upon certificate of the competent health care authority substantiating that he/she is capable of performing the tasks stipulated by the employment relationship, and that these tasks are not harmful for his/her health.

Pursuant to Article 4 of the **Criminal Code** (*Official Gazette of RS* No. 85/05, 88/05, 107/05, 72/09, 111/09), criminal sanctions can not be imposed to a person who, at the time of committing the offence, was under 14 years of age. Pursuant to Article 9 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (*Official Gazette of RS*, No. 85/05), educational measures, juvenile detention and security measures, stipulated by the Criminal Code, may be pronounced to juvenile offenders, with the exception of restraint to be engaged in his occupation, business activities or duties. Only educational measures may be pronounced to juvenile offenders (14-16 years of age). Educational measures, and exceptionally juvenile detention, may be pronounced to elder juveniles (16-18 years of age).

Similar provisions are prescribed by the Misdemeanor **Law** (OG of RS No.101/05, 116/08, 111/09). A minor who, at the time of committing offence has not reached the age of 14, can not be subject to misdemeanour proceedings (Article 63). Only educational measures may be imposed on a minor who, at the time of committing offence, has reached the age of 14, but has not reached the age of 16 (young minor). A

minor who, at the time of committing offence, has reached the age of 16, but has not reached the age of 18 (older minor) can be subject to educational measure or punishment (Article 65). The Law on Public Order (OG of RS No. 51/92, 53/93 – other law, 67/93 – other law, 48/94 – other law, 85-05 – other law, 101/05 – other law) prescribes the punishment for the offence to a person who sells alcoholic beverages to a person who has not reached the age of 16 (Article 11).

Pursuant to the Criminal Procedure Code (OJ of FRY No. 70/01, 68/02, OG of RS No. 58/04, 85/05 – other law, 85/05, 115/05, 49/07, 20/09 – other law, 72/09, 76/10), a minor who has turned sixteen can submit the request or private charges by himself/herself (Article 55), and a child, as an injured party in criminal proceedings, who has turned sixteen, is authorized to give statements of his own and to undertake activities in the proceedings (Article 65). The Civil Procedure Law (OG of RS No. 125/04, 111/09) stipulate that a minor shall be competent for civil procedure within the limits of recognised legal competence (Article 74).

BEST INTEREST OF THE CHILD

The Family Law stipulates that everyone is obliged to act in the best interest of the child in all activities related to the child (Article 6). The state is obliged to undertake all necessary measures to protect the child from neglect, from physical, sexual and emotional abuse and from every form of exploitation. In addition, the state is obliged to respect, protect and improve the rights of the child. A child born out-of-wedlock has the same rights as a child born in marriage. An adopted child has the same rights in relation to his/her adopters as a child has in relation to his/her parents. The state is obliged to provide a child without parental care with protection in a family environment whenever possible.

The procedures for adoption and foster care provide that the child may be adopted, or that foster care may be established only if in the best interest of the child (Article 89 and Article 111).

In proceedings for the protection of the child rights as well as in proceedings for the exercise or deprivation of parental rights, the court is always under the obligation to act in the best interest of the child (Article 266). The lawsuit for the protection of a child rights may be filed by: the child, the child's parents, the public prosecutor and the guardianship authority (Article 263). The lawsuit for the protection of the child rights may be filed with regard to all rights granted to the child by this Law, and which are not protected by some other proceedings (Article 263). All health and educational institutions or social protections institutions, judicial and other state authorities responsible for the protection of the child rights, as well as associations and citizens, have the right and duty to inform the public prosecutor or the guardianship authority about the reasons for the protection of the child rights. (Article 263)

If adverse interests exist between the child and the child's legal representative, the child shall be represented by a collision guardian. A child who has reached the age of 10 and who is able to reason has the right to request from the curator authority, personally or through another person or institution, to appoint a collision guardian for him/her. A child who has reached the age of 10 and who is able to reason has the right to request from the court, personally or through another person or institution, to appoint a

temporary representative for him/her, due to the existence of adverse interests between him/her and his/her legal representative (Article 265).

A series of measures to protect the interests of the child lies within the competence of juvenile judiciary. Thus, the Law on Juvenile Offenders and Criminal Protection of Juveniles, which contains specific provisions relating to proceedings against minors, provides that when undertaking actions in presence of the minor, and particularly during his/her questioning, participants in the proceeding are required to exercise due care having regard to maturity, other personal traits and protection of privacy of the minor, so that conducting of criminal proceedings would not have a detrimental effect to his/her development (Article 48). No publication of the course of juvenile criminal proceeding or the ruling thereof is allowed without permission of the Court. Only the part of the proceeding and/or the part of the ruling may be published for which a permission exists, but in such cases the name of the minor or other data identifying the minor may not be stated (Article 55). Authorities involved in juvenile proceedings and any other bodies or institutions requested to supply information, reports or opinions shall proceed without delay in order to conclude the proceeding speedily (Article 56).

NON DISCRIMINATION

Pursuant to the Constitution of the Republic of Serbia, all direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other belief, property status, culture, language, age, mental or physical invalidity shall be prohibited (Article 21).

Pursuant to Article 22 of the Law on Prohibition of Discrimination (OG of RS No. 22/09), every child, i.e. every minor shall have equal rights and protection in the family, society and the state, regardless of his/her personal characteristics, or those of his/her parents, guardians or family members. It is forbidden to discriminate against a child or minor on the grounds of his/her health, being born in or without the wedlock, to publicly advocate giving priority to children of one gender over the other, as well as differentiating among children on the grounds of the financial situation, profession and other characteristics related to the social position, activities, expressed opinions or beliefs of the child's parents, guardians and family members..

HUMAN RIGHTS AND FREEDOMS

The right to life, survival and development

In relation to the protection of undoubtedly most important human right - the right to life – the Constitution of the Republic of Serbia prohibits death penalty and cloning of human beings (Article 24) and guarantees a person's physical and mental integrity (Article 25).

Protection of the right to life is provided by the criminal legislation, through prescribing of criminal offences of murder and other crimes with fatal consequences and through prescription of criminal sanctions for the perpetrators thereof.

According to Family Law, a child has the right to be provided with the best living and health conditions for his/her proper and full development (Article 62).

Personal name of the child

The Constitution of the Republic of Serbia guarantees every child's right to personal name and entry in the registry of births (Article 64).

Pursuant to Article 13 of the Family Law, everyone shall have the right to personal name, which is acquired by birth, and can be changed under the conditions stipulated by this Law.

According to the Law on Registers (OG of RS No. 20/09), the birth of the child shall be reported to the registrar competent for entry into the register of births (Article 46). A medical institution, in which a child is born, shall be obliged to report the birth in the prescribed form. Child's father is obliged to report the birth of the child born outside of a medical institution, and if he is unable to do so, another member of the household or a person in whose dwelling the child was born or the mother as soon as she is capable of such action, or midwife and/or doctor who were present at the birth shall be obliged to do so. If these persons are absent or unable to report the birth – a person who has learned of the birth of a child shall have such obligation. Child birth is reported within 15 days after the birth. If a child is born dead, the birth must be reported within 24 hours of his/her birth. The fact of birth is entered in the register of births in the respective area of birth, comprising the populated place of child's birth. The fact of child's birth in the means of transportation during the journey is entered in the register of births in the respective area comprising a populated place where the mother's journey ended. The fact of child's birth whose parents are unknown is entered in the register of births in the respective area comprising a populated place where the child was found. Entry into register is conducted on the basis of the decision of the competent authority of guardianship, including the following information: personal name of the child, gender of the child, day, month, year and time of birth, place and municipality of birth and nationality of the child. A populated place where the child was found is entered as birth place. Guardianship authority shall pass a decision as referred to in paragraph 2 this Article based on the record of finding the child and shall submit it along with the record thereof to the registrar. The fact of the birth of the child without parental care, which is informed about upon the expiry of the deadline stipulated by this Law, and which can not be entered in the register of births in the manner regulated by Articles 49 and 50 this Law, shall be entered in the register of births by place of residence of the child at the time of initiating procedures for the registration of that fact in the register of births. Entry into register is conducted on the basis of the decision of the competent authority of guardianship, including the following information: personal name of the child, gender of the child, day, month, and year of birth, place and municipality of birth and nationality of the child. Populated place where the child resides at the time of initiating the procedure for registration of the fact of birth in the birth register, shall be entered in the birth register as a place of birth.

According to Article 344 of the Family Law, a child's name is determined by his/her parents. Parents have the right for their child's name to be also entered in the register of births in the mother tongue and script of one or both parents. Parents have the right to choose their child's name freely, but they cannot give a child a defamatory name, a name that insults the morality or a name that is contrary to the customs and opinions of the community. A child's name is determined by the guardianship authority if the

parents are not alive, if they are unknown, if they have not determined the child's name within the time limit set by the law, if they cannot reach an agreement on the child's name or if they gave the child a defamatory name, a name that insults the morality or a name that is contrary to the customs and opinions of the community. Pursuant to Article 345 the Family Law, a child's surname is determined by the parents according to the surname of one or both parents. Parents may not give different surnames to their common children. A child's surname is determined by the guardianship authority if the parents are not alive, if they are unknown or if they cannot reach an agreement on the child's surname.

Preservation of identity

The Constitution of the Republic of Serbia guarantees every child's right to learn about its ancestry, and the right to preserve his own identity (Article 46).

The Family Law determines the right and prescribes the conditions and procedure for the change of the personal name. Every person who has reached 15 years of age and who is able to reason has the right to change his/her personal name. A child who has reached the age of 10 and who is able to reason has the right to give consent to the change of his/her personal name (Article 346). A Child's surname may be changed: upon establishment of maternity or paternity; upon contesting of maternity or paternity. An adopted child's surname may be changed according to the surname of one or both adopters. A child who has changed his/her surname by adoption may take back his/her surname after the termination of adoption by annulment (Article 349).

Pursuant to Article 38 of the Constitution of the Republic of Serbia, 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. According to the Law on Citizenship, the citizenship of the Republic of Serbia is acquired by: descent, birth in the territory of the Republic of Serbia, admission and pursuant to international treaties. The records of citizens of the Republic of Serbia are kept in the registers of birth. (Article 46). Citizenship of the Republic of Serbia shall be terminated by: release, renunciation and pursuant to international treaties (Article 27).

The right to freedom of opinion and expression

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

A child who has reached the age of 10 may freely and directly express his/her opinion within every court or administrative proceedings where his/her rights are decided on. A child who has reached 10 years of age may address the court or an administrative body, by himself/herself or through another person or institution, and request assistance in realization of his/her right to free expression of opinion. The court and the administrative authority shall determine a child's opinion in cooperation with a school psychologist or guardianship authority, family counselling service or other institution

specialized in mediating family relations, and in the presence of a person the child chooses himself/herself (Article 65).

Right to privacy

The Criminal Code prescribes criminal offences related to the violation of privacy rights, as follows: infringement of inviolability of home, illegal searches, unauthorised disclosure of secret, violation of privacy of letter and other communications, unauthorised surveillance and recording, unauthorised photography, unauthorised publication and presentation of another's texts, portraits and recordings, unauthorised collection of personal data (Articles 139 to 146). For the same purpose the criminal offences against honour and reputation are also prescribed: insult, defamation, disclosure of information on personal and family life (Articles 170 to 172). The Law on Juvenile Offenders and Criminal Protection of Juveniles, provides the no publication of the course of juvenile criminal proceeding or the ruling thereof will be allowed without permission of the Court (Article 55).

The Law on Public Informing (OG of RS No. 43/03, 61/05, 71/09, 89/10-CC) stipulates that in order to protect the rights of minors, the media must pay special attention to the contents of the media and the distribution method so as not to harm the moral, intellectual, emotional or social development of minors. The contents of the public media that can affect the said development of the minor must be clearly and visibly marked in advance and as such distributed in a manner that is least likely to be used by minors. A minor can not be made recognizable in the information that is likely to violate his/her right or interest (Article 41).

The right of the child to protection from torture and unlawful or arbitrary deprivation of liberty

According to Article 66 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, during preparatory proceeding, the juvenile judge may remand a minor to a temporary shelter, educational or similar institution, under supervision of a guardianship authority or may order placement in foster family on temporary basis (hereinafter referred to as: temporary placement measure for minors) if this is necessary to separate the minor from his current environment or to provide assistance, supervision, protection or accommodation for the minor.

Pursuant to Article 67 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, the juvenile judge may exceptionally remand the minor to detention when grounds exist specified under Article 142(2) of the Criminal Procedure Code, if the purpose for ordering detention cannot be achieved by temporary placement of the minor to shelter, educational or similar institution, under supervision of a guardianship authority or in foster family on temporary basis. On grounds of the detention order issued by the Juvenile judge, detention in preparatory proceeding may not exceed one month. The juvenile Court bench of the same Court may, on justifiable grounds, extend detention for maximum one more month. Following conclusion of preparatory proceeding and from the moment of filing a motion for pronouncing of criminal sanction, detention of an elder minor may not exceed six months, and four months for a younger minor. From the moment of ordering an educational measure of remand to a correctional facility, and pronouncing a minor prison sentence, detention of

a minor may not exceed six months. In cases of extended detention following conclusion of preparatory proceeding, i.e. ordering an educational measure of remand to a correctional facility and pronouncing a minor prison sentence, juvenile bench is required to review once a month whether grounds for detention exist, and to pronounce a decision on either suspending or extending the detention. .

According to the Law on Police (OG of RS No. 101/05, 63/09 – CC), authorized officers who have undergone appropriate special training may apply police powers against minors, young adults and in the cases of criminal protection of children and minors. In exceptional cases, other authorized officer may apply police powers if the authorized officer, specially trained for work with minors, is unable to act Police powers against a minor shall be applied in the presence of the parent or guardian or, if these are unavailable, in the presence of the representative of curatorship authority, excepting special circumstances or urgent need. The presence of representatives of the guardianship authority, instead of parents, can also be provided, if possible, in cases where the presence of parents is harmful to minors and in cases of domestic violence and the like, or when parental presence causes a serious disturbance likely to interfere with police work. In cases when it is not possible to provide the presence of the guardianship authority, the presence of another legally responsible person, experienced to work with minors, and who is neither a member of the police nor involved in the case, shall be provided (Article 38).

FAMILY ENVIRONMENT AND ALTERNATIVE CHILD CARE

The right to parental care According to the Family Law, the family is entitled to special protection of the state. Everyone has a right to have his/her family life respected (Article 2).

The Family Law stipulates that the mother and the father have joint parental rights. Parents are equally entitled to exercise parental rights. The abuse of parental rights is prohibited. Adopters have the legal status of parents (Article 7).

The said Law prescribes that parental rights are derived from the duties of the parents and exist only to the extent necessary for the protection of the personality, rights and interests of the child (Article 67). Parents have the right and duty to take care of the child, including: protection, raising, upbringing, education, representation, and support of the child and management and disposal of the child's property. Parents have the right to receive all information on their child from educational and medical institutions (Article 68).

According to the Family Law, parents exercise parental rights jointly and consensually when they cohabitate. Parents also exercise parental rights jointly and consensually when they do not cohabitate, if they conclude an agreement on joint exercise of parental rights, and if the court finds that this agreement is in the best interest of the child (Article 76).

One parent exercises parental rights alone when the other parent is unknown, has died, or is fully deprived of parental rights or legal capacity; when the child lives with this parent only, and the court has not yet made a decision on the exercise of parental rights; on the basis of a court decision when the parents do not cohabitate, and have not

concluded an agreement on the exercise of parental rights; on the basis of a court decision when the parents do not cohabit, and have concluded an agreement on joint or independent exercise of parental rights; on the basis of a court decision when the parents do not cohabit, if they conclude an agreement on independent exercise of parental rights, and the court finds that this agreement is in the best interest of the child (Article 77).

Parental Responsibility

Parents have the right and duty to protect and raise the child by personally taking care of his/her life and health. Parents may not subject the child to humiliating actions and punishments which insult the child's human dignity and have the duty to protect the child from such actions by other persons. Parents may not leave a child of pre-school age unsupervised. Parents may temporarily entrust the child to another person only if that person meets the requirements for being a guardian (Article 69). Amendments to the Family Law are in the procedure, whereby formal verification of a complete and explicit prohibition of corporal punishment of children and the use of corporal punishment as an educational means shall be implemented.

Parents have the following rights and duties: Upbringing of the child (Article 70), providing the child with elementary education and taking care of further education of the child according to their possibilities, as well as providing the child with education that is in accordance with his/her religious and ethical beliefs (Article 71), representing the child (Article 72); supporting the child (Article 73); and managing and disposing of the child's property (Article 74).

Preventive supervision over the exercise of parental rights is performed by the guardianship authority, when it makes decisions, placed in its competence by virtue of this Law, which enable the parents to exercise parental rights (Article 79). Corrective supervision over the exercise of parental rights is performed by the guardianship authority when it makes decisions that correct parents in the exercise of parental rights. In performing the corrective oversight of guardianship authority makes decisions that warn the parents of deficiencies in the exercise of parental rights; refer parents for consultation to a family counselling service or an institution specialized in mediating family relations; request that parents submit an account on managing the child's property. In performing corrective supervision the guardianship authority also initiates court proceedings in accordance with law (Article 80).

Separation from parents

The Family Law stipulates that children have the right to live with their parents and the right to be taken care of by their parents, in preference to all others. The right of a child to live with his/her parents may be limited only by a court decision, when that is in the best interest of the child. A court may decide to separate a child from his/her parent if there are reasons for the parent to be fully or partially deprived of his/her parental rights or in case of domestic violence. A child who has reached the age of 15 and who is able to reason has the right to decide which parent he/she is going to live with (Article 60).

A child has the right to maintain personal relations with the parent he/she does not live with (Article 61). The right of a child to maintain personal relations with the parent

he/she does not live with may be limited only by a court decision, when that is in the best interest of the child. According to the Criminal Code, whoever prevents enforcement of the decision of a competent authority setting out the manner of maintaining of personal relationships of a minor with parent or other relative, shall be punished (Article 191 paragraph 2).

The proceedings to limit the rights of the child to maintain personal relationships with the parent, initiated by the curatorship authority ²⁶	During 2007	During 2008	During 2009
DC(District court) proceedings initiated for the protection of children without parental care	28	43	30
DC(District court) proceedings initiated proceedings for the protection of children victims of violence	23	22	25
DC(District court) proceedings initiated for the protection of children from families with disturbed family relations	31	20	42
The total number of proceedings of the curatorship authority	82	85	97

The findings and opinions submitted to the court in deciding on the child's right to maintain personal relationships with the parent when the initiator of someone else - the other parent, relative, public prosecutor, etc. ²⁷	During 2007	During 2008	During 2009
for children without parental care	4	12	20
for child victims of violence	21	100	120
For children from families with disturbed family relations	779	2477	1907
The total number of findings and opinions	804	2589	2047

The parent who does not exercise parental rights has the right and duty to support the child, to maintain personal relations with the child, and to decide, jointly and consensually with the parent exercising the parental rights, on issues that significantly influence the child's life. The issues considered to be of significant influence to the child's life, in terms of this Law, are specifically: the education of the child, larger medical interventions on the child, the change of the child's residence, and the disposal of the child's property of great value (Article 78).

The Family Law prescribes the exclusive jurisdiction of the court in the proceedings of separating children from their parents, while also taking into account preventive and

²⁶ The data of the Ministry of Labour and Social Policy – Annual reports on the work of social welfare centres for 2007, 2008 and 2009.

²⁷ The data of the Ministry of Labour and Social Policy – Annual reports on the work of social welfare centres for 2007, 2008 and 2009.

consultative role of the curatorship authority. Before coming to a decision on the protection of a child's rights or on the exercise or deprivation of parental rights, the court is under the obligation to ask for the findings and expert opinion of the curatorship authority, family counselling service or another specialized (Article 270). In addition, if in judicial enforcement procedure relating to family rights, such as handing the child over or taking the child away from the person who has custody of the child, and in other enforcement procedure relating to the child rights, within the meaning of Article 224(4) of the Law on Enforcement Procedure, every enforcement procedure must be attended by the psychologist of the curatorship authority.

A parent who abuses his/her rights or grossly neglects duties that comprise a part of his/her parental rights may be fully deprived of parental rights. A parent abuses rights that comprise a part of parental rights: if he/she physically, sexually or emotionally abuses the child; if he/she exploits the child by forcing him/her to excessive labour, or to labour that endangers the moral, health or education of the child, or to labour that is prohibited by law; if he/she instigates the child to commit criminal acts; if he/she accustoms the child to indulge in bad habits; if he/she in any other way abuses rights that comprise a part of parental rights. A parent grossly neglects duties that comprise a part of parental rights: if he/she abandons the child; if he/she does not at all take care of the child he/she lives with; if he/she avoids to support the child or to maintain personal relations with the child he/she does not live with, or impedes the maintaining of personal relations of the child with the parent the child does not live with; if he/she intentionally and unduly avoids to create conditions for cohabitation with the child who is living in a social service institution for user accommodation; if he/she in any other way grossly neglects duties that comprise a part of parental rights. A court decision on full deprivation of parental rights deprives the parent of all rights and duties that comprise parental rights, except the duty of supporting the child.

A court decision on full deprivation of parental rights may prescribe one or more measures for protecting the child from domestic violence (Article 81).

A parent who exercises the rights or duties that comprise a part of his/her parental rights unconscionably may be partially deprived of parental rights. A court decision on partial deprivation of parental rights may deprive the parent of one or more rights and duties that comprise parental rights, except the duty of supporting the child. A parent who exercises parental rights may be deprived of the rights and duties of protecting, raising, upbringing, educating and representing the child, as well as of managing and disposing of the child's property. A parent who does not exercise parental rights may be deprived of the right to maintain personal relations with the child and of the right to decide on issues that significantly influence the child's life. The court decision on partial deprivation of parental rights may prescribe one or more measures for protecting the child from domestic violence (Article 82).

The procedure for complete or partial deprivation of parental rights, initiated by the curatoship authority ²⁸	Procedure initiated before 2007.	Procedure initiated during 2007.	Procedure initiated during 2008.	Procedure initiated during 2009.
Partial deprivation	69	308	273	271
Complete deprivation	219	399	322	295
Total	288	707	595	566

Number of closed court proceedings for deprivation of parental rights, the initiator of which being the curatorship authority under the outcome of the procedure ²⁹	Procedure initiated before 2007.	Procedure initiated during 2007.	Procedure initiated during 2008.	Procedure initiated during 2009.
Parent/s partially deprived	61	195	179	186
Parent/s completely deprived	136	218	181	184
Parent/s not deprived	11	15	27	11
Procedure terminated	5	20	15	12
Total	213	448	402	393

Parental rights of a parent may be restored when the reasons for which he/she was fully or partially deprived of his/her parental rights cease to exist (Article 83).

Illicit taking away and retention of child abroad

In the case of illegal taking away, retention and non-return of a child from abroad, which can be qualified as violation of the right of custody over the child, i.e. violation of the right to maintaining personal relationships, the provisions of the Convention on the Civil Aspects of International Child Abduction shall be applied. The Ministry of Justice shall be the central authority responsible for the implementation of the Convention. The Ministry shall be obliged to receive from abroad and dispatched to the central authorities of other Member States the requests for return of children who were illegally separated from their parents or persons having parental responsibility.

²⁸ The data of the Ministry of Labour and Social Policy – Annual reports on the work of social welfare centres for 2007, 2008 and 2009.

²⁹ The data of the Ministry of Labour and Social Policy – Annual reports on the work of social welfare centres for 2007, 2008 and 2009.

The Republic of Serbia confirmed the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Serbia has also signed several bilateral agreements on legal assistance between the judicial and other competent authorities, i.e. the States, in carrying out decisions concerning the care of children, which should contribute to more effective protection of children who were illegally separated from their parents.

The Criminal Code prescribes the criminal offence of detainment of juveniles (Article 191).

Family reunification

Pursuant to the Constitution of the Republic of Serbia everyone shall have the right to free movement and residence in the Republic of Serbia, as well as the right to leave and return. Freedom of movement and residence, as well as the right to leave the Republic of Serbia may be restricted by the law if necessary for the purpose of conducting criminal proceedings, protection of public order, prevention of spreading contagious diseases or defence of the Republic of Serbia. Entry and stay of foreign nationals in the Republic of Serbia shall be regulated by the law. A foreign national may be expelled only under decision of the competent body, in a procedure stipulated by the law and if time to appeal has been provided for him and only when there is no threat of persecution based on his race, sex, religion, national origin, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by this Constitution (Article 39).

The Law on Travel Documents (OG of RS No.90/07, 116/08, 104/09, 76/10) provides that a passport issued is valid for ten years. Exceptionally, persons under the age of 3 shall be issued passports with validity for three years, and persons aged 3-14 years with validity of five years.

For minors, or persons incapable of doing business, an application for issuing travel documents shall be submitted by a parent with consent of the other, or another legal representative or custodian. Exceptionally, the passport shall be issued without the consent of the other parent in the following cases: if a parent is a person unaccounted for, if a parent's permanent or temporary residence is unknown, if a parent is deceased, if a parent is given custody to a minor or if issuance of travel document is allowed by a court decision, except for the case when by same decision of the court, issuance of travel document and travel of a minor abroad is not conditioned by the agreement of both parents (Article 29).

Protection of children without parental care

Protection of children without parental is regulated by the Family Law and the Law on Social Protection and Provision of Social Security of the Citizens (*Official Gazette of RS* No. 36/91, 79/91-other law, 33/93-other law, 53/93- other law, 67/93, 67/93- other law, 46/94, 48/94-other law, 52/96, 29/01, 84/04, 101/05 – other law and 115/05), and in accordance with the UN Convention on the Rights of the Child.

A child without parental care, within the meaning of Article 113(3) of the Family Law, shall be considered: a child who has no living parents, a child whose parents are unknown or their dwelling place is unknown, a child whose parents are fully deprived of parental rights or legal capacity, a child whose parents have not yet acquired legal capacity, a child whose parents are deprived of the right to protect and raise or educate the child, and a child whose parents fail to take care of the child or take care of the child in an inappropriate manner.

Pursuant to the Law on Social Protection and Provision of Social Security of the Citizens, a child without parental care is a child who has no living parents, whose parents are unknown or missing and a child whose parents, for any reason, temporarily or permanently fail to exercise their parental rights and obligations (Article 39).

One of the measures of family care of the child without parental care is guardianship. A person who has personal characteristics and abilities necessary to perform the duties of a guardian and who has consented to being a guardian may be appointed as a guardian. A ward's spouse, relative or foster parent are primarily appointed as a guardian, unless the ward's interest requires otherwise (Article 126). The guardian is under the obligation to take care of his/her ward conscientiously, to represent the ward, acquire assets to support the ward and manage and dispose of the ward's property (Article 135).

Pursuant to the Family Law, in addition to guardianship, measures of family protection of the children without parental care are adoption and fostering. According to the Law on Social Protection and Providing Social Security of Citizens, there is a possibility of placement of children without parental care in a social care institution, to be applied restrictively, since the state is obliged, under Article 6(6) of the Family Law, to provide child without parental care with protection in a family environment whenever possible. In the Republic of Serbia, fostering has a long tradition, and in recent years a great progress has been made in the development of fostering, because it significantly increased the number of children in foster care and adoptive families and reduced the number of children without parental care placed in social care institutions. Currently, about 5,100 children are accommodated in foster families.

Decisions on custody, foster care, adoption and placement of a child in a social care institution are taken by the competent guardianship authority, taking care in each concrete case about child's best interest.

Adoption

According to the Family Law, a child deprived of parental care may be adopted if it is in his/her best interest (Article 89). Adoption is established by a decision of the guardianship authority.

Only a minor child may be adopted if: He/she has no living parents, his/her parents are unknown or their whereabouts is unknown, his/her parents are completely deprived of parental rights, his/her parents are completely deprived of legal capacity, his/her parents agreed to the adoption (Article 95).

A child may not be adopted before reaching the third month of life, as well as minor who has acquired full legal capacity. A blood relative in a straight line may not be

adopted, and among relatives in a lateral line, a brother, a sister, or a brother or sister of the same mother or father, as well as a child already adopted, may not be adopted. A guardian may not adopt his/her ward. A spouse or a cohabitee of the adopter may adopt his/her formerly adopted child.

A child may be adopted only with the consent of his/her parents. A parent gives his/her consent to adoption with or without designating the adopters. A parent may not give his/her consent to adoption before the child reaches his/her second month of life, and given consent may be withdrawn within 30 days from the day the consent was given. A parent can use this right only once. The consent of a parent to adoption is not necessary: if the parent is fully deprived of parental rights; if the parent is deprived of the right to decide on issues that significantly influence the child's life; if the parent is fully deprived of legal capacity. If the child is under guardianship, consent to adoption shall be given by his/her guardian. A child who has reached 10 years of age and who is capable of reasoning has to give his/her consent to adoption (Article 98).

The difference in age between the adopter and the adoptee must not be less than 18 years nor more than 45 years. Exceptionally, the minister responsible for family protection may grant adoption to a person who is less than 18 years older than the adoptee or to a person who is more than 45 years older than the adoptee, if such an adoption is in the best interest of the child.

Only a person for whom it has been established that he/she possesses personal characteristics upon which it may be concluded that he/she will exercise his/her parental rights in the best interest of the child may adopt. The following persons may not adopt: a person fully or partially deprived of parental rights; a person fully or partially deprived of legal capacity; a person suffering from an illness that may have detrimental effects on the adoptee; a person convicted for a criminal act belonging to the group of criminal acts against marriage and family, against sexual freedom and against life and body.

Spouses or cohabitees may adopt together. A person who is the spouse or the cohabitee of the child's parent may adopt. Exceptionally, the minister responsible for family protection may grant adoption to a person who lives alone, if there are particularly justified reasons for doing so.

Only a person who has been trained for adoption according to a special programme may adopt, except in the case of a spouse or a cohabitee of the child's parent or adopter. The minister responsible for family protection prescribes the programme of training for adoption.

A foreign citizen may adopt a child under the condition that adopters cannot be found among domestic citizens, and that the minister responsible for family protection gave his consent to adoption. It is to be considered that adopters cannot be found among domestic citizens if more than one year has passed from the day of entry of data on the future adoptee in the Unified Personal Register of Adoptions. Exceptionally, the minister responsible for family protection can grant adoption to a foreign citizen before the expiry of the deadline, if that is in the best interest of the child.

Adoption results in the establishment of the same rights and duties between the adoptee and his/her offspring and the adopters and their relatives, as between a child and his/her parents and other relatives. Adoption terminates the parental rights of parents, unless the child is adopted by the spouse or the cohabitee of the child's parent. Adoption terminates the rights and duties of the child towards his/her relatives and the rights and duties of the relatives towards the child (Articles 104 and 105 of the Family Law).

Adoption terminates by annulment, if it is null and void or voidable. Adoption may not be rescinded. An adoption is null and void if, at the occasion of its establishment, the conditions for its validity as specified by this Law have not been met. An adoption is voidable if the consent to adoption was given under duress or in error. After the termination of an adoption, the curatorship authority decides on the care of the child.

The proceedings for establishment of adoption may be initiated by the guardianship authority *ex officio*, the future adopters and the child's parents or guardian (Article 311 of the Family Law).

Upon receiving a request of parents for adoption, guardianship authority is obliged to recommend to the parent psycho-social counselling in curatorship authority, family counselling or other institution specialized in family mediation. Within due time, after the parent has been advised on the psycho-social counselling, curatorship authority shall invite the parent and child who has reached the age of 10 to submit written statements on consent to adoption before the curatorship authority. After the parent submits a written statement on consent to adoption, the curatorship authority is under the obligation to appoint a temporary guardian to the child, who is to represent the child in the proceedings for establishment of adoption.

The guardianship authority determines whether the future adopters are eligible to adopt a child (general eligibility of adopters) and whether there child is eligible to be adopted (general eligibility of adoptee) on the grounds of statements given by future adopters, the child's parent or guardian, the child himself/herself, on the grounds of documents submitted and in other ways (Article 314).

The curatorship authority that established the general eligibility of an adoptee shall choose the future adopters on the grounds of records from the Unified Personal Register of Adoptions and shall issue a special ruling thereof. Selection of future adopters is not to be made if the child is being adopted by the spouse or cohabitee of the child's parent, or if an adopted child is being adopted by the adopter's spouse or cohabitee (Article 317).

The guardianship authority that chose the future adopters is under the obligation to direct the child to them for the purpose of mutual adaptation, unless the adopter is a foreign citizen. The adaptation period may not exceed six months (Article 318).

The guardianship authority that chose the future adopters issues a written ruling on adoption: if the future adopters are eligible for adopting a child, if the child is eligible for being adopted, if it determines that mutual adaptation of future adopters and the child was successful (special eligibility of adopters and adoptee). The adoption is established on the day the ruling on adoption is issued (Article 320).

The official of the guardianship authority is to advise the future adopters to tell the child the truth on his/her origin as soon as possible (Article 322).

The public is excluded from the adoption proceedings. Data from record keeping and documentation on adoption are privileged and all participants in the proceedings who have had access to such data are under the obligation to maintain confidentiality (Article 323). The curatorship authority issues a decision on a new entry of birth for the adoptee on the grounds of the decision on adoption where the data on parents are replaced by the data on the adopters. The decision on the new entry of birth for the adoptee is delivered without delay to the registrar keeping the birth register for the child

In addition to the Family Law, adoption is regulated by several by-laws passed on the basis of this Law, regulating this matter in detail by appropriate internal and external regulations (rulebooks, instructions and opinions).

Protection of children from abuse and neglect

The right of protection against all forms of violence represents the fundamental right of every child stipulated in the Convention on the Rights of the Child and other documents of the United Nations, the Council of Europe and other international organisations ratified by the state of Serbia as a member of those organisations. By confirming (ratifying) the Convention on the Rights of the Child, the Republic of Serbia undertook the obligations to take measures to prevent violence against children and to provide protection from any form of violence in the family, institutions and wider social environment, from: physical and mental violence, abuse and neglect (Article 19), all forms of sexual exploitation and sexual abuse (Article 34), abduction of children and trafficking in children (article 35), all other forms of harmful exploitation harmful for the child (Article 36), torture, inhuman or degrading treatment or punishment (Article 37). The Convention also establishes the state's obligation to provide support measures for the physical and psychological recovery of children - victims of violence and their social reintegration (Article 39).

The legal framework for the protection of children against violence

The Constitution of the Republic of Serbia specifically focuses on the rights of the child, for the first time in the constitutional history of the Republic of Serbia. Under the Constitution, human life is inviolable (there is no death penalty in the Republic of Serbia), the physical and mental integrity is inviolable, no one can be held in slavery or the position similar thereof. All forms of human trafficking are prohibited. Forced labour is prohibited. Sexual and financial exploitation of a person who is at a disadvantage is considered to be forced labour. Children shall enjoy human rights suitable to their age and mental maturity. Children are protected from physical, psychological, economic and any other form of exploitation or abuse. Children under 15 can not be employed, while children under 18, can not work at jobs detrimental to their health or morals. Under the provisions of the Constitution, it is proclaimed that children enjoy human rights suitable to their age and mental maturity. Children under 15 can not be employed, while children under 18 can not work at jobs detrimental to their health or morals.

The Family Law (2005) established the obligation of the State to take all necessary measures to protect children from neglect, physical, sexual and emotional abuse, and from every kind of exploitation. In addition, all health and educational institutions, as well as institutions of social protection, judiciary and other judicial authorities, associations and citizens shall be obliged to inform the public prosecutor or the curatorship authority of the need and reasons for the protection of child rights. The Family Law defines domestic violence, prohibits domestic violence, establishes the right to protection from domestic violence, and determines the persons who are entitled to protection from domestic violence, provides protective measures and regulates a special judicial procedure for the protection of family violence. Family law also establishes the right of the child to independent representation in case of collision of interests of the child and the child's legal representative. Family Law introduces the specialization of judges to deal with family matters and provides for mandatory training of judges in the field of child rights. According to the Family Law, parents should not subject the child to humiliating treatment or punishment that violates the human dignity of the child and are obliged to protect children from such acts of others.

Law on the Fundamentals of the Educational System (2009) prohibits physical violence and insults of children's personality, and guarantees the right of the child (student) to be protected from discrimination and violence.

The Law on Health Care (2005) provides for the right of every patient to health care exercised with respect for the highest possible standards of human rights and values. In this way, the child patient has a guaranteed right to physical integrity and security of his personality and the respect of his moral, cultural, religious and philosophical convictions.

The Law on Police (2005) introduces the specialization of police officers who act in the case of criminal offences to the detriment of minors.

The Law on Juvenile Offenders and Criminal Protection of Juveniles (2005), for special protection of minor personalities, as well as the personality of injured persons, or victims who are being examined as witnesses in criminal proceedings, explicitly provides introduction of a specific specialization of all the actors of criminal procedure (the judge presiding over a larger, public prosecutor, the investigative judge, a police officer and a proxy of the injured). In addition, the law contains new evidentiary rules that have undergone significant process modification, above all, in light of the protection of minor injured persons.

The Criminal Code (the Law on Amendments to the Criminal Code of 2009) for the first time defines the very notion of a minor as: "person under the age of eighteen" and provides a wide array of offences that can be done "to the detriment of children and minors", for the purpose of their protection (adopted in 2005, enforced as of 1 January 2006).

The Labour Law (2005) contains specific provisions that relate to the employment relationship that can be entered into with a person who has at least 15 years of age, while person under 18 years of age may establish working only with the consent of a parent, adoptive parent, or guardian, provided that such work does not endanger his/her health, and education or if such work is not prohibited by law. In addition, employees

under 18 years of age can not work when particularly difficult jobs are concerned that would, by the findings of the competent medical authorities, adversely and with an increased risk influence the health and life due to mental and physical abilities. In terms of length of full-time employment relationship, for the person under 18 years of age it can not be determined for more than 35 hours per week, or more than eight hours a day. In addition, overtime working hours and redistribution of employee's working hours is prohibited if the employee is under 18 years of age. In relation to night work, an employee under 18 years of age can not work at night, except in cases and under conditions prescribed by Article 88 of the Labour Law.

The Law on Asylum (2007, enforced as of 1 April 2008.), under the expression: *unaccompanied minor* defines a foreigner who has not reached 18 years of age and when entering the Republic of Serbia does not have or, after entering into it, was left without a parent or guardian. Pursuant to provisions of the Law, before applying for asylum, minors shall be determined a guardian who must attend his hearing. An asylum seeker is a person granted asylum has the right to free primary and secondary education and the right to social assistance, in accordance with special regulations. In addition, the asylum seeker and a person granted asylum in the Republic of Serbia have equal rights to health care protection, in accordance with the regulations governing the health care protection of foreigners.

General Protocol on Protection of Children from Abuse and Neglect provides clear and binding guidelines to all providers, both governmental and non-governmental and private sector for implementation of integrated intersectoral cooperation in the protection of the child. The Government of the Republic of Serbia adopted a General Protocol on Protection of Children from Abuse and Neglect in 2005, with the aim of establishing effective, operational, multisectoral network to protect children from abuse, neglect, exploitation and violence. General Protocol defines the role of Centres for Social Work as coordinating services in the community to protect children from all forms of abuse. The General Protocol accepted fact that the protection of child victims of abuse and neglect is a complex process in which institutions, organizations and individuals from different systems participate (social welfare, education, health, police, judiciary, etc.), and that effective intervention requires the cooperation and coordinated action by all involved in this process. Application of the General Protocol contributes to the establishment of an efficient and coordinated process to protect a child who is actually or potentially abused and neglected and allows appropriate intervention, recovery and safe environment for further safe development of the child. General Protocol has contributed to developing and expanding the network of multidisciplinary teams for child protection in the local community, and implementation of a unified model of these teams at the municipal level throughout the Republic of Serbia. With this approach, it shall be emphasized that the protection of children is a unique process, although it involves different systems, each with its own peculiarities that should be recognized and respected.

In addition to the General, Special Protocols for the protection of children against abuse and neglect in the social care institutions. Special protocols to protect children from abuse and neglect in institutions for social protection (2006); Special Protocol on acting of police officers to protect minors from abuse and neglect (2006); Special Protocol for the protection of children and students from violence, abuse and neglect in educational institutions (2007); Special Protocol on healthcare system to protect

children from abuse and neglect (2009); Special Protocol on acting of the judiciary in protecting minors from abuse and neglect (2009). In this way, a complete protection system is developed, providing early identification of children who are at risk of violation of the rights stipulated in the Convention on the Rights of the Child and Optional Protocols, as well as adequate and timely intervention of all relevant systems in the community.

The document entitled National Millennium Development Goals was adopted in the Republic of Serbia (2007). For each global Millennium Goal, eight national goals and tasks to be achieved by 2015 are established. Within the Millennium Goal 3, related to the promotion of gender equality and improvement of the position of women, reduction of violence against women and children is set as one of the specific goals, with a recommendation to adopt and implement National action plan against violence in everyday life and to introduce gender-sensitive of statistics on victims of violence. At the beginning of May 2008, the Government, on its session held on 9 May 2008, adopted the *National Strategy for the Youth*, a part of which is concerned with the protection of children and the young against violence.

The Serbian government adopted a *National Strategy for the Prevention and Protection of Children from Violence* and in early March 2010 the Action Plan to this strategy.

Adoption of the Rulebook on organization, norms and professional work standards of Centres for Social Work (2008) provided that the activities on reception include the receipt of the assessment done of all filings and complaints of citizens, potential users of this service.. This assessment determines the priority level for the treatment of head cases (immediate, urgent and routine), the intensity and the sequence of in the procedure of assessing the centre, and the intensity and dynamics of involvement of representatives of other systems to assist and support the child. In accordance with the General Protocol, in all social work centres in Serbia a 24 obligatory duty is introduced for urgent intervention to protect children from abuse and neglect, which are conducted in cooperation with the police and health care services.

Every citizen, who has legal and civic obligation to report the threat or suspicion or knowledge that a child is abused or seriously neglected, should be familiar with the procedure which follows upon submitting the notification

In the social security system, all children who are registered with the Centre for Social Work, on any basis, particularly in the group of neglected or abused children, are included by some form of social intervention.

SOS *Children's line* is established in 2005 in cooperation with the Ministry of Labour, Employment and Social Policy, Ministry of Health, Ministry of Education and Sports, People's Office of the President of the Republic of Serbia, the Foundation of Princess Katarina Karađorđević, and Telecommunications Company Telekom Srbija a.d. The work is initiated as a project activity, which developed into a service funded from the budget (Ministry of Labour and Social Policy), as the only telephone line of this kind at the national level.

Criminal protection of children

Criminal protection of children is regulated by the Criminal Code (*Official Gazette of RS*, No. 85/2005, 88/2005 - corr., 107/2005 - corr., 72/2009 and 111/2009), the Criminal Procedure Code (*OJ of FRY*, No. 70/2001 and 68/2002 and *Official Gazette of RS*, No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20 / 2009 – other law, 72/2009 and 76/2010) and the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (*Official Gazette of RS*, No. 85/2005).

The Criminal Code contains a large number of criminal offences that can be analysed in terms of child rights. These criminal acts are classified into several groups, some of them being particularly important: criminal offences against life and limb (Art. 113-127), offences against sexual freedom (Art. 178-186), offences against marriage and family (Art. 187-197), or offences against humanity and other rights guaranteed by international law (Art. 370-393). In some offences, juvenility is a constitutive element forming the criminal offence, in others juvenility is a qualifying circumstance, while in some criminal offences the legislator does not make a difference whether criminal offences are committed against a juvenile or an adult.

If the criminal proceeding is initiated in which the victim is a juvenile, or if a juvenile appears as offender, any person in this process must proceed carefully, in accordance with the best interest of a juvenile, and in particular to take care to avoid re-victimisation. In this regard, provisions of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles ("Law on Juveniles") shall be relevant, which governs the criminal procedure both in relation to juvenile offenders, and in relation to juvenile victims. All persons participating in the process must acquire expertise in the field of child rights and criminal protection of juvenile. During the procedure, it must be taken into account the age, personality attributes, education and living circumstances of a child, and in particular it should be strived to avoid all the harmful consequences of the proceedings on child's personality and development.

Criminal proceeding for criminal offences under Article 150 of the Law on Juveniles is urgent (Article 157). The hearing of a juvenile is done by a psychologist, pedagogue or other professional, and if a juvenile is being heard as a witness who is a victim of the criminal offence referred to in Article 150 of this law, a hearing cannot be conducted more than two times, and only exceptionally more than twice if necessary to achieve the purpose of criminal proceedings with the obligation of judges to specifically take care to protect the personality of a juvenile (Article 152, para. 1-2).

A juvenile victim may make his statement in other premises that are connected to the courtroom with the aid of technical devices for transmitting of image and sound (Article 152(3)). Juveniles may be questioned as witness-victims in their apartment or other premises and/or authorised institution – organisation that is professionally qualified for questioning of minors, with the possibility of use of technical devices for transmitting the image and sound (Article 152 (4)). The use of technical means for transmitting image and sound is possible when questioning a very vulnerable witness. In addition, very vulnerable witnesses can be questioned at their residence or other place where they are located, and/or any other rules of questioning of vulnerable witnesses provided under the criminal procedure law may be applied (Article 110 of the CPC).

In addition, it is forbidden to conduct the confrontation between the juvenile witness-victim and the defendant, if a juvenile is questioned as witness, who due to the nature of the criminal offence, consequences or other circumstances is particularly vulnerable or is in a particularly difficult mental state (Article 153). A juvenile who is a victim shall have a legal representative from the first questioning of the defendant (Article 154 (1)).

In relation to juvenile offenders, the Law on Juveniles adopts the standards of restorative justice and promotes the application of non-institutional forms of reaction. In addition, the Law on Juveniles provides that all persons acting in proceedings against juvenile offenders must be specially trained and have certification in the field of child rights and juvenile delinquency.

Health protection of children

The Constitution of Serbia guarantees the right for protection of psychical and physical health, in compliance with the law. Children, pregnant women, mothers during maternity leave, single parents with children younger than seven years and the old realise the health care from the public funds, if not otherwise, in compliance with the law (Article 68).

The child has the right for provision of the best possible life and health conditions for one's regular and complete development. A child who has reached 15 years of age and who is able to reason may give an approval for taking a medical surgery (Article 62 of the Family Law).

The most important regulations in the area of health care that are also related to establishment and provision of an efficient protection of the rights of the child are:

- Law on Health Care ("Official Gazette of RS" No. 107/05, 72/09 - other law and 88/10),
- Law on Health Insurance ("Official Gazette of RS" No. 107/05 and 109/05),
- Law on Medicinal Products and Medical Devices ("Official Gazette of RS" No. 84/04 and 85/05),
- Law on Protection of Population against Communicable Diseases ("Official Gazette of RS" No. 125/04).
- Strategy for Continuous Quality Improvement and Patient Safety ("Official Gazette of RS" No. 15/2009),
- Special Protocol of the health care system for protection of children against abuse and negligence.

According to the Law on Health Insurance (Article 16), the child of a policy holder has the right for health insurance until the reached 15 years, i.e. 26 years, during the regular education, i.e. 27 years if during the regular education period, one did military service. The child, who terminated the regular education due to illness, has the right from health insurance also after the specified age limit, but not for longer than the time period of education termination due to illness. If the child becomes disabled for independent life and work, regarding the regulations on disability insurance before the time periods for regular education expire, has the right from health insurance during the disability period. The child, who becomes disabled for independent life and work, regarding the regulations on disability insurance also after the specified age, has the rights from health insurance during the disability period, if the policy holder cares for the one due

to the fact that one does not have own income for alimentation. The children of policy holders older than 15 years, who do not attend regular education, are provided the rights from the health insurance under the conditions stipulated in the general act of the Fund for the members of the extended family.

The Law on Health Care stipulates as the priority health care measures (Article 8) that at the level of the Republic of Serbia the health care is provided under the equal conditions, population and nosologic groups of special social-medical significance. In this regard, the health care includes children of up to 15 years, children at schools and students until the end of education period, not older than 26 years, in compliance with the law; women relating family planning, as well as during the pregnancy, delivery and maternity up to 12 months after the delivery; persons with disabilities and mentally insufficiently developed persons.

Social protection and services and institutions for child care

Pursuant to Article 69 of the Constitution of the Republic of Serbia, the citizens and families with the necessary social care for coping with social and life difficulties and provision of conditions for meeting the basic life needs, have the right for social protection, whose provision is based on the principles of social justice, humanity and respect of human dignity.

Social protection is regulated by the Law on Social Protection and Provision of Social Security of the Citizens. This law includes also the rights of children without parental care and the children with difficulties in development. In the system of social protection, the children may be the users of all rights of general interest such as: the rights for material provision; the rights for allowance for assistance and care of other persons; the right for assistance for work enabling; the rights for assistance at home, daily accommodation, temporary accommodation in the asylum or acceptance office; the right for accommodation into the institution or accommodation in other family; the right for social services; the right for equipment of user accommodation into the social protection institution or other family; the right for one-off financial aid.

The rights for material provision, contribution for aid and care of other person, the assistance for work enable, accommodation into the social protection institution or other family and social services in conduct of public authorizations, entrusted by this law are the rights of general interest and the Republic conducts their provision.

The provision of rights for assistance at home, daily accommodation for temporary accommodation in to the asylum or acceptance office, equipment of users for accommodation into the social protection institution or other family, one-off aid and other social services are entrusted with the municipality, i.e. the town in compliance with this law.

Material provision is entrusted with the individual, living alone (hereinafter: individual), i.e. family who realise the incomes below the minimum level of the social safety stipulated by this law. The individual who is able to work, i.e. family who has members able to work, apart when the majority of members are disabled for work or a family members does military service is provided with the material provision during up to nine months per year (Article 10).

The right for contribution for aid and care of other person are entrusted with the person who, due to the nature and difficulty of the condition of injury or illness, requires necessary assistance and care for carrying out the activities in order to meet basic life needs, under the condition that it may not be realised based on other legal basis (Article 23).

The right for assistance for work enabling i.e. education and training for work (hereinafter: training for work) is entrusted with children and the youth with disabilities and majors with disabilities who, in accordance with psycho-physical abilities and age, may be enabled for certain work and that right may not be realised on other legal basis (Article 26).

The right for daily accommodation is entrusted with the child with difficulties in physical or psychical development, autistic child, child with difficulties in social behaviour and a major who has the right for accommodation into the institution or other family if, depending on the level and type of disabilities, opportunities and requirements of these persons and other reasons, this form of protection is mostly useful. The right for daily accommodation is provided by order to the user to the appropriate institution of social protection which is providing the services of daily accommodation or educational institution providing such services (Articles 33 and 34).

The accommodation into the institution of social protection is realised by order to the user to the appropriate institution for provision of care (accommodation, food, clothes, care, assistance and fostering), education and upbringing, training for certain work activities and health care in compliance with the special regulations, work-occupational, culture-entertainment and recreative-rehabilitative activities and services of social labour. Exceptionally to the aforementioned, the accommodation may be done also in stationary health institution, meeting the requirements for provision of accommodation services as well as in the pupil residences, i.e. students when the user is ordered to work training, based on the contract on provision of services contracted between the centre for social labour with the appropriate institution, after the obtained opinion of the Ministry for social issues (Article 36).⁵ The right for the placement in a social protection institution has: a child without parental care and a child with difficulties in development due to family issues until: being enabled for independent life, return to the own family, or fostering into adoption family or other one, completion of regular education, not longer than six months after the completion of the regular education; the child mentally handicapped at the level of moderate, severe and the highest level of mental handicap, multiply handicapped, autistic child as well as the one with difficulties in corporal development without the conditions to remain in one's family until the need for this type of protection; the child with difficulties in social conduct; pregnant woman and a single mother with the child up to one year who, due to material insufficiency, requires the temporary placement (Article 37).

The right for placement in other family has entrusted with the persons who have the right for placement in the institution in compliance with this law (Article 40).

The Law on Social Protection and Provision of Social Security of the Citizens of the Republic of Serbia stipulates the institutions of social protection providing the realisation of the rights in the field of social protection.

The institutions of social protection in compliance with the Law on Social Protection and Provision of Social Security of the Citizens may be established by the central government – the Government of the Republic of Serbia, local self-government – Municipal government, as well as other legal and natural persons.

The central government – the Government of Serbia in compliance with the network of institutions, establish the institutions providing the realisation of rights of general interest: Stationary placement of children without parent care, children with asocial and delinquent behaviour, children with disabilities in psycho-physical development, the old persons and pensioners, majors with disabilities, majors psychically impaired persons.

The local self-government - Municipal Assembly, in compliance with the criteria stipulated by the Government of Serbia, establish the institutions providing the rights specified in the Law within the local self-government competence (aid at home, daily centres, clubs and counselling institutions and institutions for intermediary on family issues).

Other legal and natural persons may establish any types of institutions of social protection, apart for centres for social labour and stationary institutions for children - criminal offenders and children with difficulties in behaviour – institutes for education of the youths.

The local self-government - Municipal Assembly, in compliance with the criteria especially stipulated by the Government of Serbia, establish the centre for social labour as a special institution of social protection conducting activities with public authorizations in the field of social and family legal protection of citizens at the local level.

Life standard

Pursuant to Article 27 of the UN Convention on the rights of the child, the parents are obliged to provide their children with the basic conditions for life, and the country shall help them in that if necessary.

Pursuant to the Family Law, the parents are obliged to foster their minors (Article 73). Parent who has been deprived of parental right shall not be deprived of the obligation to provide for the children (Articles 81 and 82).

The minor has the right for provision by the parents. The minor child has the right for provision by other blood relatives in the direct line if the parents are not alive or they do not have enough assets for provision. The obligation of a minor to partly cover the requirements of one's provision by the own earnings or property is subsidiary in relation to the obligation of the parent and blood relatives (Article 154).

Pursuant to the Family Law, the major who is disabled for work, without sufficient assets for living, has the right for alimentation by the parents during that kind of condition. The major, who is regularly educated, has the right for alimentation from their parent in relation to their possibilities, not later than the reached 26 years. The

major has the right for alimentation by other blood relatives in the direct line in relation to their possibilities if the parents are not alive or they do not have enough assets for alimentation. The major does not have the right for alimentation if approval of alimentation would represent obvious injustice for parents, i.e. other blood relatives.

The alimentation, by the rule, shall be specified in money. If the amount of alimentation is specified in the percentage of the regular monthly income of the provider (salary, compensation for salary, pension, author earnings, etc.), the amount of alimentation, by the rule, shall not be less than 15% not higher than 50% of the regular monthly income of provider reduced by the taxes and contributions for obligatory social insurance (Article 162).

The obligation of the family who are obliged to provide alimentation shall be specified in relation to the requirements of the child and possibilities of the provider, considering the minimum amount of alimentation. The minimum amount of alimentation shall represent the amount which, as a compensation for fostered children, i.e. persons in the family accommodation, is periodically specified by the ministry for family protection, in compliance with the law (Article 160).

The proceedings in the dispute for alimentation are initiated by the appeal, submitted by the person referred to creditor, i.e. provider, and it may be brought by the foster authority (Article 278). The proceedings in the dispute for alimentation is especially urgent, the first session is scheduled within eight days from the appeal being received in the court, and the court of second instance is obliged to take decision within 15 days from the delivery of the claim (Article 280).

Pursuant to the Criminal Code, the person who does not provide alimentation for the person one is obliged to provide, and that obligation is specified in the executive judicial decision or executive settlement before the court or other competent authority, in the amount and method specified by the decision, i.e. settlement, shall be regarded as conducting the criminal act of non provision of alimentation (Article 195).

The intermediary authorities in relation to alimentation for the child by the parent abroad shall be Ministry of Labour and Social Policy and Ministry of Foreign Affairs.

In the course of provision of the rights of a child for life standard, the Law on Financial Support to Families with Children regulates the financial support to the family with children which, in the meaning of this law, include: Enhancement of conditions for meeting the basic needs of children; special incentive for delivery of babies; support to the materially handicapped families with children, families with children handicapped in development and children without parental guide.

The rights to the financial support to the family with children of general interest on whose provision the Republic shall take care, based on the Law on Financial Support to the Families with Children, are: Compensation for salary during the maternity leave, leave from work due to child care and leave due to special child care; parental allowance; child allowance; compensation for expenses of accommodation in pre-school institution for children without parental care; compensation for expanses of accommodation in pre-school institution for children handicapped in development. The provision of rights to the refund of expenses for accommodation in the pre-school

institution for children from materially handicapped families shall be entrusted with municipality, i.e. the town, in compliance with this law (Article 9).

Compensation for salary during the maternity leave, leave from work due to child care and leave due to special child care The compensation for salary during maternity leave, leave from work due to child care and leave from work due to special child care shall be realised by: The employees with the legal and natural entities; persons who conduct activities independently. An employed man, one of the adopters or a fosterer is entitled to the compensation for salary, when in compliance with the regulations on labour, uses the specified leave (Article 10).

The right for parental compensation shall be realised by the mother for the first, second, third and fourth child under the condition she is a citizen of Serbia, has the residence in the Republic of Serbia and realises the right for health protection through the Republic Institution for the Health Insurance (Article 14).

The right for parental compensation shall be realised by one of the parents who immediately fosters the child, who is a citizen of Serbia, has the residence in the Republic of Serbia and realises the right for health protection through the Republic Institution for the Health Insurance for the first, second, third and fourth child for the birth order in the family, from the date of request submission, under the conditions stipulated by this law. Under the specified conditions, the right for child compensation is entrusted with the fosterer and guardian. The fosterer or guardian of a child may realise the right for child compensation for maximum fourth child in the family, including own children living in common household and children without parental care. The foreign citizen working at the territory of the Republic of Serbia realises the child compensation if it was specified in the international agreement, under the conditions specified by this law. The child compensation shall belong to the children living and educated at the territory of the Republic of Serbia, if it was not specified otherwise by the international agreement. The child compensation shall belong to the child up to the reached 19 years, if one is a regular student. The child compensation shall also belong to the child who, due to justified reasons, does not start education, i.e. who starts education later or terminates education as a regular student, during the time of being prevented, maximum up to the reached 19 years. Exceptionally, the child compensation shall belong after the reached 19 years to the child for whom the act on distribution was brought, until one participates in the educational program and work training program, and for the child for whom the parental right was extended until the reached 26 years maximum (Article 17).

The pre-school children without parental care have the right for compensation of expenses for accommodation in the pre-school institution within the institutional network established by the municipality, i.e. the town, in the amount of the user participation in the cost of service (Article 23).

The pre-school children with difficulties in development are entitled for the compensation of the part of expenses for accommodation in the pre-school institution within the institutional network established by the municipality, i.e. the town, in the amount of the user participation in the cost of service (Article 24).

The pre-school children from materially handicapped families, as well as the children without parental care and the children with difficulties in development who did not

realised the right regarding Articles 23 and 24 have, depending on material position of a family, the right for refund of expenses for accommodation in the pre-school institution within the institutional network established by the municipality, i.e. the town (Article 25).

Education, including professional training and direction

The Constitution of the Republic of Serbia guarantees the right for education to everybody. Primary education is mandatory and free, whereas secondary education is free (Article 71).

Pursuant to the Family Law, the child is entitled to education in compliance with one's abilities, wishes and inclinations. A child who has reached 15 years of age and who is able to reason may decide which high school to attend (Article 63).

CHILDREN IN SPECIAL SITUATIONS

A child refugee

Article 57 of the Constitution of the Republic of Serbia stipulates that the foreign citizen who justifiably fears of prosecution due to one's race, sex, language, religion, national affiliation or affiliation to certain group or due to political beliefs, has the right for asylum in the Republic of Serbia. The foreign citizen may be prosecuted just on the basis of the decision of the competent court, within the proceedings specified by the law and in case the right for appeal is provided only when the prosecution due to race, sex, religion, nationality, citizenship, certain social group affiliation, political belief is not possible or the severe violation of rights guaranteed in this Constitution (Article 39(3)) shall not occur.

Pursuant to the Law on Refugees ("OG of RS" No. 18/92, OJ of SRY No. 42/02 – CC, OG of the RS No. 30/10), persons who due to the events within the period from 1991 until 1998 and their consequences fled away or were prosecuted from the former Yugoslav republics to the territory of the Republic of Serbia, and they cannot or due to the fear from prosecution or discrimination, do not want to return to the territory they fled away, including also the persons who chose the integration (hereinafter: refugees), the care shall be provided in compliance with the provisions of this law, in order to meet their basic life needs and provide the support in the process of integration. The person who has chosen integration, pursuant to this law, is a person who submitted the request for being accepted as a citizen of the Republic of Serbia. The status of refugee shall be defined pursuant to the provisions of this law. Care for refugees includes organised reception, temporary accommodation, allowance for food, material and other assistance. The refugees have the right for health and social protection, employment and education, in compliance with the law and they shall have the working obligation under the same conditions as the citizens of the Republic of Serbia. The specified rights and obligations shall be realised in relation to their residence in the Republic of Serbia.

Right for asylum

The Law on Asylum (OG of RS No. 109/07) regulates that during the procedure, the asylum seeker has the right to reside in the Republic of Serbia, and during this time, if required, has the right for placement in the Centre for Asylum. The asylum seeker and a person granted asylum in the Republic of Serbia have the equal rights for health care in compliance with the regulations specifying the health care of foreign citizens. The asylum seeker and the person granted asylum have the right for free primary and secondary education and the right for social aid, in compliance with the special regulation. The persons who were admitted to the Republic of Serbia have equal rights as citizens of the Republic of Serbia regarding the right for protection of intellectual property, free access to the courts, legal advice, and redemption from the payment of judicial and other expenses before the state authorities and rights for religious freedom. Persons, whose right to refuge in the Republic of Serbia has been recognised, shall have the rights equal to those of the foreigners who are permanent residence holders, with respect to rights related to and resulting from labour, right to entrepreneurship, right to permanent residence and freedom of movement, rights to movable and immovable property and right of association. The persons granted the right for refuge or subsidiary protection shall be provided the accommodation in relation to the possibilities of the Republic of Serbia, not longer than one year from the final decision granting the status. The accommodation includes provision of certain residential area for use or granting the funds required for residential provision (Article 39).

The right of the child in armoured conflicts, including also the right for physical and psychical recovery and rehabilitation

Pursuant to the Law on Defence (OG of RS No. 116/07, 88/09, 88/09 - other law, 104/09 - other law), the labour obligation shall be incurred on war and extraordinary occasions, the autonomous province authorities, local self-government authorities, companies, other legal entities, as well as the entrepreneurs. The work obligation includes the conduct of activities and tasks of defence pursuant to the Defence Plan of the Republic of Serbia (Article 50). The work obligation shall include all working age citizens with the reached 18 years up to 65 years (men), i.e. up to 60 years (women) and they have not been placed to the military service in the Serbian Armed Forces (Article 51).

The work obligation shall not be defined for the parent conducting independently the parental right over the child younger than 15 years or minor with difficulties in development or major with the extended parental right to just one parent. The work obligation shall not be defined for the parent of the child younger than 15 years or a minor with difficulties in development or major with the extended parental right if the parents conduct mutually the parental right and the other parent is engaged with the defence activities. The same shall be applicable both to guardian and foster parent of the minor, i.e. major deprived of business ability.

Children in conflict with the law

The criminal legalisation of Serbia on juvenile offenders of criminal acts and criminal legal protection of the minors ("OG of RS" no. 85/05) contain international standards included in the conventions and international documents in this field (for example Convention on the Rights of a Child, European Convention on Protection of Human Rights and Basic Freedoms, Standard Minimum UN Rules for Juvenile Judiciary, UN Guidelines for Prevention of Juvenile Delinquency, UN Rules on Protection of Minors Deprived of Freedom, Standard Minimum UN Rules for the Measures Alternative to Institutionalized Treatment, European Rules on Social Sanctions and Measures and some other documents of the Council of Europe whose member is Serbia).

Regarding criminal sanctions, the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles affirms at maximum level the educational principle in comparison to punishment, emphasising that the purpose of the criminal sanctions toward the juveniles, within the general purpose of the criminal sanctions in compliance with the Criminal Code, that through the supervision, provision of protection and assistance, as well as provision of general and professional training, affect the development and enforcement of personal responsibility of the juveniles, to education and regular development of one's personality, in order to provide re-inclusion of juveniles into the social community.

Pursuant to the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, the person who at the time of conduct of counter-legal act, in the law stipulated as the criminal act, did not reach fourteen years, shall not be declared the criminal sanctions not apply other measures stipulated by this Law (Article 2).

The minor is a person who at the time of the conduct of criminal act reached fourteen and did not reach eighteen years. The junior minor is a person who at the time of the conduct of criminal act reached fourteen and did not reach sixteen years.) The senior minor is a person who at the time of the conduct of criminal act reached sixteen and did not reach eighteen years. The junior major is a person who at the time of the conduct of criminal act reached eighteen and in the time of proceedings did not reach twenty-one years (Article 3).

In relation to the sanction system which may be declared for the minors, it was decided that the educational measures may be declared to the minors for the conducted criminal acts, the penalty of juvenile imprisonment and safety measures stipulated in the Criminal Code, apart from the prohibition of conduct of profession, activities or duty. The junior minors may be declared only the educational measures. The senior minors may be declared the educational measures and exceptionally the punishment of juvenile imprisonment may also be declared. The safety measures may be declared to the juveniles under the conditions stipulated in the law. The educational measures are: 1) warning and directional measures: judicial admonition and special obligations; 2) measures of enhanced surveillance: enhanced surveillance by the parents, adopter or guardian, enhanced surveillance in other family, enhanced surveillance by the foster authority, enhanced surveillance with the daily accommodation in the appropriate institution for education of the juveniles; 3) institute measures: order to educational institution, order to detention and rehabilitation centre, order to special institution for treatment and training (Article 11).

In the event of choosing the educational measure, the court shall especially consider the age and maturity of the minor, other characteristics of one's personality and the level of impairment in social behaviour, the severity of act, reasons why it was done, surroundings and circumstances in which one lived, behaviour after the conducted criminal act, and especially, whether one prevented or tried to prevent the occurrence of damaging effect, compensated or tried to compensate for the damage, whether the minor was earlier declared the criminal or offence sanction, as well as all other circumstances which may affect declaration of the measure by which the purpose of educational measures shall be acquired best (Article 12).

The senior minor, who conducted the criminal act for which the imprisonment punishment was stipulated by the law longer than five years, may be declared the punishment of juvenile imprisonment if due to high level of crime, nature and severity of the criminal act, the educational measure would not be justified to be declared. The juvenile imprisonment shall not be shorter than six months nor longer than five years, and it shall be declared for complete years and months. For the criminal act for which the imprisonment punishment is stipulated amounting twenty years or some more severe punishment, or in case of combination of at least two criminal acts for which the imprisonment punishment shall be more than ten years, the juvenile imprisonment may be declared for up to ten years (Articles 28 and 29).

The educational measures and juvenile imprisonment do not imply consequences including prohibition of acquiring certain rights from the Article 95(2) of the Criminal Code. (Article 36)

One or several educational orders may be applicable for criminal act for which fine or imprisonment up to five years are stipulated to the minor offender of criminal act. The educational orders are: 1) settlement with the respondent in order to dispose, completely or partly, the damaging effects of the act, by the compensation of the claim, apology, work or in some other way; 3) inclusion, without any compensation, into the work of humanitarian organizations or activities of social, local or ecological content; 4) submission of corresponding inquiry and disuse of addiction caused by the use of alcoholic beverages or intoxicating drugs; 5) inclusion in individual or group treatment in the corresponding health institution or counselling institution (Article 5).

The purpose of the educational orders is not to initiate the criminal proceedings towards the minor or to terminate the proceedings, i.e. that application of educational order affects the regular development of a minor and enhancing one's personal responsibility in order not to conduct criminal acts any more (Article 6).

The right of a child for protection against labour exploitation

The Labour Law includes special provisions referring to the fact that the employment may be contracted with the person who is minimum 15 years old; that the person younger than 18 years may start employment only with the approval of parents, adopters, guardians which shall not affect one's health, moral and education, i.e. if such work is not prohibited by the law. Besides the aforementioned, the employees who are younger than 18 years shall not work regarding especially difficult jobs which would, based on the finding of the competent health authority, could hazardously and with the

increased risk, affect one's health and life, regarding one's psycho-physical abilities. Regarding the duration of the full time working hours, the full time of the employee younger than 18 years shall not be defined for more than 35 hours per week nor longer than eight hours a day. Furthermore, the overtime and re-distribution of working hours for employee younger than 18 are prohibited. In relation to night shifts, the employee younger than 18 years shall not work at night, apart in cases and under conditions stipulated in Article 88 of the Labour Law .

The Labour Law stipulates the offence responsibility for the employer who starts the employment with the person younger than 18 years contrary to the provisions of this law. In case it is proved that the person is younger than 18 years, and at least 15 years, started employment without the written approval from the parents, the labour inspector shall through the minutes warn the employer about the obligation to provide the approval from the parents, and the parents may be informed in writing on the fact that their child has started the employment without their approval in which case, if they do not want to grant this approval additionally, they may submit the request to the employer for the termination of employment of such person in compliance with Article 175(1)(5) of the Labour Law . If the employer does not provide additionally the approval from the parents, the request for initiating misdemeanour proceedings shall be submitted. Thereby, if the employer pursuant to Article 25(1) and (2) of the Labour Law does not provide additionally approval from the parent and finding of the competent health authority, the labour inspector shall submit the order for initiating the misdemeanour proceedings.

Pursuant to Article 193 of the Criminal Code, 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 for years.

The right of a child for protection against sexual exploitation and abuse

Serbia accepted the international instruments regulating the field of protection against exploitation and abuse. The additional convention on abolishment of slavery, slave trafficking and practice similar to slavery, the Convention for reduction and abolishment of trafficking of persons and exploitation of prostitution, the International act pact on civil and political rights, Convention on elimination of all forms of discrimination of women, Convention against torture and other fierce, inhumane or humiliating actions, the Facultative protocol with the Convention on the rights of a child, child prostitution and child pornography.

The Criminal Code stipulates several criminal acts against sexual freedom. Copulation with the child (Article 180) shall be prohibited; furthermore, it is prohibited to show, obtain and possess pornography material and use of a minor for pornography (Article 185). Thereby, the one who sells, shows, publicly exhibits or in other way makes available the texts, images, audio-visual or other objects of pornographic content to the minor or show the pornographic play shall be fined or imprisoned up to six months. The one, who uses the minor for production of images, audio-visual or other objects of pornographic content or for pornographic play, shall be imprisoned from six months to five years. The one who provides for oneself or somebody else, possesses, sells, shows, publicly, electronically or in some other way exhibits the images, audio-visual or other

objects of pornographic content obtained through misuse of a minor, shall be imprisoned from three months to three years.

Also certain criminal acts from the group of criminal acts against marriage and family have the importance for protection of children against sexual exploitation. The major living in common law marriage with the minor shall be punished with imprisonment from three months to three years. Furthermore, the parent, adopting parent or foster parent shall be punished who enable the minor to live in common law marriage with the major or force one to do that (Article 190).

As a special criminal act, the incest is regulated (Article 197). This criminal offence is committed by an adult who engages in sexual intercourse or an act of equal magnitude with a direct minor relative by blood or a minor sibling.

The Law on Public Peace and Order stipulates the offence for the person who provides the minor with the premises for prostitution (Article 14).

The right of a child for protection against trafficking and forced kidnapping

The Republic of Serbia has ratified several conventions in relation to the prohibition of human trafficking: UN Convention against Transnational Organised Crime in 2000 and its Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, especially women and children, European Convention on Fight Against Human Trafficking.

The trafficking of persons, especially children, is also criminalized in the Criminal Code. Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person's labour, forced labour, commission of offences, prostitution, mendacity, pornography, removal of organs or body parts or service in armed conflicts, shall be punished by imprisonment of three to twelve years. For the offence committed against the minor, the offender shall be punished by the penalty specified for that offence even if he did not use force, threat or any other method of its conduct (Article 388).

Two other criminal acts are stipulated: the criminal offence trafficking in minors for adoption (Article 389) and the criminal act of holding in slavery relations and transportation of enslaved persons (Article 390).

In 2003, in Serbia, National Mechanism for Coordination of Activities and Creation of Political Campaign against Human Trafficking was formed in Serbia in 2003. It is made up of Council for Combating Human Trafficking, Coordinator for Combating Human Trafficking, Republican team for Combating Human Trafficking (the strategic level) and Service for the Coordination of Protection of Human Trafficking Victims (established in 2004) together with the police and judiciary (the operative level).

The right of a child for protection against illegal use of narcotics and psycho-tropic substances

Pursuant to the Law on Production and Circulation of Intoxicating Drugs, the production and circulation of intoxicating drugs and monitoring the production and circulation shall be done under conditions stipulated in this law (Article 1).

The production and circulation of intoxicating drugs may be done only in medical, veterinarian, educational, laboratorial and scientific purposes based on approvals and permit of the competent authority. The Law regulates the conditions for production of these substances, registry taken on it and procedure of the competent authorities with the disposed drug (Article 4).

The Criminal Code, in the group of criminal acts against the health of persons, contains criminal acts for criminalization of unauthorized production, placement into circulation, keeping and enabling use of intoxicating drugs. The unauthorized production, processing, selling or offering for sale, keeping or transportation for sale, intermediation in selling or buying or in other way unauthorized placement into circulation of substances or preparations specified as intoxicating drugs, unauthorized nourishment of poppy seeds or psycho-active hemp or other plants which derive the intoxicating drugs (Article 246).

Unauthorized keeping of a small amount for one's own use of substances or preparations considered as intoxicating drugs is prohibited (Article 246a).

Whoever with intent to force somebody else to use intoxicating drug or provide the intoxicating drug for use shall be punished as well as making the premises available for use of intoxicating drugs or in some other way enable other to use intoxicating drugs, shall be punished by imprisonment from six months to five years. The more severe form of this criminal act shall be if it was done towards the minor (Article 247).

The rights of a child who is a member of a minority group

The Constitution of the Republic of Serbia guarantees additional, individual or collective rights to the members of national minorities, besides the rights stipulated in the Constitution to all citizens. The individual rights shall be realised individually and the collective ones in the community with others, in compliance with the Constitution, law and international agreements (Article 75). The members of minority groups have the right: for expression, keeping, nourishment, development and public expression of national, ethnical, cultural and religious differences; for use of their symbols at the public places; for use of their language and alphabet; that in the areas making significant population, the state authorities, organizations with public authorizations, authorities of autonomous provinces and units of local self-government conduct the proceedings also in their language, to education in their language in the state institutions and institutions of autonomous provinces; to establishment of private educational institutions; to use in their language their name and family name; that in the surroundings making the significant population, the traditional local names, names of the streets, areas and topographic signs are written also in their language; to complete, timely and unbiased information in their language, including also the right for

expression, receiving, sending and exchange of notices and ideas; for establishment of own assets of public media, in compliance with the law.

99. How is domestic violence against children treated in your legislation and in judicial practice? How is effective protection of children from violence, including exploitation and sexual violence ensured?

The right to protection against all forms of violence is the fundamental right of every child stipulated in the Convention on the Rights of the Child, Optional Protocols and other documents ratified by the state of Serbia as a member of the United Nations, the Council of Europe and other international organisations. By confirming (ratifying) the UN Convention on the Rights of the Child, the Republic of Serbia undertook the obligation to take measures for prevention of violence against children and to provide protection from all forms of violence in the family, institutions and wider social environment, from: physical and mental violence, abuse and neglect (Article 19), all forms of sexual exploitation and sexual abuse (Article 34), abduction of children and trafficking in children (article 35), all other forms of exploitation harmful for the child (Article 36), torture, inhuman or degrading treatment or punishment (Article 37). The Convention also establishes the obligation of the state to provide supportive measures for the physical and psychological recovery of the child - victim of violence and his/her social reintegration (Article 39).

Pursuant to Articles 1, 3 and 5 of the **Constitution of the Republic of Serbia** (*Official Gazette of RS* No. 98/6) 1, 3 it is proclaimed that children shall enjoy human rights suitable to their age and mental maturity. Under the Constitution, human life is inviolable (there is no death penalty in the Republic of Serbia), the physical and mental integrity is inviolable, and no person may be kept in slavery or servitude. Any form of human trafficking is prohibited. Forced labour is prohibited. Thus, sexual or financial exploitation of person in unfavourable position shall be deemed forced labour. Children are protected from physical, psychological, economic and any other form of exploitation or abuse. Children under 15 can not be employed, while children under 18 can not work at jobs detrimental to their health or morals.

Strategic framework

In 2007, the Government of the Republic of Serbia adopted the document entitled **National Millennium Development Goals in the Republic of Serbia**. For each global Millennium Goal, eight national goals and tasks to be achieved by 2015 are established. Within the Millennium Goal 3, related to the promotion of gender equality and improvement of the position of women, reduction of violence against women and children is set as one of the specific goals, with a recommendation to adopt and implement the National Action Plan Against Violence in Everyday Life and to introduce gender-sensitive statistics on victims of violence.

- **The National Strategy for the Prevention and Protection of Children from Violence** (*Official Gazette of RS* No. 122/08), promotes a vision that all children in the Republic of Serbia, regardless of their age, sex, national or ethnic origin, family status or any other social or individual characteristics of the child and his family, should grow up in an environment safe from all forms of violence, in which respect the personality and dignity of the child is respected, as well as the child needs and development potentials, while the child is enabled to develop tolerance and to use non-violent forms of communication.

The basic principles underlying the Strategy are derived from the value system contained in the Convention on the Rights of the Child and the Constitution of the Republic of Serbia, which are incorporated in the National Plan of Action for Children. These are: 1. the right of the child to life, survival and development; 2. non-discrimination; 3. the child's best interest; 4. participation of the child.

The strategy applies to all children, without discrimination, i.e. regardless of family status, ethnic origin and any other social or personal characteristics of the child (sex, language, religion, nationality, mental, physical or other characteristics of the child and his/her family). The strategy applies to children in all environments: family (biological, foster, adoptive), in institutions where children reside temporarily or permanently (schools, pre-school, resorts, daycares centres, boarding schools, housing institutions for children and other institutions), on the street, at sports, entertainment or other events and other places where children are located.

The two fundamental strategic goals are: 1. The development of a secure environment in which every child shall be entitled to protection from all forms of violence; 2 Establishment of a national system of prevention and protection of children against all forms of abuse, neglect and exploitation..

The specific strategic objectives are: Raising awareness of citizens, especially children, with their active participation, on the problem of violence and determination of standpoints regarding unacceptability of all forms of violence and in all environments; Development of tolerance through recognition and acceptance of diversity and fostering of non-violent forms of communication; Strengthening and support to families (biological, foster, adoptive) in preventing and protecting children from violence; Support to the development of programmes for prevention of violence against children; Encouragement and support to participation of children in developing and implementing programmes for prevention and protection from violence; Commitment, willingness and responsibility of decision makers at the national level in setting and implementing policies for prevention and protection of children against violence; The creation of a comprehensive legislative framework to protect children from abuse, neglect or exploitation; Development of effective multisectoral and multidisciplinary networks to prevent and protect children from abuse, neglect or exploitation; Development of services for working with victims and perpetrators of violence; Acquiring new knowledge and skills of all who work with children and for children to prevent and protect them from violence; Improvement of the system for collecting and analyzing data and reporting on abuse, neglect and exploitation of children; Providing support research on attitudes about violence against children, the causes, consequences, costs, prevention and protection from violence against children. The Strategy elaborates the measures for the implementation of the said general and specific goals.

At the session held on 11 March 2010, the Government adopted the Action Plan for implementation of the National Strategy for Prevention and Protection of Children from Violence (2010-2012). The Action Plan shall be implemented over the next two years, and the general aim is to "develop a secure environment in which every child shall be entitled to protection from all forms of violence."

- **The National Youth Strategy** (*Official Gazette of RS* No. 55/08) stipulates that the youth are people between fifteen and thirty years of age.

Pursuant to this Strategy, the most significant challenges, risks and threats to the safety of young people are crime, violence and traffic accidents. Within this meaning, the Strategy defines specific goal – providing support to research on violence among and

against young people, as well as the following measures to be taken: monitoring of the forms and frequency of violence among youth; improving the data collection, analysis and reporting system concerning all forms of violence among youth and against youth; examining the influence of different factors on the appearance and consequences of violence; continuously monitoring of the effects of conducted preventive programs and activities related to the protection of young people from violence; inclusion of the young researchers in research projects about violence against youth and among youth.

In 2005 the Government of the Republic of Serbia adopted a **General Protocol on the Protection of Children from Abuse and Neglect**, with the aim of establishing effective, operational, multisectoral network to protect children from abuse, neglect, exploitation and violence. The General Protocol on the Protection of Children from Abuse and Neglect provides clear and binding guidelines to all service providers, both governmental and non-governmental and private sector, for implementation of integrated intersectoral cooperation in the process of child protection.

The General Protocol defines the role of the Centres for Social Work as the coordinating community services for the protection of children from all forms of abuse. The General Protocol established the fact that the protection of children, victims of abuse and neglect, is a complex process which includes participation of institutions, organizations and individuals from different systems (social welfare, education, health, police, judiciary, etc.), and that effective intervention requires cooperation and coordinated action of all involved in this process. This means that all who work with children and families (including the persons who primarily work with parents), have to be completely sure about their treatment of children when suspecting the child to be exposed to abuse and neglect.

Application of the General Protocol contributes to the establishment of an efficient and coordinated process for the protection of a child who is actually or potentially abused and neglected and allows appropriate intervention, recovery and conditions for further safe development of the child.

The General Protocol has contributed to developing and expanding of the network of multidisciplinary teams for child protection in the local community, and implementation of a unified model of these teams at the municipal level throughout the Republic of Serbia. With this approach, it shall be emphasized that the protection of children is a unique process, although it involves different systems, each with its own peculiarities that should be recognized and respected.

Special Protocols on the Protection of Children from Abuse are: Special Protocol for the Protection of Children against Abuse and Neglect in Social Care Institutions(2006); Special Protocol on Acting of Police Officers to Protect Minors From Abuse and Neglect (2006); Special Protocol on the Protection of Children and Students From Violence, Abuse and Neglect in Educational Institutions (2007); Special Protocol of the Healthcare System on Protection of Children From Abuse and Neglect (2009); and Special Protocol on Acting of the Judiciary in Protecting Minors From Abuse and Neglect (2009).

By adopting the said Protocols, a complete protection system is developed, providing early identification of children who are at risk of violation of the rights stipulated in the Optional Protocol, as well as adequate and timely intervention of all relevant systems in the community.

The legal framework for the protection of children against violence

The Family Law (*Official Gazette of RS* No. 18/05) explicitly stipulates that domestic violence is forbidden and that everyone has, in accordance with the law, right to protection from domestic violence (Article 10). In addition, the state is obliged to undertake all necessary measures to protect the child from neglect, from physical, sexual and emotional abuse and from every form of exploitation (Article 6(2)). Moreover, this law contains other substantive and procedural provisions for the protection against domestic violence related to the concept, methods and measures for protection against domestic violence, as well as a procedure for exercising the protection (Articles 197, 198, 199, 200, 283, 284, 285, 286, 287 and 288).

Domestic violence, in terms of this Law, is every behavior by which one family member endangers the physical integrity, mental health or tranquility of another family member and the said actions, considered particularly violent are: inflicting or attempting to inflict a bodily injury; incitement of fear by threatening to murder or inflict a bodily injury to a member of the family or another person close to him/her; forcing to sexual intercourse; abetting to sexual intercourse or sexual intercourse with a person who has not reached 14 years of age or an incapable person; restricting of freedom of movement, insulting, unscrupulous or malevolent behavior, etc. (Article 197).

Members of the family, only within the meaning of this legal institute, are: spouses or former spouses; children and parents; blood relatives, in-law or adoptive relatives; persons related by foster care, out-of wedlock community or persons who live or have lived in the same family household, or persons who have been or still are in a mutual emotional or sexual relation, or have a common child, or the child is to be born, although they have never lived in the same family household (Article 197(3)).

Pursuant to the Family Law, one or more protective measures may be ordered against a family member who acts violently. Legislative measures for protection against domestic violence are: the issuance of a warrant for eviction from a family apartment or house, i.e. for moving into a family apartment or house, regardless of a right to property or a lease to immovable property; prohibition of getting closer to a family member than a certain distance; prohibition of access to the vicinity of the place of residence or workplace of a family member; prohibition of further molestation of a family member. The purpose of the said measures is to completely prohibit or only to restrict maintenance of personal relationships with other family member. A protective measure against domestic violence may not last longer than one year, but may also be prolonged until the reasons for which it had been ordered cease to exist, and it may also be terminated before the expiry of its duration if the reasons for which it had been ordered cease to exist. The protective measure against domestic violence shall be ordered in special civil procedure.

Pursuant to the Family Law (Article 263), all health and educational institutions or social protections institutions, judicial and other state authorities responsible for the protection of the child rights, as well as associations and citizens, have the right and duty to inform the public prosecutor or the guardian authority about the case of domestic violence for the purpose of protecting the child rights. Action for ordering a protective measure against domestic violence, as well as for the prolongation of a protective measure against domestic violence may be initiated by: a family member who was subject to domestic violence, his legal representative, the public prosecutor and the guardianship authority, and the action for terminating a protective measure against domestic violence may be initiated by the family member against whom this

measure has been ordered. In a dispute over protection from domestic violence, besides the court of general territorial jurisdiction, the court on the territory of which the family member who was subject to domestic violence has residence or a dwelling place has also territorial jurisdiction. Proceedings in a dispute over protection from domestic violence has several additional specific characteristics: the proceedings is particularly urgent, meaning that the first hearing is to be scheduled to take place within eight days from the day the action was filed in court, and the court of second instance is under the obligation to make a decision within fifteen days from the day the appeal was delivered to the court; the court is not bound by the limits of the claim for protection from domestic violence so it may order a measure which has not been demanded if it finds that by such a measure the protection is best achieved; finally, the appeal does not withhold the enforcement of a judgment on ordering or prolonging a protective measure against domestic violence. Violation of a protective measure against domestic violence by the person, who was ordered such a measure, is considered to be criminal offence and shall be punished by a fine or imprisonment of three months to three years (Article 194(5) of the Criminal Code).

In the proceedings over protection against domestic violence, the guardian authority may be actively legitimated subject or a specific expert, from whom the court may request assistance in collecting necessary evidence, as well in delivering his opinion about the purpose of the requested measure. The guardianship authority is obliged to keep records and documents of the persons who were subject to violence and of persons who were ordered a protective measure.

As basic services for social protection within local community, the centres for social work, currently 139 of them in the Republic of Serbia are authorized to provide help and support to all children and young people in situations when their health and development are endangered. Competences of the Centre for Social Work, particularly exercised the guardian authority, are related to provision of fundamental protection of rights and interests of a child through adequate interventions of social and family legal protection of a child. Centre for Social Work has specific tasks and powers for implementation of urgent measures of legal and social protection of a child exposed to abuse and neglect within the family, but also in all other situations in which the response is necessary in order to protect the rights of the child. The child's parents are subject to binding measure (preventive, corrective supervision over the exercise of parental right), in order to ensure optimal conditions for development of a child. In case these measures are ineffective, and serious threat to life and development of a child is still present, the child shall be placed in a foster family, mostly kinship family, and only in cases where the said is not possible, in the existing social institutions for the protection of children without parental care. In such cases, the parents are subject to judicial proceedings over partial or complete deprivation of parental rights.

End December 2002, the Ministry of Labour and Social Policy established the Shelter for emergency protection of abused children, as a special unit of the Centre for Protection of Infants, Children and Youth in Belgrade. Shelter takes care of children who are separated from the family environment due to physical, sexual and emotional abuse, neglect or life endangerment of a child, caused by illness of parents, parents serving prison sentences and the like.

The Criminal Code (Official Gazette of RS No. 85/05, 88/05, 107/05, 72/09, 111/09), within the set of criminal offences against marriage and family, stipulates the following: neglecting and abusing a minor (Article 193) and domestic violence (Article 194), Incriminating behaviour is such of a parent, adoptive parent, guardian or other person who by gross dereliction of his/her duty to provide for and bring up a minor

neglects a minor he/she is obliged to take care of, or abuses a minor or forces him/her to excessive labour or labour not commensurate with his/her age, or to mendacity, or for gain induces him/her to engage in other activities detrimental to his/her development. In addition, whoever by use of violence, threat of attacks against life or body, insolent or ruthless behaviour endangers the tranquillity, physical integrity or mental condition of a member of his/her family, shall be punished (Article 194). In addition to the said, the Code stipulates the criminal offence of *cohabiting with a minor* (Article 190), committed by an adult cohabiting in such community with a minor, or a parent, adoptive parent or guardian who enables or induces a minor to cohabit with an adult in extramarital community. Qualified form of the criminal offence referred to in paragraph 2 of this Article exists if the act was committed for gain, i.e. if containing the element of financial exploitation. *Incest* is envisaged as a special criminal offence (Article 197). This criminal offence is committed by an adult who engages in sexual intercourse or an act of equal magnitude with an underage kin relative in linear relations, or an underage sibling.

The Criminal Code also provides for the criminal offences *against sexual freedom*: Sexual intercourse or the related act against a child (Article 180) is criminalized, as well as is displaying of pornographic material and child pornography (Article 185). As for other criminal offences contained in this set, minority of a victim is envisaged as a qualifying fact, thus the criminal offence becomes more severe if committed against a minor.

Pursuant to Article 388 of the Criminal Code, the *trafficking in human beings* is criminalized. This criminal offence is committed by everyone who, by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another person, retaining identity papers or by giving or accepting money or other benefits, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit his/her labour, forced labour, to commit offences, for prostitution, mendacity, pornography, establishing of slavery or servitude relationship, removal of organs or body parts or for abuse in armed conflicts. Circumstances that make the criminal offence being more severe are minority of the passive subject, serious bodily injury or death of one or more persons in the exercise of human trafficking.

The Criminal Code prohibits *trafficking in children for adoption* (Article 389). This criminal offence is committed by a person who abducts another person under fourteen years of age for the purpose of adoption contrary to laws in force or a person who adopts such another person or mediates in such adoption or a person who, for that purpose, buys, sells or hands over another person under fourteen years of age or transports such a person, provides accommodation or conceals such a person. The circumstances pursuant to which the basic criminal offence is committed in an organized way, makes the offence more severe.

Pursuant to the Criminal Code (Article 390) the criminal offence of *holding in slavery and transportation of enslaved persons* is committed by a person who, in violation of international law, enslaves such person or places such person in similar position, or holds such person in the said position, or buys, sells, hands over to another or mediates in buying, selling and handing over of such person or induces another to sell his freedom or freedom of persons under his support or care, or by a person who transports enslaved persons or persons in similar position from one country to another. The qualifying circumstance related to this criminal offence is minority of a passive subject.

Exploiting children in prostitution is criminalized within Chapter 18 of the Criminal Code which includes sexual offences against sexual freedom, in particular: pimping and procuring (Article 183) and mediation in prostitution (Article 184). The criminal offence of *pimping and procuring* has two forms which only differ in the action of execution. As for the first form (Paragraph 1), the action of execution is pimping, and regarding the second form (Paragraph 2) the action of execution is procuring. The passive subject in both cases is a minor. The criminal offence of *mediation in prostitution* is stipulated by provision of Article 184 of the Criminal Code. The sole act of prostitution is considered offence against public order. The execution of this criminal offence is stipulated alternatively: inducing, encouraging another person to prostitution or participating in handing over a person to another for the purpose of prostitution, or promoting or advertising prostitution by means of the public media. More severe form of the criminal offence exists if a passive subject is a minor.

Exploitation of children in pornography is criminalized within the Chapter 18 of the Criminal Code, which includes criminal offences against sexual freedom: showing, procuring and possession of pornographic material and exploitation of a minor in pornography (Article 185), inducing a minor to attend sexual intercourse (Article 185a), and exploitation of computer network or communication through other technical devices for the commission of criminal offences against sexual freedom of a minor (Article 185b).

The criminal offence of *showing, procuring and possession of pornographic material and exploitation of a minor in pornography* is set out in Article 185 of the Criminal Code. This criminal offence is committed by a person who sells, or shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a minor, or who uses a minor to produce photographs, audio-visual or other items of pornographic content or for a pornographic show. More severe form of the criminal offence exists if a passive subject is a minor, i.e. a child under the age of 14. In addition to above mentioned, whoever sells, or shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting from committing this offence, shall be punished.

Inducing a minor to attend rape, sexual intercourse or an act of equal magnitude or another sexual act, is criminalized by the criminal offence of *inducing a minor to attend sexual intercourse* (Article 185a). More severe form of this criminal offence exists if this offence is committed by sing force or threats against a child – a person under the age of 14, thus stipulating the punishment of imprisonment from one year to eight years.

The criminal offence of *exploitation of computer network or communication through other technical devices for the commission of criminal offences against sexual freedom of a minor* (Article 185b) criminalizes arrangement of meetings with a minor and appearance at the appointed place in order to have a meeting, and particularly by the use of computer network or communication by other technical means with the intent to commit the criminal offence of rape, sexual intercourse with a helpless person, sexual intercourse with a child, sexual intercourse through abuse of position, prohibited sexual acts, pimping and procuring, mediation in prostitution, showing, procuring and possession pornographic material and exploitation of a minor for pornography and inducement of a minor to attend the commission of sexual acts (Paragraph 1). More severe form of the criminal offence exists if a passive subject is a minor, i.e. a person under the age of 14.

According to statistical data of the prosecution service, 43 persons were charged in 2009 with committing criminal offence of mediation in prostitution, as referred to in Article 184 of the CC (Criminal Code), and by 20 December 2010, a total number of persons charged with committing the same criminal offence was 35. In the work in 2009, there were also 26 charges pending from the previous period, while in 2010 in the work there were 21 charges pending from the previous period. In 2009, criminal charges were rejected against 5 persons, and in 2010 against 4 persons. In 2009, investigation was requested for 39 persons and in 2010 for 30 persons. In 2009, a total of 28 persons was accused and in 2010 the number of accused persons was 17. In 2009, a total of 10 verdicts was passed, out of which 7 imprisonments, 1 fine and 2 probations. One appeal was lodged by public prosecutor, while in 2010 two verdicts were passed, both on imprisonment, to which one appeal was lodged by the public prosecutor.

According to statistical data of the prosecution service, 6 persons were charged in 2009 with committing a criminal offence of showing pornographic material and child pornography, as referred to in Article 185 of the CC (Criminal Code), and by 20 December 2010, a number of persons reported for committing the same criminal offence was 29. During the same period, one criminal charge was pending from the previous period. In 2010, criminal charges were rejected against 4 persons. In 2009, investigation was requested for 3 persons and in 2010 for 12 persons. In 2009, 5 persons were accused and in 2010 the number of accused persons was 12. In 2009, a total of 4 verdicts were passed, out of which 2 fines and 2 probations, and 1 appeal was lodged by public prosecutor, while in 2010, a total of 8 verdicts were passed, out of which 3 on imprisonment, 2 fines and 3 probations, and 4 appeals were lodged by public prosecutor. According to statistical data of the prosecution service, no charges were filed in 2009 for the criminal offence of trafficking in children for adoption, as referred to in Article 389 of the CC. However, by 20 December 2010, ten persons were charged for this criminal offence, while investigation was requested for 5 persons. No criminal charges were filed against the criminal offence of holding in slavery and transportation of enslaved persons, as referred in Article 390 of the CC.

In the Supreme Court of Serbia, by motion for revision for the protection against domestic violence there were: in 2007 -one case, in 2008 - 8 cases, in 2009 -15 cases, all resolved within legally prescribed time limit. In 2010 there were 9 cases of domestic violence, for which the revision was appealed, 8 cases were resolved while one case, received on 14 December 2010, was not resolved.

The Criminal Procedure Code, with the Law amending the Criminal Procedure Code of 2009 (OJ of SRY No. 70/2001 and 68/2002 and OG of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010) clearly prescribes the rules relating to reporting suspicion of committing criminal offence which is prosecuted ex officio, and includes new procedural rules in terms of protecting the victim (adopted in 2006, effective since 1 January 2009).

The Law on Public Order (*Official Gazette of RS* No. 51/92, 53/93 – other law, 67/93 – other law, 48/94 – other law, 85/05-other law, 101/05 – other law) prescribes as criminal offence the behaviour of a person who cedes the premises for prostitution to a minor. Article 14 (2). Pursuant to Article 20 the same law, a parent or guardian of a minor who commits an offense under this law (insult or violence against another, inducement to begging and vagrancy, unauthorized traffic of beverages to minors under 16 years of age, gambling and inducing minors to gambling), shall be punished if the

offense committed by a minor is a consequence of *failure in due supervision of a minor by one of the said persons*, who are able to perform such monitoring.

The Law on Juvenile Criminal Offenders and Criminal Law Protection of Juveniles (*Official Gazette of RS*, No. 85/05) stipulates that a person who at the time of committing unlawful act, set out by the law as criminal offence, is under 14 years of age, can not be imposed criminal sanctions or other measures stipulated by this Law (Article 2).

During the preparatory proceedings, the Juvenile judge may remand a minor to a home, educational or similar institution, under supervision of a guardian authority or placement in foster family on temporary basis if this is necessary to separate the minor from his current environment or to provide assistance, supervision, protection or accommodation for the minor (Article 66).

The minor must be provided with a defence counsel during the first hearing as well during the whole proceedings.

When a minor participated in committing criminal offence along with an adult, the proceedings against him will be separated and carried out under the provisions of this Law.

When undertaking actions in the proceedings attended by a minor, and particularly during his/her questioning, participants in the proceeding are required to exercise due care having regard to maturity, other personal traits and protection of privacy of the minor, so that conducting of criminal proceedings would not have a detrimental effect to his/her development.

Of any proceedings against the minor, the public prosecutor for minors shall notify the competent guardian authority, which shall perform duties of assistance and protection of the family, which has the right to become acquainted with the course of proceedings, to deliver recommendations during the course of proceedings and to indicate the facts and evidence that are relevant to making right decision..

A minor shall be summoned through parents or legal guardian, except in cases when it is not possible due to receive urgent treatment or other circumstances. When escorting a minor, this measure shall be conducted by law enforcement officers in civilian clothes, taking care of doing so in an unobtrusive way.

No publication of the course of juvenile criminal proceeding or the ruling thereof is allowed without permission of the Court. Delivering judicial documents to a minor, through publication on the court board, is forbidden.

In criminal proceedings for the special protection of minors as victims, as well as in criminal proceedings against juvenile offenders, it is specifically provided for specific specialization of prosecutors and judges. The acquisition of specific knowledge and training of judges and prosecutors, working in the field of child rights, juvenile delinquency and criminal protection of juveniles, lies within the competence of the Judicial Academy that performs the activities in cooperation with relevant ministries in charge of Justice, Social Affairs, Interior and the Bar Association of the Republic of Serbia. The Judicial Academy shall issue certificates on evaluation of knowledge and professional training.

The Law on Prohibition of Discrimination ("OG of RS" No. 22/09), stipulates that every child, i.e. every minor shall have equal rights and protection in the family, society and the state, regardless of his/her personal characteristics, or those of his/her parents, guardians or family members. It is forbidden to discriminate against a child or minor on the grounds of his/her health, being born in or without the wedlock, to publicly advocate giving priority to children of one gender over the other, as well as differentiating among children on the grounds of the financial situation, profession and

other characteristics related to the social position, activities, expressed opinions or beliefs of the child's parents, guardians and family members..

The Law Fundamentals of Educational System (*Official Gazette of RS* No. 72/09), prohibits physical violence and insults of children personality, and guarantees the right of the child (student) to protection from discrimination and violence.. The law prohibits discrimination and violence, abuse and neglect. The obligation of directors of educational institution is to take measures in cases of violation of these prohibitions, and if they do not undertake measure, they shall be dismissed from duty, while the institution shall be punished with a fine. A teacher who, in disciplinary proceeding, was ordered a measure of termination of employment for violation of the prohibition, shall be revoked the license to operate.

In the early twenties, various preventive programmes aiming to improve the quality of communication, developing tolerance for diversity, reducing violence and constructive conflict resolution, were initiated in educational institutions, in cooperation with international organizations, line ministries and NGO.

Development of tolerance and non-violent communication in primary and secondary schools has contributed to the introduction of the optional subject on Civic education. In addition, schools are able, through the optional parts of the programmes, to decide on implementation of the contents aligned with the needs of children and the demands of the environment. School without Violence programme is implemented by UNICEF in cooperation with the Ministry of Education, Ministry of Health, Ministry of Interior, Ministry of Labour and Social Policy, Institute for the Improvement of Education and Upbringing, Council for the Rights of the Child, and is aimed at preventing and reducing violence against and among children. The program provides specific knowledge about how to solve the problem of violence through learning of behavior techniques and procedures to overcome the conflict. The program contributes to creating a safe and peaceful environment for the upbringing of children, promoting development and fostering friendly relations, tolerance and healthy lifestyles.

Under the Special Protocol for the Protection of Children and Students from Violence, Abuse and Neglect in educational institutions, preventive activities are presented and procedures to protect children from violence defined, The roles of all involved in the life and work of the educational institution are specified. Based on Special Protocol, in accordance with the specific work, the institution has an obligation to define in the Annual work programme the Program for protection children and students from violence and to form a Team to protect children and students from violence. Special Protocol is intended for principals, teachers, educators, expert associates, non-teaching staff, children and students, parents, local community representatives, and other relevant institutions involved in preventing and resolving problems of violence.

Several programmes aimed at improving the safety of children are carried out in cooperation with the Ministry of Education and Ministry of Interior (The school police officer, Action of intensified control of traffic, of selective contents - School, Action of intensified control of prohibition of the sale and dispensing of alcoholic beverages to minors, Preventive activities among school children and youth, Drug is zero, life is one). The School officer programme was introduced in 2002. in a number of schools in the Republic of Serbia, which are estimated to have the most obvious security issues.

The Law on Police (*Official Gazette of RS* No. 101/05, 63/09) prescribes, that in carrying out the activities out of its jurisdiction, the police are obliged to respect international standards of police conduct, and in particular requirements determined by international acts related to: duty to serve the people, respect for legality and prevention

of illegality , exercise of human rights, non-discrimination in carrying out police duties, limitation and restraint in the use of force; prohibition of torture and inhuman and degrading coercive measures, provision of support to the injured persons; obligation to protect confidential information; obligation rejection of illegal orders and resist bribery, corruption (Article 12).

According to the Law on Police, police powers against the minors, young adults and in cases of criminal protection of children and minors authorized officers specially trained to work with minors shall apply the powers. In exceptional cases, other authorized officer may apply police powers if the authorized officer, specially trained for work with minors, is unable to act

Police powers against a minor shall be applied in the presence of the parent or guardian or, if these are unavailable, in the presence of the representative of guardian authority, excepting special circumstances or urgent need.

The presence of representatives of the guardian authority, instead of parents, can also be provided, if possible, in cases where the presence of parents is harmful to minors and in cases of domestic violence and the like, or when parental presence causes a serious disturbance likely to interfere with police work. In cases when it is not possible to provide the presence of the guardian authority, the presence of another legally responsible person, experienced to work with minors, and who is neither a member of the police nor involved in the case, shall be provided (Article 38).

In exercising power against children and minors, restrictions on the use of coercive measures are clearly defined. The child shall not be subject to coercive measures, unless directly endangers his own life, the life of a police officer or other person. Coercive measures can be used against a minor, except for the firearms which can be used only when being the only way to defend against direct attack or threat.. A police officer is obliged to make a report on the use of coercive measures.

- **Law on Health Protection** (“Official Gazette of RS” No. 107/05, 72/09 – other law 88/10) guarantees the right of every patient to health care exercised with respect for the highest possible standards of human rights and values.. As priority measures of health care, the Law on Health Care (Article 8) stipulates that health care shall be provided under the same conditions to population and nosological groups of special social and medical significance at the level of the Republic of Serbia. In this sense, health care covers children under 15 years of age, school children and students by the end of schooling, and later to 26 years, in accordance with the law, women in family planning, as well as during pregnancy, childbirth and motherhood to 12 months after delivery, the disabled and mentally challenged persons. Health care of children is an integral part of health care provided to the entire population. It is organized into levels with well-developed network of health institutions in the state health sector, in which a large number of doctors in pediatrics and pediatric nurses from departments, as well as many medical staff provide a wide range of preventive and curative health services.

The Law on Prevention of Discrimination against Persons with Disabilities ((*Official Gazette of RS* No. 33/06), prohibits all forms of direct and indirect discrimination and violation of the principle of equal rights and obligations (Article 6). Particularly severe case of discrimination based on disability is any discrimination against persons with disabilities, including children, during the provision of medical services (Article 17). Discrimination based on disability at all levels of education and upbringing is prohibited. In addition, it is prohibited to discriminate on the bases of disability, in the transportation in all modes of transport.. (Article 27).

The Labour Law (*Official Gazette of RS* No. 24/05, 61/05, 54/09") contains a provision according to which employment can be established with a person who is under 15 years of age and who meets other requirements for employment in certain jobs, as stipulated by law or the Rulebook on organization and job systematization. The Rulebook establishes the organizational units of the employer, job types, the type and level of education and other special conditions for work on such activities (Article 24). In addition, employees under the age of 18 and employed disabled persons are entitled to special protection (Article 12)..

Employment with a person younger than 18 may be established with the written consent of a parent, adoptive parent or guardian, if such work does not endanger his health, ethics and education, or if such work is not prohibited by law. In addition, a person below the age of 18 (a minor) can enter into employment relationship only upon certificate of the competent health care authority substantiating that he/she is capable of performing the tasks stipulated by the employment relationship, and that these tasks are not harmful for his/her health. The costs of medical examination for that person, if registered as unemployed, which is maintained by the organization responsible for recruitment - is borne by such organizations (Article 25).

Employees below the age of 18 shall not work at the jobs involving strenuous physical work, work underground, under water and at excessive heights; the jobs involving noxious radiation or substances that are toxic, carcinogenic or causing inherited diseases, as well as risk for health related to cold, heat, noise or vibrations; or that may, pursuant to advice of the competent health authority, increase health and life risks and be harmful in the light of psychophysical capacities of adolescents (Article 84).

Employees between the ages of 18 and 21 may work at jobs involving strenuous physical work, work underground, under water and at excessive heights; the jobs involving noxious radiation or substances that are toxic, carcinogenic or causing inherited diseases, as well as risk for health related to cold, heat, noise or vibrations only upon report of the competent medical authority substantiating that such work shall not be deteriorating for their health (Article 85)

In terms of length of full-time employment relationship, for the person under 18 years of age it can not be determined for more than 35 hours per week, or more than eight hours a day. In addition, overtime working hours and redistribution of employee's working hours is prohibited if the employee is under 18 years of age.

Employees under the age of 18 can not work at night, unless performing tasks in the field of culture, sports, art and advertising business, where it is necessary to continue the work terminated due to force majeure, provided that such work takes some time and must be completed without delay, and the employer does not have available a sufficient number of other adult employees. In cases when the employee is under the age of 18, The employer is obliged to provide supervision over his work by an adult employee, for the purposes of overtime hours (Art. 87. and 88.).

The Family Law stipulates that the parent is completely deprived of parental rights, if they exploit the child by forcing him to excessive work, or work that endangers the morals, health or education of the child, or the work that is prohibited by law (Article 81).

The Criminal Code provides that 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 three months to five years (Article 193, Paragraph 2)

The Law on Asylum ("Official Gazette of RS", br.109/07) provides that no person shall be expelled, or involuntarily returned to a territory where there is a risk that they will be subjected to torture, inhuman or degrading treatment or punishment (Article 6).

In the asylum procedure the special care shall be taken of persons with special needs seeking asylum, such as minors, persons totally or partially incapacitated, children separated from parents or guardians, and persons with disabilities, the elderly, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence (Article 15).

Unaccompanied minor, the guardian authority shall, before applying for asylum, determine the guardian, in accordance with the law..

During hearing of a minor, a guardian must be present. (Article 16). The Law on Asylum stipulates that during the procedure the asylum seeker has the right to reside in Serbia and in that time, if necessary, have the right to housing in the Asylum Centre. The asylum seeker and a person granted asylum in the Republic of Serbia have equal rights to health care protection, in accordance with the regulations governing the health care protection of foreigners. An asylum seeker is a person granted asylum has the right to free primary and secondary education and the right to social assistance, in accordance with special regulations.

The Law on Protection of Rights and Freedoms of National Minorities ("OJ of FRY" No. 11/2002, *Official Journal of SCG* No 1/2003, and *Constitutional Charter and Official Gazette of RS* No 72/09, -other law)

The Law on Travel Documents (Official Gazette of RS, No. 90/2007, 116/2008, 104/2009, 76/2010) sets out that child has to have its travel documents, and the request for the issuance thereof must be signed by both parents.

The Law on Registries of Births (OG of RS No 20/2009) sets out that birth of a child shall be reported the within 15 days from the date of birth. If a child is born dead, the birth must be reported within 24 hours of his/her birth. On the other hand, the relevant provisions of the Law on Registries of Birth stipulate that death must be reported within three days after the death of the person with a certificate obtained from health facilities. In addition, this law defines the way of civil registration of children born in vehicles, children of unknown parents and the birth of children without parental care..

According to the **Law on Public Information** ("Official Gazette of RS" No. 43/2003, 61/2005, 71/2009, 89/2010) in order to protect the rights of minors in the media special attention must be paid to contents of public media and distribution method in order not to harm the moral, intellectual, emotional or social development of minors.. The contents of the public media that can affect the said development of the minor must be clearly and visibly marked in advance and as such distributed in a manner that is least likely to be used by minors. A minor can not be made recognizable in the information that is likely to violate his/her right or interest. It is prohibited to publicly display printed subject with pornographic contents .in a manner available to minors.

The Law on Broadcasting (*Official Gazette of RS* No. 42/2002, 97/2004, 76/2005, 79/2005, 62/2006, 85/2006, 86/2006, 41/2009) stipulates that the Agency shall ensure the protection of minors and respect for the dignity in programmes that are broadcasted on radio and television, adopting thereof general binding instruction.. The Agency shall take particular care that the programmes, harmful to physical, mental or moral development of minors shall not be broadcasted on radio or television, except

when broadcasting time or technical process ensure that minors, as a rule, are not able to see or listen to them. It is prohibited to broadcast the programmes which make serious threat to the physical, mental or moral development of minors.

The institutional mechanisms for the protection of children against violence

Children's Rights Council of the Government of the Republic of Serbia is an advisory authority established in 2002. The Council is tasked with initiating measures for harmonizing the Government's policy in the area relating to children and the young (health system, education system, culture, social issues); initiating measures for development of comprehensive and coherent policy towards children and the young; defining recommendations for attaining major social indicators in the area of child care; proposing the policy to establish the rights of children in accordance with the UN Convention of the Rights of the Child; analyzing the effects of the measures taken by the competent bodies on children, the young, families with children and childbirth rate; monitoring of execution and protection of child's rights in our country.

The Ombudsman is a state authority established in 2007. The Ombudsman is an independent authority which protects the rights of citizens and monitors the performance of the state authorities, as well as other authorities and organizations, companies and institutions endowed with public authorizations.

Within the institution of Ombudsman, the special field of activities represents the work regarding the protection of children's rights, presided by the deputy Ombudsman, by which the state of Serbia implemented also the recommendation from the UN Committee on the Rights of the Child from June 2008.

In Autonomous Province of Vojvodina, the independent monitoring over protection of the rights of the child is conducted also by the specialized deputy Ombudsman for the rights of the child.

Furthermore, the Decision on Ombudsman for the city of Belgrade, regulates that the Ombudsman defines the deputy specialized for conduct of the activities in relation to the protection of the rights of the child.

The Proposal on the Law on Ombudsman is under the parliamentary procedure which shall establish the independent institution at the level of the Republic for development and monitoring over the application of Convention on the Rights of the Child regarding promotion, development and protection of the rights of the child in the Republic of Serbia.

The relevant ministries in compliance with the Law on Ministries ("Official Gazette of RS", No. 65/08, 36/09 – other law, 73/10 – other law) regarding the fields of social policy, health care, education, internal affairs, judiciary, the youth and sports, culture, local self-government represent the significant mechanisms for the protection of the victims of violence, respectively in their own competences, as well as in the cooperation of non-governmental and governmental organizations in formation of local networks and shelters for the protection of the victims of violence (trust network against violence based on the gender affiliation, shelters for women and children who are victims of violence, etc.). The need for holistic approach in policy-making and planning the protection of the victims of violence within the family and networking and adjustment of activities of the authorities and services competent for taking the measures in the course of timely and efficient protection of victims is regulated in the strategic documents of the Government and other documents regulating this field.

Republic Statistical Office represents an institution of special importance which gathers data at the national level; reformation of this area is in progress.

The National Mechanism for the Coordination of Activities and Policy Making to Fight against Trafficking in Human Beings was established in 2003. It is made up of Council for Combating Human Trafficking, Coordinator for Combating Human Trafficking and Republican team for Combating Human Trafficking (the strategic level) and Agency for the Coordination of Protection of Human Trafficking Victims (established in 2004) together with the police and judiciary (the operative level).

The Agency for Coordination of Protection of Human Trafficking Victims was established in 01 March 2004 as a common project of the Ministry of Labour, Employment and Social Policy and OEBS Mission in Serbia. The Agency conducts activities within the Institute for Education of Children and the Youth in Belgrade. Since 01 June 2005, the Agency has been providing services financed from the budget of the Republic of Serbia (Ministry of Labour and Social Policy). It represents one of the important sections of the established national mechanism for the fight against trafficking in human beings.

The Agency conducts the protection of human trafficking victims, including children, through identification and direction of victims to the corresponding programs of aid. Regarding the fact that the Agency does not have the developed programs for work with children victims, nor the appropriate shelter for their placement, all minor human trafficking victims shall be provided with protection through inclusion of centres for social welfare from the territory of the whole Republic.

SOS Child's Line was established in 2005 in the cooperation with the Ministry of Labour, Employment and Social Policy, Ministry of Health, Ministry of Education and Sports, National Office of the President of the Republic of Serbia, Foundation of HRH Princess Katarina Karadjordjevic and Telekom Srbija. It started its conduct as a project activity, which was converted to the service financed from the budget funds (Ministry of Labour and Social Policy) as the only telephone line of this type at the national level.

The data from the practice of the guardian authority – violence over children in 2009¹

The structure of the reported families in relation to revealing the family violence	The number of families
Method of revealing	
Reporting of the family member	1.681
Reporting of the other person outside family	338
Reporting of the institution (school, health institute, kindergarten, etc.)	296
Reporting of the MIA	1.924
Reporting of the court	478
Reporting of the non-governmental organisation	28
The guardian authority per official duty	274
Total number of families	5019

The children victims of violence – structure in relation to the sex in 2009)	Female	Male	Total
	1.707	1419	3126

The children structure in relation to the violence form - 2009	Number of children
Physical violence	878
Emotional violence	1381
Sexual violence	92
Severe negligence	855
Economic exploitation	115
Total number of children	3321

The most important regulations in the area of health care that are also related to protection of the children against violence are:

- **Law on Health Protection** ("Official Gazette of RS" No. 107/05, 72/09 - other law and 88/10),

- **Law on Health Insurance** ("Official Gazette of RS" No. 107/05 and 109/05),

- **Law on Medicines and Medicinal Products** ("Official Gazette of RS" No. 84/04 and 85/05),

- **Law on Protection of Population from Infectious Diseases** ("Official Gazette of RS" No. 125/04).

- **Strategy for Continuous Improvement of the Quality of Health Protection and Security of Patients** ("Official Gazette of RS" No. 15/2009),

- **Special Protocol of the health care system for protection of children against abuse and negligence.**

The Ministry of Health in 2009 prepared the Special Protocol of the health care system for protection of children against abuse and negligence. This special protocol defines the roles and responsibilities of the health care workers as well as the mechanisms of cooperation of authorities and institutions from various sectors in prevention and protection of children against abuse. The protocol is prepared primarily for the health care workers as well as health care associates immediately engaged in the health protection of children at all levels (public, private and non-governmental sector). In the field of health protection, the resources from the Ministry of Health and Health Institutions at all levels of health protection shall be engaged, included also Institute for Public Health of Serbia and the network of Institute and Institute for Public Health. The health institutions are obliged to form the Expert Team for Protection of Children against Abuse in the specified organisation and conduct education and introduce all employees and health associates in the institution with the content of the Special Protocol, whereas higher education level and specialized education shall include expert team and a certain number of experts. Some activities which have been systematically planned in the Special Protocol have been conducted since 1996 when the Multidisciplinary Team was formed in the Institute for Health Protection of Mother and Child in Belgrade.

Age in years	Number of children	%
0-2	6	3.6
3-6	15	9.1
7-14	81	49.1

15-18	32	19.4
19-25	28	17.0
26-27	3	1.8
Total:	165	100.0

Out of the total number of the placed children and major persons, 93 are female and 72 are male. The shown number of major persons refers to the student population which was partially placed in the specified period in the Institute for Health Protection of Mother and Child.

The examination of the placed children in relation to their age, who were placed by the Multidisciplinary team in the period 2006-2008:

Age in years	Number of children	%
0-2	5	8.2
3-6	19	31.1
7-14	30	49.2
15-18	7	11.5
Total:	61	100.0

Out of the total number of the placed children, 41 are female and 20 are male.

Multidisciplinary Team prepared the Protocol of Health Care of the Abused Children in 1998 regulating the procedure in case of doubt that the child is abused referring to setting the diagnosis by the members of the multidisciplinary team, also health care employees of other speciality if required, the treatment procedure as well as specifying the doubt on abuse to the competent authorities. This protocol is used both in everyday work in the Institute and the education of health care employees in the Institute and other health institutions, especially in the health institutions, for the employees in polyvalent patronage services and other services in relation to children.

Education based on life messages for children, including also the education in relation to protection of children against abuse and negligence, was organized by the City Institute for Public Health of Belgrade, with expert and financial assistance of Ministry of Health and UNICEF, in the period 2002-2006. The total of 2,500 nurses was educated in the specified period from the services of polyvalent patronage of all health institutes in the Republic of Serbia, as well as 500 nurses from the paediatric services of the health institutes in the City of Belgrade.

The Specialized team for work with the abused and neglected children was formed in the Institute for mental health in Belgrade in 2000. The team deals with sensibilization and education of the experts from the Institute for Mental Health and other systems, diagnosis and psychotherapeutic work with children and families, as well as cooperation with other services in the course of mutual protection of children against abuse and negligence. As the part of the standard procedure, the Matrix for evaluation of risks was implemented and the Application was prepared filled in by the expert who was the first one to doubt the abuse and negligence. The team provided the treatment for 564 registered children, made contact with the competent services and took part in the further protection process.

The team for protection of children against abuse and negligence was formed by the doctors and associates from various organizational units - Child Institute, Department for Marriage and Family and Department for Addictive Diseases.

- Recognition and evaluation of abuse and negligence;
- Specialized treatment for children and family including also work with the abuser and non-abusing parent;
- The cooperation with other services and systems (centres for social welfare, health institutes, schools, non-governmental organizations);
- Sensibilization of the employees within the Institute for Mental Health for issues on abuse and negligence of children;
- Sensibilization and education of experts from other systems (education of experts from the centres for social welfare during 1999/2000, education of experts of primary health protection during 2000, education of employees in the police, representatives of the local community, as well as organization of education in cooperation with UNICEF in the course of training of experts participating in the work with children in south-eastern Serbia 2003-2005);
- Active participation in change of legal regulations in relation to abuse and negligence of children at the level of the state.

The team took part in preparing the protocol content in health care by active participation in the work groups and public debates in the process of enforcement of Protocol, organized by the Ministry of Health of the Republic of Serbia in the cooperation with UNICEF.

The team was converted to the Cabinet for protection of children against abuse and negligence consisting of: a child psychiatrist, two psychologists, two social workers and a lawyer. The cabinet gathers once per week with the conduct of following activities:

- consideration and registration of the new cases revealed in the previous week
- meetings with other experts from the Institute in the course of support and supervision of the cases, decision making and procedure planning.
- consideration of cases with the representatives from other institutions (centres for social welfare, schools, health institutes)
- reporting to other services

From the beginning, as an integral part of the standard procedure, the Registry for reporting on the cases of abuse and negligence of children was implemented, who contacted the Institute for Mental Health. In the period 2000 – 2009, 564 cases of abused and neglected children were specified. The major number of applications was received by the child psychiatrists who revealed abuse and negligence in everyday practice, then psychiatrists working with the adults, and the great number of children was directed also from other institutions (centres for social welfare, health institutes, schools, police, Court).

The sources which directed the abused/neglected children to the treatment in the Institute for Mental Health were shown in the table:

THE SOURCE WHICH DIRECTED THE CHILD	NUMBER OF CHILDREN	%
Parent	197	36,1
Doctor	120	22
School	38	7
Centre for Social Welfare	90	16,5
Court	3	0,5
Personally	8	1,5
Asylums or centres for children	7	1,3
Total	463	84,8
Not registered*	83	15,2
Total	546	100,00

*refers to children for whom it was defined during the treatment that there was abuse/negligence, thus initially the data on who directed them to the institution was not registered

Out of the total number of the reported children, only 63 children, i.e. 11.3% was directed to or contacted the psychiatrist primarily for abuse and negligence, pdo diagnosis from the spectre F74. In the significantly less number of cases (13 children, i.e. 2.5%), the children came to the Institute or they were directed from other institutions (centres for social welfare, schools, health institutes, Court) primarily for psychiatric issues, with already registered abuse and/or negligence. However, in the majority of cases (86.2%), abuse/negligence was revealed during the treatment of the child due to primary psychiatric disease.

The number of registered cases by the Team for protection of children against abuse and negligence in the period 2000 - 2009:

YEAR OF REGISTRATION	NUMBER OF CHILDREN	%
2000	65	11.9
2001	57	10.4
2002	99	18.1
2003	86	15.8
2004	54	9.9
2005	57	10.4
2006	42	7.7
2007	25	4.6
2008	11	2.0
2009	50	9.2
Total	546	100.00

As it can be seen in the table, in the first years of activities, the team registered greater number of children. Regarding the fact that within that period, other health institutes working with children did not recognize the issues of abuse and negligence of children and they did not have their teams, the children were directed to the Institute for Mental Health. Starting the education of health employees and associates in other health institutions, sensibilization of the employees in these institutions for work with these children was increased therefore, the certain number of children was directed to evaluation and treatment also to those institutions.

In relation to the sex of the children, 284 children or 52% are female out of the total number and 262 children or 48% are male, thus there is not statistically significant difference regarding the sex.

The types of abuse and negligence are shown in the table:

TYPES OF ABUSE AND NEGLIGENCE							
		Physical	Emotional	Sexual	Negligence	Exploitation	Witnessing the violence
Sex	Male	141	168	26	63	1	54
	Female	126	162	74	69	2	34
	Total	267	330	100	132	3	88
	%*	48.9	60.4	18.3	24.2	0.5	16.1

Emotional abuse was the mostly registered type of abuse, since it occurs also with other forms of abuse (physical and sexual abuse). This percentage is probably higher, but due to methodology of diagnosis, it is difficult to specify with certainty when inadequate conduct of parents occurs (which is not represented as a special category) in relation to emotional abuse. 18.3% children experienced sexual abuse.

100. How is child labour addressed in the legislation and what is the practical experience with its implementation?

According to the Constitution of the Republic of Serbia (OJ of RS No. 98/06) children under 15 years of age may not be employed, nor may children under 18 years of age be employed at jobs detrimental to their health or morality.

The Labour Law (*Official Gazette of RS* No. 24/05, 61/05 and 54/09) in Article 24 prescribes the minimum age for employment of a minor and this is the age of 15. There are special conditions for employment of a minor: written approval of the parents, adoptive parents or foster parents; that such work does not jeopardize their health, morality or education, and is not prohibited by the law. A person younger than 18 (minor) may be employed only upon certificate of the competent health care authority substantiating that he/she is capable of performing the jobs that he/she is being hired for and that these jobs are not harmful to his/her health.

The Labour Law provides for misdemeanour liability for an employer who employs a person younger than 18 contrary to the provisions of this law (Article 274 (1) point 2). The Law provides for fines for employers in the capacity of legal entity in the range of RSD600,000 to 1,000,000 and for fines for entrepreneur ranging from RSD300,000 to 500,000. A responsible person in the legal entity shall be fined in the amount of RSD30,000 to 50,000. The labour inspector is authorised to file a request for initiating misdemeanour proceedings if he/she establishes that the employer, i.e. director or entrepreneur, committed a minor offence by violation of the law or another regulation regulating labour relations (Article 270 of the Labour Law).

In carrying out inspections, a labour inspector shall be authorized to issue a decision binding the employer to eliminate identified violations of the law, general document and labour contract. The employer is obliged to inform the labour inspectorate, no later than 15 days after expiry of the deadline for elimination of the identified violation, on enforcement of the decision (Article 269 of the Labour Law). Therefore, if he/she

establishes that an employer employed a minor contrary to the provisions of Article 25 of the Labour Law, he/she shall order the employer to eliminate the identified violations and shall initiate misdemeanour proceedings against the employer.

The Family Law (*Official Gazette of RS* No. 18/05) in Article 81 (2) point 2 prescribes that a parent abuses rights contained in the parent's right if he/she exploits the child by forcing him/her to overwork or to perform work that endangers morality, health, or education of the child, i.e. work that is prohibited by the law.

In regards to the work of persons younger than 15, in the last two years requests for inspection have not been forwarded to the Labour Inspectorate and in the given period the labour inspectors have not found persons younger than 15 working.

101. Please elaborate on legislative and non-legislative actions taken to address discrimination against children from ethnic minorities, (including the Roma minority), children with disabilities, children living in remote areas as well as on grounds such as sex, birth status (married/unmarried parents) or others.

The Law on the Prohibition of Discrimination ("Official Gazette of RS", No. 22/2009) includes provisions concerning the prohibition of discrimination against certain groups, that is, categories of persons (members of minorities, religious communities, disabled persons, persons discriminated against on the grounds of their sex, sexual orientation, etc.), while the Article 22 of the Law comprehensively ensures protection of children against discrimination by explicitly defining the subjects whose rights are protected and precisely stipulates that every child, i.e. a minor has the same rights and the protection in the family, the society and the state, regardless of their personal characteristics or the characteristics of their parents, guardians or family members.

The Law prohibits discriminating against a child, i.e. a minor on the grounds of their health status, birth status (married/unmarried parents), as well as overt invitation to give preference to the child of one sex over children of the other sex, and differentiating between children on the basis of the health status, financial status, the profession and other indicators of social status, activities, expressed opinions or convictions of the child's parents, or their guardians or family members.

In the Republic of Serbia, since school year 2003/2004 pursuant to the Framework Convention for the Protection of National Minorities and articles 2, 3 and 4 of the Law on the Protection of Rights and Freedoms of National Minorities ("Official Journal of FRY", No. 11) the measures of the affirmative action for the enrolment of students in secondary schools and universities have been implemented. The measures of the affirmative action have been recognised by the Constitution of the Republic of Serbia (article 21 and article 76) and the Strategy for the Improvement of the Status of Roma in the Republic of Serbia ("Official Gazette of RS", No. 27/09) as well as the Action Plan for the implementation of the Strategy for the Improvement of the Status of Roma ("Official Gazette of RS", No. 57). Through the implementation of the measures of the affirmative action around 1,000 pupils have enrolled into schools in the Republic of Serbia since the school year 2003/2004.

Pursuant to Art. 44 of The Law on the Fundamentals of the Education System (“Official Gazette of RS”, No. 72/09) in cooperation with the civic sector The Ministry for Human and Minority Rights and the Ministry of Education have drafted the Rulebook containing detailed criteria for identifying forms of discrimination in educational institutions.

The Law on the Fundamentals of the Education System (“Official Gazette of RS”, No. 72/09) changed the primary school enrolment procedure, which contributed to the greater inclusion of Roma children into primary education and the decrease of enrolment of Roma children in schools for pupils with developmental difficulties. Especially significant for enabling Roma children to exercise their right to education are the provisions stipulating the following: children coming from vulnerable social groups can enrol in schools without any proof of residence of their parents and the required documentation (art. 98 paragraph 3); the examination of the child enrolled in school is performed in the child’s mother tongue (art. 98 paragraph 3); in the process of the examination of the child enrolled in school the school may deem necessary to adopt an individual education plan or additional support for education (art. Article 98 paragraph 6). Furthermore, in the process of testing the child’s ability, based on the school’s psychologist’s opinion the school may recommend the following: the enrolment of the child in the first grade or postponement of the start of school until next year, with the continuation of attendance of the pre-school preparatory programme.

Within the system of social welfare, children, including children from ethnic minorities, children with disabilities, children born in wedlock or out of wedlock, can, without any discrimination be the beneficiaries of all rights of common interest financed from the budget of the Republic of Serbia, as follows: income support; caregivers benefit and increased allowance, allowance for enabling the disabled for work; accommodation in residential care institutions or another family, and other social welfare services. The request for the exercise of these rights is submitted by the child’s legal representative (a parent, an adoptive parent, a foster parent, or a guardian). These rights are granted to parents and children, free of discrimination on any ground, pursuant to the Law on Social Protection and Provision of Social Security of Citizens.

The Family Law (“Official Gazette of RS”, No. 18/2005, Article 6, obliges every person to be guided by a child’s best interest in all the activities concerning the child. The same article prescribes that a child born in wedlock has equal rights as a child born out of wedlock. With regard to exercising the child’s right to know who his/her parents are, relevant provisions of the Family Law are those related to the establishment and the dispute of maternity or paternity of the child. Matrimonial paternity is established based on the assumption that the marital partner is the father of the child, while non-matrimonial paternity is established by acknowledgement or based on the court decision. The right to initiate the procedure for the dispute of paternity or maternity is granted to both the biological parents and the child.

The Law on Financial Support to Families with Children (“Official Gazette of RS”, No. 16/02, 115/05 and 107/09) guarantees disbursement of the parent’s (adoptive parent’s, foster parent’s, guardian’s) pay for the period of their leave of absence due to the special care of the child with disabilities, child allowance granted under more favourable conditions and in a greater amount and covering part of the expenses of the child with developmental difficulties’ stay in a pre-school institution. This right is

enjoyed free of any discrimination and in its full extent by children and parents from ethnic minorities and those living in remote areas, irrespective of the marital status of the child's parents, the condition being that the persons submitting the request must be the citizens of the Republic of Serbia.

Concerning the legislative activities undertaken to prevent discrimination of children with disabilities, the Republic of Serbia adopted the Law on Prevention of Discrimination against Persons with Disabilities in 2006. This Law governs the general mode of the prohibition of discrimination, special cases of prohibited discrimination in acting before public authorities, membership in citizens associations, access to buildings and services open to the public, public areas, public transport, education, employment and employment relations, matrimonial and family relations, and health care. Furthermore, the Law prescribes measures for promoting the equality of the persons with disabilities, measures of judicial protection against discrimination, and sanctions for discriminators.

The children and the young with developmental difficulties and disabilities and adults with disabilities are entitled to education. The Law on the Fundamentals of the Educational System of 2009 promoted the idea of inclusive education.

The child with disabilities placed pursuant to the regulations concerning the placement of children with developmental difficulties incapable of work is entitled to family pension and they exercise this right in the procedure and under the conditions prescribed by the Law on Pension and Disability Insurance.

Regarding the non-legislative arrangements undertaken in order to prevent discrimination of children with disabilities, The Ministry of Labour and Social Policy provides financial support to persons with disabilities' organisations which implement daily activities within day care institutions aimed at children with disabilities, who are unable to follow the regular school curriculum due to the nature of their disability.

Social welfare services at the local level are established and financed from the funds of local self- governments. Thus, for instance, the day care service enables children with disabilities to stay with the family and satisfy their needs in the environment in which they live, in their natural surroundings. This service provides structured activities within the defined curricular concept aimed at developing practical everyday skills, which to the greatest extent enable independence, development and maintenance of social, cognitive and physical functions, with the purpose of creating prerequisites for their inclusion into community life. This particular service offers its beneficiaries the positive and constructive experience of the stay outside the family.

Individual curriculum is designed for every beneficiary, as well as the individual plan for beneficiaries' integrated daily activities. The activity plan specifies concrete goals and the expected outcomes, and consequently the level of support each beneficiary needs in every kind/stage of the activity, as well as the necessary aids for the realisation of these activities.

In some local communities, according to the children's and their parents' needs, children with disabilities and children from particularly vulnerable groups are provided with transport, in-house assistance, one-off financial support, and in-kind assistance within the available resources of the community in question.

In the past 4 years, using the resources of the National Investment Fund, the Ministry of Labour and Social Policy provided the construction or the adaption of the 28 day care institutions in 24 local communities, 16 of which were intended for children with disabilities.

Furthermore, through its project activities the Ministry of Labour and Social Policy supports housing programmes with the back-up organised by the associations of persons with disability. Supported housing for persons with disability is a service provided at the local level its primary aim being the support in the exercise of rights and needs of persons with disability in achieving a greater level of independence, with the purpose of improving the quality of life and better social integration.

This service provides accommodation for maximum 5 beneficiaries in one residential unit, with continuous provision of support so as to enable day-to-day functioning. The beneficiaries of this category of services can be the individuals with disability who are not in possession of a residential space adequate to their needs.

The most significant regulations in the field of health care, pertaining to the actions taken to reduce discrimination of the children from ethnic minorities, (including the Roma minority), children with disabilities, children living in remote areas as well as on grounds such as sex, birth status (married/unmarried parents) or other are the following:

- Law on Health Care ("Official Gazette of RS" No. 107/05, 72/09 - other law and 88/10),
- Law on Health Insurance ("Official Gazette of RS", No. 107/05 and 109/05),
- Law on Medicines and Medical Products ("Official Gazette of RS", No. 84/04 and 85/05).
- Law on Protection of Population from Communicable Diseases ("Official Gazette of the RS", No. 125/04).
- Strategy of Continuous Improvement of Quality of Health Care and Security of Patients ("Official Gazette of RS", No.15/2009);
- Special Protocol of the Health Care System on protecting children from abuse and neglect.

In 2005 the Government of the Republic of Serbia adopted the Protocol on the Protection of Children from Abuse and Neglect in accordance with which the Ministry of Health made the Special Protocol of the Health Care System for the Protection of Children from Abuse and Neglect. This Special Protocol defines the roles and responsibilities of health professionals as well as the cooperation mechanism between the institutions operating in different sectors in the prevention and the protection of children from abuse. The Special Protocol rests on the same principles as does the General Protocol and the National Action Plan for Children, these being a child's right to life, survival and development, non-discrimination, a child's best interest, participation (participation of the child in making decisions concerning the child according to the age and developmental abilities of the child).

In the Republic health care is achieved with maintaining highest standards of human rights and values ensuring the right of the individual to physical and mental integrity

and the safety of their personality, respect of their moral, cultural, religious and philosophical convictions.

The overall aim of the Special Protocol is the protection of children from all forms of abuse, neglect and exploitation in the health care system.

In the territory of the Republic social concern for health of the socially vulnerable population is realised under equal conditions as this is done for the population group exposed to the higher risk of disease, and health care of individuals regarding the prevention, combating, early diagnostics and treatment of the diseases of greater socio-medical significance. These categories include children up to the age of 15, school children and students up to the end-date of the prescribed schooling of maximum 26 years of age pursuant to the Law; persons of Roma nationality who do not have permanent residence, that is to say, the residence in the Republic due to their traditional way of living;; persons with disabilities and mentally underdeveloped persons, as well as unemployed persons and other categories of socially vulnerable individuals whose monthly income goes below the income value prescribed by the Law governing health insurance.

102. Which measures have been taken to promote and facilitate the registration of all children?

The Constitution of the Republic of Serbia (Official Gazette of RS, No. 98/2006) guarantees the right to personal name and entry into the birth register to each and every child (Article 64).

In accordance with the Law on Registries (Official Gazette of RS, No. 20/2009), registers represent basic official records of the personal data of citizens of the Republic of Serbia. One of them is the birth register, evidencing the fact of birth, as well as other facts and changes relating to the entry of the fact of birth into the birth register envisaged by law. Civil registers, excerpts from civil registers and certificates issued based on civil registers are public documents, while data entered in civil registers and facts evidenced therein are considered true unless proven otherwise in a legally prescribed way.

The following data are entered in the birth register: data about the birth (first and last name of the child; abbreviated personal name; sex; day, month, year and hour of birth; place and municipality of birth, and name of the country of birth if the child is born abroad; unique personal identification number and citizenship), data about the child's parents (first and last name and if the parents are married to each other, last name prior to the marriage; unique personal identification numbers; day, month and year of birth; place and municipality of birth, and name of the country of birth if the parents were born abroad; citizenship; permanent place of residence and address), as well as other data relating to the change in personal status of a person registered in the birth register.

The procedure of entering the fact of birth into the birth register is clearly and precisely laid down by the Law on Civil Registers and by the Guidelines on Civil Register Keeping and Forms (Official Gazette of RS, Nos. 109/09, 4/10-corr. and 10/10), in a way which enables the exercise of constitutional right to equal protection of all citizens before the competent authorities and to legal remedy against decisions rendered by those authorities with regard to the right to the entry into the birth register.

A child birth is reported by the health institution where the child is born, and if the child is not born in a health institution, it should be reported by the father, and if he is unable to do so, by another household member, and/or by a person in whose apartment the child was born, or by the mother as soon as she is able to do so, or by a midwife, and/or the doctor who assisted the child delivery, and if there are no such persons or if they are unable to report the birth – the child birth should be reported by the person who has knowledge about the birth.

A child birth is reported to the relevant registrar for the purposes of registration into the birth register. The report may be either written or oral, but must give accurate data. The oral report of child birth requires compilation of record on the form prescribed by the Guidelines on Civil Register Keeping and Forms, and the parent details entered into the record are those from the identification card, or from passport and the excerpt from the birth register and/or marriage register if the parents are foreign citizens.

The registrar must enter the reported data into the birth register without delay. The birth data entered in the birth register must be read out loud to the person who reported them. The entry into the birth register is then signed by the person who reported the birth and by the registrar, which concludes the basic entry of the fact of birth into the birth register.

A child birth must be reported within 15 days following the birth or within 24 hours if the child is stillborn.

The fact of birth is entered in the birth register of a specific register area to which the place of birth belongs. The fact of child birth in a vehicle during a journey is entered in the birth register of a register area to which the inhabited place where the journey ended belongs.

Day, month and year of birth is entered in the birth register based on a birth report submitted by the health institution. If the child is not born in a health institution, day, month, year, hour and place of birth are established by taking a statement from the reporting person and the persons present at birth. The statement is incorporated into the record.

Data on citizenship are entered in the birth register in accordance with the Law on the Citizenship of the Republic of Serbia (Official Gazette of RS, Nos. 135/04 and 90/07) and the Rulebook on Entering the Fact of Citizenship in the Birth Register, Forms for Record Keeping of the Decisions on the Acquisition or Termination of Citizenship and the Citizenship Certificate Form (Official Gazette of RS, Nos. 22/05, 84/05, 121/07 and 69/10).

Determining the child's personal name and acknowledgement of paternity or maternity is performed in accordance with the relevant provisions of the Family Law (Official Gazette of RS, No. 18/05). These facts are entered into the birth register as prescribed by the Guidelines on Civil Register Keeping and Forms. As regards the constitutional right to a personal name, please note that pursuant to Article 13 of the Family Law, each and every person has right to a personal name, acquired at birth, which may be changed under certain conditions stipulated by that law.

As set out in Article 344 of the Family Law, the child's name is determined by parents. Parents have the right to have the child's name entered in the birth register in both mother tongue and alphabet of one or both parents. The parents are free to choose the child's name to the extent it is not disparaging, insulting to the morals or contrary to the customs and values of the community. A child's name is determined by the guardianship body if the parents are dead, if they are unknown, if they failed to name the child within the legal timeframe, if they can not agree on the child's name, or if they gave the child a disparaging name, a name insulting to the morals or contrary to the customs and values of the community.

Pursuant to Article 345 of the Family Law, parents determine the child's last name according to the last name of one or both parents. Parents can not give different last names to their common children. A child's last name is determined by a guardianship body if the parents are dead, if they are unknown, and/or if they can not agree on the child's last name.

The above provisions of the Family Law regulating personal name are connected with the provisions of the Law on Civil Registers relating to the entry of personal name into the birth register. Namely, Article 17 of the Law on Civil Registers prescribes that the personal name of a child and his/her parents is to be entered in the Serbian language, Cyrillic letters. Minority members have to right to have their personal names entered in their respective language and alphabet, this however not excluding parallel entering of those personal names in the Serbian language, Cyrillic letters.

Pursuant to Article 54 of the Law on Civil Registers, persons authorized by regulations governing personal name to determine a personal name are obliged to report a child's personal name to the competent registrar for the purposes of registration in the birth register within 30 days following the child's birth, and if they fail to agree on the child's personal name, they are required to notify the competent registrar thereof within 30 days following the child's birth. After the lapse of this period, the entry of a child's personal name will be made based on a decision of the competent guardianship body.

In addition to the above, the Law on Civil Registers also prescribes the manner of registration of the fact of birth of a child whose parents are unknown, of a child without parental care and of a child adopted. Thus, the fact of birth of a child whose parents are unknown is entered in the birth register of the register area to which the inhabited place where the child is found belongs. The entry is made based on a decision of the competent guardian body, containing the following data: child's personal name; sex; day, month, year and hour of birth; place and municipality of birth, and the child's citizenship. The inhabited place where the child has been found is registered as the place of birth. The fact of birth of a child without parental care can not be entered in the birth register in the manner prescribed for the birth of a child whose parents are known and/or unknown. The fact of birth of a child without parental care is reported after the lapse of a 30-day period following its occurrence and is entered into the birth register according to the child's residence at the time of initiating the procedure for entering that fact of birth into the birth register. The entry is made based on a decision of the competent guardian body, containing the following data: child's personal name; sex; day, month and year of birth; place and municipality of birth, and the child's citizenship. The inhabited place where the child resides at the time of initiating the procedure for entering the fact of birth into the birth register is registered as the place of

birth. An adopted child is registered in the birth register based on a decision on a new registration of birth of the adopted child rendered by the guardian body. The decision on a new registration of the fact of birth of an adopted child contains the following data: child's personal name; sex; day, month, year and hour of birth; place and municipality of birth, and the child's citizenship. Parent data are replaced with data on adoptive parents. This decision nullifies the earlier registration of birth of the adopted child.

The Law on Civil Registers provides for the registration of the fact of birth even after the lapse of timeframe for its reporting. Namely, if the birth is reported 30 days after the date of birth, the registrar may enter the fact of birth in the birth register based on a decision of the competent body. It should be noted, though, that decision-making in first instance administrative proceedings in the area of civil registers, and thus in the procedure of subsequent registration of the fact of birth, is entrusted to the city and/or municipal administration, while complaints against first instance decisions of those bodies are considered by the second instance body – the Ministry of State Administration and Local Self-Government. The work of the administration is subject to court control as complaints against final decisions in administrative proceedings may lead to administrative disputes before the Administrative Court.

103. Please describe the procedure for taking care of orphans. Is there a foster care system?

Protection of children without parental care is regulated by the Family Law ("Official Gazette of RS" No. 18/05) and the Law on Social Protection and Provision of Social Security of the Citizens ("Official Gazette of RS" No. 36/91, 79/91-other law, 33/93-other law, 53/93-other law, 67/93-other law, 46/94, 48/94-other law, 52/96, 29/01, 84/04, 101/05-other law and 115/05) and in accordance with the ratified UN Convention on the Rights of the Child.

In terms of Article 113 (3) of the Family Law, a child without parental care is: a child who has no living parents, a child whose parents are unknown or their residence is unknown, a child whose parents are fully deprived of parental rights or legal capacity, a child whose parents have not yet acquired legal capacity, a child whose parents are deprived of the right to protect and raise or educate the child, and a child whose parents fail to take care of the child or who take care of the child in an inappropriate manner. Pursuant to the Law on Social Protection and Provision of Social Security of the Citizens, a child without parental care is a child who has no living parents, whose parents are unknown or missing and a child whose parents, for any reason, temporarily or permanently fail to exercise their parental rights and obligations (Article 39).

Pursuant to the Family Law, measures of family and legal protection of children without parental care are guardianship, foster care and adoption.

Guardianship

Guardianship over minors is regulated by provisions of the Family Law (Articles 124-145 and Articles 329-340). Pursuant to the Family Law, a child without parental care (a minor ward) or an adult who is deprived of legal capacity (adult ward) is placed under guardianship. The decision on placing someone under guardianship is made by the guardianship authority and it includes the plan of guardianship, decision on appointing a guardian and decision on accommodation of the ward. A person who has personal traits and abilities necessary to perform the duties of a guardian and who has

consented to being a guardian is appointed as a guardian and these are primarily ward's spouse, relative or foster parent, unless the ward's interest requires otherwise. A ward who has reached 10 years of age and who is able to reason has the right to propose the person to be appointed as his/her guardian

The number of children under guardianship in the period 2007-2009³⁰

Year	2007.	2008.	2009.
Number of children	6.071	6.185	6.222

The guardianship authority may decide to appoint a temporary guardian to a ward, to a child with parental care, or to a person with legal capacity, if it finds that necessary for the temporary protection of the personality, rights or interests of those persons. The decision on the appointment of a temporary guardian also defines the legal operations or type of legal operations that the guardian may undertake depending on the circumstances of each specific case.

The number of children appointed a temporary guardian in the period 2007-2009³¹

Year	2007. year 2007	2008. year 2008	2009. year 2009
Number	1.918	2.250	2.813

The guardian is obliged to take care of the ward conscientiously, which includes: taking care of the ward's personality, representing the ward, acquiring funds to support the ward and managing and disposing of the ward's assets. The guardian is obliged to take care that the protecting, raising, upbringing and educating of a minor ward lead, as soon as possible, to his/her ability to lead an independent life.

Guardianship terminates: 1. when a minor ward reaches 18 years of age; 2. when a minor ward acquires full legal capacity before attaining the age of majority; 3. when a minor ward is adopted; 4. with a final court decision on the restitution of parental rights or on the acquiring or restitution of legal capacity to a minor ward's parent; 5. with a final court decision on the restitution of legal capacity to a mature ward; 6. when the ward dies. Guardianship may also terminate when a parent who failed to take care of the child or took care of the child in an inappropriate manner, starts to take care of the child in an appropriate manner. With the termination of the guardianship, the rights and duties of the guardian are also terminated.

The proceedings of placing under guardianship is initiated ex officio by the guardianship authority. The initiative for initiation of proceedings for placement under guardianship may be submitted by health care and educational institutions or social

³⁰ The data of the Ministry of Labour and Social Policy – Annual reports on the work of social welfare centres in the Republic of Serbia.

³¹ The data of the Ministry of Labour and Social Policy – Annual reports on the work of social welfare centres in the Republic of Serbia.

protection institutions, judicial and other public authorities, associations and citizens. The public is excluded from the proceedings of placing under guardianship. Data from records and documentation on placement under guardianship are considered official secret and all participants in the proceedings who have had access to such data are under the obligation to maintain confidentiality. The proceedings for placement under guardianship is urgent, the guardianship authority is under the obligation to issue a decision on the placement under guardianship immediately, and no later than 30 days from the day of being informed of the existence of a need for guardianship over a minor. The guardian or a person having legal interest may file an appeal against the decision on placement under guardianship, termination of guardianship, changing and relieving a guardian to the ministry responsible for family protection. The final decision on placement under guardianship, i.e. final decision on termination of guardianship is registered in the birth register for the ward and in the public register of real estate rights if the ward owns real estate property.

Foster care

Foster care, i.e. placement in other family, as a measure of protection of children without parental care is regulated by provisions of the Family Law (Article 110-123 and Article 328)

Pursuant to the Family Law, foster care may be established by a decision of the guardianship authority, only if the child is minor and if this is in his/her best interest. An established foster care may continue after the foster child has reached the age of 18, if the child has an impediment in psychophysical development and is unable to take care of himself/herself and of the protection of his/her rights, i.e. till the child reaches the age of 26 if the child is attending regular school. A child who has reached 10 years of age and who is able to reason has to give his/her consent to the establishment of foster care. Foster care may be established only with the consent of the child's parents, parents' consent to the establishment of foster care is not necessary when the child is without parental care. If the child is under guardianship, the consent to the establishment of foster care is given by his/her guardian.

Pursuant to the Family Law, only a person for whom it has been established that he/she possesses personal traits upon which it may be concluded that he/she will take care of the child in the best interest of the child may become a foster parent. As a rule, a person who has been trained for foster care following a special programme may become a foster parent.

Pursuant to the Family Law, a foster parent has the right and duty to protect, raise, bring up and educate the child and has to take special care to prepare the child for independent life and work. Parents of a child given over to foster care have the right and duty to represent the child, to manage and dispose of the child's property, to support the child, to maintain personal relations with the child and to decide on issues significantly influencing the child's life jointly and consensually with the foster parent, unless the parents are fully or partially deprived of parental rights or legal capacity, or they fail to take care of the child or if they take care of the child in an inappropriate manner.

Pursuant to the Family Law foster care terminates: 1. when the child reaches 18 years of age; 2. when the child acquires full legal capacity before attaining the age of majority; 3. when the child is adopted; 4. when the child or the foster parent dies; 5. by rescission of foster care. The guardianship authority may decide on rescission of foster

care at the request of the foster parent, at the request of a parent or guardian of the foster child or at their consensual request. The guardianship authority is obliged to make a decision on the rescission of foster care if it establishes that the need for foster care has ceased or that foster care is no longer in the best interest of the child. After foster care has been terminated due to the death of the foster parent or by rescission of foster care, the child's parents continue to take care of the child under parental care. After foster care has been terminated due to the death of the foster parent or by rescission of foster care, the guardianship authority decides on the care of a child without parental care.

The Rulebook on Foster Care ("Official Gazette of RS" No. 36/08) passed by the Minister of Labour and Social Policy, prescribes more detailed terms for establishing foster care and placing children in other family related to forms of foster care, standards for exercising protection of child in foster care and standards of expert procedure, the program of preparation for foster care, normative and standards for performing activities of a centre for family accommodation and the method of keeping records and documentation on foster care (Article 1).

A great progress has been made in development of foster care in the deinstitutionalisation process since the number of children in foster care has increased significantly whilst the number of children without parental care placed in institutions of social protection has decreased. Namely, until 2000 the number of children in orphanages was approximately the same as the number of children in foster families. In the period January 2000 – October 2010, the number of children in foster families increased by over 54%. The increase in number of foster families and the number of children in foster families is a continuous and stabile upward trend which is justifiably considered one of the best results in the deinstitutionalisation processes in Serbia. Six years have passed since the implementation of a well-designed and comprehensive provision of this service and the foster care popularisation program started. This service is being developed, above all, in the interest of children and because it is socially and economically justified. The main goal is that the support system for children without parental care and social protection includes as many families of favourable age structure, educational and cultural level as possible and that they are engaged in foster care. The final goal of the reform of this segment of social protection is that children without parental care grow up in family rather than in institution surroundings.

The number of children in foster care in the period 2000-2010³²

year	2000	2004	2005	2006	2007	2008	December 2009	January 2010	October 2010
Number of children in foster families	2.363	2.452	3.399	3.339	3.647	4.164	4.770	4.816	5.113

Adoption

Adoption of children is regulated by provisions of the Family Law (Articles 88-109 and Articles 311-327). Pursuant to the Family Law, a child without parental care may be adopted if it is in his/her best interest. Adoption is established by the decision of the guardianship authority.

³² The data of the Ministry of Labour and Social Policy – Annual reports on the work of social welfare centres in the Republic of Serbia.

Only a minor child may be adopted if: the child does not have living parents; the child's parents are unknown or their residence is unknown; the child's parents have been fully deprived of parental rights; the child's parents are fully deprived of legal capacity; the child's parents gave their consent to adoption.

A child that has not reached three months of life and a minor who has acquired full legal capacity may not be adopted. A child who has reached 10 years of age and who is able to reason has to give his/her consent to adoption.

Only a person for whom it has been established that he/she possesses personal traits upon which it may be concluded that he/she will exercise his/her parental rights in the best interest of the child may adopt. Spouses or common-law spouses may adopt together. A person who is the spouse or the common-law spouse of the child's parent may adopt. Exceptionally, the minister responsible for family protection may grant adoption to a person who lives alone, if there are particularly justified reasons for doing so.

The age difference between the adopter and the adoptee must not be less than 18 years nor more than 45 years. Exceptionally, the minister responsible for family protection may grant adoption to a person who is less than 18 years older than the adoptee or to a person who is more than 45 years older than the adoptee, if such adoption is in the best interest of the child

A foreign citizen may adopt a child under the condition that adopters cannot be found among domestic citizens and that the minister responsible for family protection gave his consent to adoption.

Adoption results in the establishment of the same rights and duties between the adoptee and his/her offspring and the adopters and their relatives, as between a child and his/her parents and other relatives. Adoption terminates the parental rights of parents, unless the child is adopted by the spouse or the common-law spouse of the child's parent. Adoption terminates the rights and duties of the child towards his/her relatives and the rights and duties of the relatives towards the child.

Adoption terminates by annulment, if it is null and void or voidable. Adoption may not be rescinded. After the termination of adoption, the guardianship authority decides on the care of the child.

The adoption proceedings may be initiated ex officio by the guardianship authority and by the future adopters and the child's parents, i.e. guardian. The guardianship authority determines whether the future adopters are eligible to adopt a child (general eligibility of adopters) and whether the child is eligible to be adopted (general eligibility of adoptee). The guardianship authority that has established the general eligibility of adoptee selects future adopters on the grounds of the records from the Unified Personal Adoption Register and issues a special conclusion thereof. The guardianship authority that chose the future adopters is under the obligation to direct the child to them for the purpose of mutual adaptation, unless the adopter is a foreign citizen. The guardianship authority that chose the future adopters issues a written decision on adoption: if the future adopters are eligible for adopting a child, if the child is eligible for being adopted, and if it determines that mutual adaptation of future adopters and the child was successful. The adoption is established on the day the decision on adoption is issued.

The public is excluded from the adoption proceedings. Data from records and documentation on adoption are considered official secret and all participants in the proceedings who have had access to such data are under the obligation to maintain confidentiality. The guardianship authority issues a decision on a new entry of birth for the adoptee on the grounds of the decision on adoption where the data on parents are

replaced by the data on the adopters. The decision on the new entry of birth for the adoptee is delivered without delay to the registrar keeping the birth register for the child

In addition to the Family Law, adoption is regulated by several bylaws passed on the basis of this law and regulating this matter in detail by appropriate internal and external regulations (rulebooks, instructions and opinions).

The number and structure of adopted children in the period 2006-2009 (domestic and intercountry adoption)³³:

year	in total	gender		intercountry	domestic	Nationality								
		m	f			Serbian	Roma	Muslim	Hungarian	Bulgarian	Croatian	Albanian	unknown	other
2006	97	43	54	9	88	71	18	1	1	1	/	/	1	4
2007	134	68	66	12	122	99	28	1	1	/	/	/	4	1
2008	140	71	69	11	129	102	25	/	4	/	1	1	5	2
2009	136	67	69	15	121	106	16	1	11	/	/	2	/	/

In addition to the nationality and gender, the data from the table illustrate a mild increase trend in the number of adopted children in the previous four-year period.

104. How do you provide physical and legal persons from the EU Member States equal access to your courts, without discrimination in relation to your citizens?

Physical and legal persons from the EU Member States are provided with equal access to the institutions of the Serbian judicial system, without discrimination in relation to citizens of Serbia.

Constitution of the Republic of Serbia (*Off. Gazette of RS*, No. 98/06) in a general way provides equal protection of all persons, whether they are foreign citizens or citizens of the Republic of Serbia. All are equal before the Constitution and law and 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. 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. Pursuant to international treaties, foreign citizens in the Republic of Serbia shall have all rights guaranteed by the Constitution and law with the exception of rights to which only the citizens of the Republic of Serbia are entitled under the Constitution and law. Everyone shall have the right to use his/her language in the proceedings before the court, other state body or organisation performing public powers, when his/her right or duty is decided on. Unfamiliarity with the language of the proceedings may not be an impediment for the exercise and protection of human and minority rights.

³³ The data source: Ministry of Labour and Social Policy of the Republic of Serbia, 2009.

Everyone shall be guaranteed the right to free assistance of an interpreter if the person does not speak or understand the language officially used in the court and the right to free assistance of an interpreter if the person is blind, deaf, or dumb. Everyone shall have the right to a public hearing before an independent and impartial tribunal established by the law within reasonable time which shall pronounce judgment on their rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against them.

Law on Litigation Procedure (*Official Gazette of RS*, No. 125/2004 and 111/2009) stipulates equal protection to all persons in litigation procedure, whether they are foreign citizens or citizens of the Republic of Serbia. Pursuant to the Law on Litigation Procedure Serbian Language and Cyrillic Script are in official use during litigation procedure. Other languages and scripts are in official use pursuant to the law. In courts located in areas where national minorities live their languages and scripts are also in official use, in accordance with the Constitution and the law. The parties and other participants in the procedure have a right to use their own language and script, pursuant to the provisions of this law. Parties and other participants in the procedure have a right to use their own language at hearings and during oral undertaking of procedural actions. If the procedure is not conducted in the language of the party, i.e. other participants in the procedure, they will be provided with, upon their request, oral translation into the language of what is said at the hearing, as well as the oral translation of the documents used as evidence at the hearing. The parties and other participants in the procedure who are blind, deaf or dumb have a right to free interpreter in the procedure before the court. Summons, decisions and other court documents are referred to parties and other participants in the procedure in Serbian language. If any of the national minorities' languages is in official use in the court, the court shall deliver court documents in that language to those parties and participants in the procedure who are members of that national minority and who use that language in the procedure. The parties and other participants in the procedure refer to the court their lawsuits, appeals and other briefs in the language which is in official use in the court. The parties and other participants in the procedure may refer to the court their briefs in the language of national minorities which is not in official use in the court, where it is allowed by the law.

Law on General Administrative Procedure (*Off. Journal of FRY*, No. 33/97 and 31/2001 and *Off. Gazette of RS*, No. 30/2010) stipulates that the parties and other participants in the procedure who are not citizens of the Republic of Serbia have a right to follow the course of procedure with the help of an interpreter and use their own language in the procedure.

Law on Criminal Procedure (*Off. Journal of FRY*, No. 70/2001 и 68/2002 and *Off. Gazette of RS*, No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 - other law, 72/2009 and 76/2010) stipulates equal protection to all persons in the criminal procedure, whether they be foreign citizens or citizens of the Republic of Serbia.

Pursuant to the Law on Criminal Procedure every defendant, i.e. suspect has a right to:

- 1) be familiarized with, in the shortest possible time, not later than the time of first hearing, thoroughly and in the language he/she understands, the criminal offence it is charged with on the nature and reasons of the judgment gathered against him/her;

2) The defendant has the right to defend himself or with the professional assistance of a defense attorney, chosen by himself from the line of counsels and who may be present during the interrogation of the defendant;

3) have his hearing attended by the defense attorney;

4) be brought before the court in the shortest time and be tried impartially, justly and within reasonable time;

5) have enough time and possibility provided for to prepare for his defense;

6) to plead on all the facts and evidence he/she is charged with and state facts in his/her defense on his/her own or through defense attorney; to cross-examine the prosecution witnesses and demand to have defense witnesses examined in his/her presence and under the same conditions;

7) to be provided with a translator or interpreter if he/she does not understand or does not speak the language used in the procedure.

The court or other public body or other government authority are obliged to:

1) be familiarized with, in the shortest possible time, not later than the time of the first hearing, thoroughly and in the language he/she understands, the criminal offence it is charged with on the nature and reasons of the judgment gathered against him/her;

2) warn the defendant, i.e. suspect, before the first hearing, that everything he/she says may be used against him/her as evidence and instruct him/her of his/her right to hire defense attorney who can be present at his/her hearing.

If the defendant, i.e. suspect does not hire a defense attorney, the court will appoint a defense attorney as set out by this code.

The defendant who cannot afford for, a defense council shall be appointed a defense attorney at his/her request at the expense of the court's budget, in accordance with this Code.

The defendant who is available to the court may be tried only in his/her presence, except when the trial in his absence is extraordinarily allowed by this code.

The suspect who is available to the court may not be punished if he/she is deprived of being heard or deprived of his defense.

A person deprived of liberty without the decision of the court, must be immediately informed that he/or she is not obliged to declare anything, and that everything he/she declares may be used against him/her; that he/she has a right to be interrogated in the presence of a defense attorney of his/her own choosing or have a defense attorney appointed to him/her at the expense of the court budget, if he/she cannot afford one.

A person deprived of liberty without decision of the court must, without delay, not later than 48 hours, be brought before the competent investigative judge, otherwise he/she shall be released.

A person deprived of liberty, according to the Law on Criminal Procedure, also has the following additional rights:

- 1) to inform at his/her request on the time, place and any other change of his/her depriving of liberty, without delay, a family member or another person closed to him, as well as the diplomatic-consular representative of the country of which he/she is a citizen, i.e. representative of the international organization if the person is a refugee or has no citizenship;
- 2) to communicate without impediment with his/her defense attorney, diplomatic-consular representative, or the representative of an international organization and the protector of citizens;
- 3) to be examined at his/her request by a doctor of his/her free choosing, and if such doctor is not available, than be examined by the body who deprived the person of liberty, i.e. the investigative judge;
- 4) to initiate procedure before the court, that is make an appeal to the court which if obliged to promptly decide on the legality of his/her depriving of liberty.

Every violence against a person deprived of liberty and a person with limited liberty shall be prohibited. Such person is to be treated humanely, with respect to his dignity.

Serbian Language and Cyrillic Script shall be in official use in the Republic of Serbia. Other languages and scripts shall be officially used in accordance with law.

In courts in areas where members of national minorities reside, their languages and scripts shall also be in official use in the criminal procedure, in accordance with the Constitution and the law.

Lawsuits, complaints and other briefs are being referred to the court in the language which is in official use at the court.

A foreign citizen deprived of liberty may refer to the court briefs in his/her language.

Criminal procedure shall be conducted in the language which is in official use in the court.

Parties, witnesses and other persons involved in the procedure have a right to use their language in the procedure. If the procedure is not conducted in the language of that person, oral translation shall be provided, at the cost of the court's budget, of what is said as well as the presentation of evidence.

A foreign citizen deprived of liberty shall be instructed to his right of an interpreter, who may waive that right if he/she understands the language in which the procedure is

conducted. It will be minuted that the instruction has been given and the participants have been heard.

Translation shall be entrusted to an interpreter.

Summons, decisions and other briefs shall be given by the court in Serbian Language.

If the language of a national minority is in official use in court, the court shall submit briefs in that language to persons who are members of that national minority, and who have used that language in the procedure. Those persons may request to have briefs submitted in the language in which the procedure is conducted.

The defendant who is in detention, serving the prison sentence or taking safety measures in a health institution shall also have delivered a translation of the brief in the language used in the procedure.

Pursuant to the The Law on Minor Offences (*Official Gazette of RS*, No. 101/2005, 116/2008 и 111/2009) misdemeanour procedure is conducted in accordance with the provisions of the law governing official use of languages and scripts. The defendant, witnesses and other people involved in the misdemeanour procedure have a right to use their language in the course of certain actions in the procedure or during oral hearing. If the action in the misdemeanour proceedings i.e. oral hearing is not conducted in the language of that person, oral translation of that persons arguments and other evidence material in writing will be provided. The accused, witnesses and other persons involved in the proceedings will be instructed of the right of translation, who may waive that right if they speak the language in which the misdemeanor procedure is conducted. It will be minuted that the instruction was given and that the participants consented. Translation shall be conducted by an interpreter appointed by the court conducting the misdemeanor procedure.

Criminal Code (*Official Gazette of RS*“No. 85/05, 88/05, 107/05, 111/09) stipulates that criminal legislation of the Republic of Serbia applies to everyone committing a criminal offence in its territory. Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on a domestic vessel, regardless of where the vessel is at the time of committing of the act. Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence in a domestic aircraft while in flight or domestic military aircraft, regardless of where the aircraft is at the time of committing of criminal offence. Criminal prosecution of foreign citizens in cases of their committing a crime in the territory of Serbia, or commit a crime a criminal offence on a domestic vessel, regardless of where the vessel is at the time of committing of the act, in a domestic aircraft while in flight or domestic military aircraft, regardless of where the aircraft is at the time of committing of criminal offence, may be transferred to a foreign state, under the terms of reciprocity.

Criminal Code – Article 7 stipulates that Criminal legislation of Serbia shall apply to anyone committing abroad a criminal offence specified in Articles 305. through Article 316 (crimes against the constitutional order or security of the Republic of Serbia) and specified in Articles 318. through Article 321 hereof (violation of territorial sovereignty, conspiracy for unconstitutional activity, plotting of Offences against the Constitutional Order and Security of the Republic of Serbia Grave Offences against the

Constitutional Order and Security of Serbia), or from Article 223 hereof (counterfeiting money), if the counterfeiting relates to domestic money.

Article 9 of the Criminal Code stipulates that criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence against Serbia or its citizen outside the territory of Serbia other than those defined in Article 7 hereof, if they are found on the territory of Serbia or if extradited to Serbia. Criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence abroad against a foreign state or foreign citizen, when such offence is punishable by five years' imprisonment or a heavier penalty, pursuant to laws of the country of commission, if such person is found on the territory of Serbia and is not extradited to the foreign state. Unless otherwise provided by this Code, the court may not impose in such cases a penalty heavier than set out by the law of the country where the criminal offence was committed.

Criminal Code in Article 11 stipulates Detention, any other depriving of liberty in respect of a criminal offence, depriving of liberty during extradition procedure, as well as the punishment that the offender has served abroad pursuant to the judgment of a foreign court shall be calculated in the punishment imposed by a domestic court for the same criminal offence, and if the punishment is not of the same kind, calculation shall be done according to the assessment of the court.

Liability of legal persons for criminal acts, as well as the sanctions of legal persons for criminal acts, are governed by The Law on the Liability of Legal Persons for Criminal Acts (*Official Gazette of RS No. 97/08*). This Law shall regulate conditions governing the liability of legal entities for criminal offences, penal sanctions that may be imposed on legal entities as well as procedural rules when ruling on the liability of legal entities, on imposing penal sanctions, passing a decision on rehabilitation, termination, of security measures or legal consequences of the conviction, and on enforcement of court decisions. Legal persons are liable for criminal acts from the special part of the Criminal Code part of the Criminal Code and other laws if the conditions have been met for the liability of a legal person stipulated by this law. This Law shall be applicable to national and foreign legal persons held accountable for a criminal offence committed in the territory of the Republic. This Law shall be applicable to foreign legal entities held accountable for criminal offences committed abroad to the detriment of the Republic, nationals thereof or national legal persons. This Law shall be applicable to national legal entities held accountable for criminal offences committed abroad. This law shall not be applicable to a foreign legal entity held accountable for a criminal offence committed abroad to the detriment of the Republic, nationals thereof or national legal persons, just as it shall not be applicable to national legal entities held accountable for criminal offences committed abroad if the special conditions for criminal prosecution from Article 10 Paragraph 1 of the Criminal Code (criminal prosecution shall not be undertaken if the offender has fully served the sentence to which he was convicted abroad; the offender was acquitted abroad by final judgment or the statute of limitation has set in respect of the punishment; to an offender of unsound mind a relevant security measure was enforced abroad; to an offender a relevant security measure was enforced and if a criminal offence under foreign law criminal prosecution requires a motion of the victim, and such motion was not filed).

105. Do law-enforcement officers, penitentiary or other officers undergo training on human rights, including the training on the rights of women and national minorities?

Ministry of Interior runs, in accordance with educational needs of police officers, the Professional Development Program of Police Officers. To that end, within theoretical lectures and since 2010 seminar as well, issues relating to human rights, police work with marginalized, minority and socially vulnerable groups, problem oriented police work and operation in multiethnic society have been dealt with, in reverence to which proper manuals have been drafted. Furthermore, the manual „Prohibition of Torture in International Documents “was written for the needs of police officers.

Internal Oversight Sector of the Police devotes considerable attention to education officers in the field of human rights, including rights of women, minors and minorities.

In the last two years, police officers of the Sector have taken part in seminars, courses, workshops and other forms of professional development. During the seminar "Police Work and Human Rights' organized by the OSCE Mission to the Republic of Serbia (April 2-4, 2009), 6 police officers of the Sector participated. Furthermore, the Sector also has its representative in the Working Group for the Coordination of Activities on the Implementation of the Provisions of the UN Convention of the Rights of the Child which was formed by the Minister of the Interior. Police officer of the Sector, who is also the President of Commission for Monitoring of the Implementation of the The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, participated in the round table „ Panel –Improvement of Security Protection and the Position of the Roma“ (30 June, 2009); round table organized by the Association of the Roma of Pčinjsko - Jablaničkog Okruga District (3 September 2009); lecture given by the Special Rapporteur to the UN on Torture on the following subjects: „Prevention of Torture and Inhumane or Degrading Treatment or Punishment – International Standards“, „Torture in Prisons “ and „Police Detention, Police Actions and Torture“, organized by the Protector of Citizens, Belgrade Center for Human Rights and the OSCE Mission to Serbia (4 September 2009).

The Sector in cooperation with the OSCE Mission to the Republic of Serbia also held the first workshop in the detention premises for 15 police officers of Belgrade Police Directorate, involved in providing security to persons and 5 police inspectors, entitled „Safer Detention and Treatment of Persons Held in Police Custody“.

With the aim of better familiarization with the international regulations on human rights, as well as provisions of domestic legislation, particularly the rights of persons deprived of liberty, The Administration for the Enforcement of Criminal Sanctions, in the Center for Training and Professional Education in Niš, conducts periodical training of the Administration staff, which deals with treatment of persons deprived of liberty, professional education for correct and legal use of means of enforcement and protection of persons deprived of liberty. The training is also concerned with gender equality as well as the rights of persons deprived of liberty who are members of national minorities in the Republic of Serbia.

Judicial Academy, and previously the Judicial Center whose legal successor is the Academy, has organized the training for the advisors employed by the Supreme Court of Serbia and the Constitutional Court in the field of protection of human rights.

In 2008, four seminars on the subject of „European Convention on Human Rights and Article 5 and 6 thereof“ were held. The seminars were attended by 93 enrollees.

Furthermore, in 2009, a thematic cycle of 8 seminars was held which dealt with the civil and criminal aspect of the European Convention on Human Rights separately. The enrollees were advisors with the Supreme and Constitutional Court. Four seminars were devoted to the civil aspect of Articles 3, 6, 8 and 10 of the Convention, while the other four dealt with the criminal aspect of the same Articles. The enrollees were divided into groups: the civil group had 38 enrollees, while the criminal group had 31 enrollees. Each group went through four semesters.

In 2010, 4 seminars for the advisors of the Supreme Court, Supreme Court of Cassation and for the advisors of The Republic Public Prosecutor's Office were organized on the Framework Convention for the Protection of National Minorities in the light of the national minorities' right to their language, the UN Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and on the subject of international legal aid in criminal and civil matters. The total of 102 enrollees attended the seminars.

106. Does your legislation allow for alternatives to imprisonment sentences, e.g. supervision measures, probation period and conditional release?

The Criminal Code (*Official Gazette of RS* No. 85/05, 88/05, 107/05, 72/09, and 111/09) recognizes community service as a type of penalty. Article 52 of this Code prescribes for which crimes community service may be imposed, the duration of this penalty, circumstances which are taken into consideration when imposing this penalty, replacement of community service by a term of imprisonment if the offender fails to meet his/her obligations, as well as a possibility to reduce the duration of the imposed community service if the offender meets all his/her obligations. There is an explicit provision that community service may not be pronounced without consent of the offender.

Articles 71 to 76 of the Criminal Code provide for suspended sentence with protective supervision as a cautionary measure. The listed provisions define this sanction, prescribe conditions when it can be imposed, its content, circumstances that the court considers when selecting the measure of protective supervision, the duration of protective supervision, and consequences of the offender failing to meet the obligations if he/she does not meet the measures set by the court.

Furthermore, Article 45, paragraph 5 of the Criminal Code enables the court, if the convicted person was sentenced to imprisonment of up to one year, to impose that the penalty shall be enforced without the offender leaving the premises where he/she lives. This way of enforcement may also be applied with the measures of electronic surveillance. It is also prescribed that, if the convicted person arbitrarily leaves the premises where he/she lives, the court shall decide that the rest of the sentence will be served in prison.

Article 37 of the Law on Enforcement of Criminal Sanctions, that, among other things, regulates enforcement of imprisonment without leaving the premises where the convicted person lives, prescribes cases when the convicted person is allowed to leave the premises, and the procedure for the relevant organisational unit of the

Administration for Enforcement of Criminal Sanctions in the procedure of enforcement of such sentence.

Appropriate bylaws have been passed laying down more detailed rules on enforcement of community service penalty, suspended sentence with protected supervision and enforcement of sentence without leaving the premises where the convicted person lives.

Article 46 of the Criminal Code regulates in more details the institution of release on parole. Pursuant to the given article, the court may release on parole a convicted person who has served two thirds of the prison sentence if in the course of serving the prison sentence he/she has improved so that it is reasonable to assume that he/she will behave well while at liberty and particularly that he will refrain from committing a new criminal offence until the end of the imposed prison sentence. The same article prescribes that in deliberating whether to release the convicted person on parole, consideration shall be given to his conduct during serving of the sentence, performance of work tasks relative to his abilities, and other circumstances indicating that the purpose of punishment has been achieved. It also laid down the limitation that a convicted person who attempted to escape from prison or who escaped from prison during serving imposed prison sentence shall not be released on parole.

107. Describe your plans to develop a probation system. Do you have conditioned parols and conditioned imprisonment sentences and, if so, are the convicted in these cases subject to surveillance by a probation officer during the probation period?

Articles 65 to 70 of the Criminal Code regulate the details on suspended sentence, as a cautionary measure. It is prescribed that by suspended sentence the court determines penalty for the offender and concurrently determines that it shall not be enforced provided that the convicted person does not commit a new criminal offence during a period set by the court, which may not be shorter than one or longer than five years (period of probation). The court may order in the decision on suspended sentence that the penalty shall also be enforced if the convicted person fails to meet some obligation (restore material gain acquired through commission of the offence, fail to compensate damages caused by the offence, etc.) Suspended sentence may be imposed when the offender is sentenced to imprisonment of less than two years.

Article 67 of the same Code laid down that the court shall revoke suspended sentence if the convicted person commits one or more criminal offences during probation period and is sentenced to two or more years of imprisonment for these offences (mandatory revoke) and cases when the court may revoke suspended sentence (optional revoke). Suspended sentence may also be revoked when the court, in addition to suspended sentence, decided that the convicted person has to meet certain obligations.

Articles 71 to 76 of the Criminal Code provide for suspended sentence with protective supervision as one of cautionary measures. The listed provisions define this sanction, prescribe conditions when it can be imposed, its content, circumstances that the court considers when selecting the measure of protective supervision, the duration of protective supervision, and consequences of the offender failing to meet the obligations if he/she does not meet the measures set by the court.

A special department has been established within the Division for Treatment and Alternative Sanctions of the Administration for Enforcement of Criminal Sanctions and it is in charge of enforcement of community service sentence, suspended sentence with protective supervision and other alternative measures. Civil servants in this department - commissioners are in charge of enforcement of the listed sanctions. It is planned to further develop the given organisational unit and to amend the existing regulations to enable expansion of the jurisdiction of this organisational unit to monitoring enforcement of release on parole with setting the obligations of the convicted person.

It is also planned to further specify the applicable legal provisions related especially to suspended sentence with protective supervision and enforcement of this measure which should contribute to greater application of this measure in court practice.

108. Detention:

a) Is there a minimum threshold for pre-trial detention? If yes, what is the threshold? (Pre-trial detention can as a main rule only be decided for crimes which can be punished with imprisonment above a certain duration, for ex. 1 year or more, which is the case in some MS.)

Pre-trial detention can be ordered for criminal offence for which imposed prison sentence is from three years. Such criminal offences, for which imposed prison sentence is to five years, before filing of criminal motion, pre-trial detention may take as much as it is necessary is necessary to undertake investigative measures, but not longer than eight days, extraordinarily 30 days if the criminal offence has elements of violence. This question has been answered in detail by the High Judicial Council in the Political Criteria, Question No. 70.

b) What is the average duration of pre-trial detention?

We do not have statistical data on the average duration of pre-trial detention.

c) Please describe the rules and procedures governing pre-trial detention and the rules on extending it. What are the rules regarding the revision of decisions on deprivation of freedom and pre-trial detention (automatic or upon request of the suspected)? For how long can a suspected person be deprived of his freedom before a court review takes place? Is there a maximum time limit for the total duration of pre-trial detention?

Pre-trial detention can only be ordered under conditions and in cases prescribed by the law. The conditions are listed in detail in Article 142 of the Criminal Procedure Code ("*Off. Journal of FRY*", No. 70/2001 and 68/2002 and "*Off. Gazette of RS*", No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 - other law, 72/2009 and 76/2010) and particularly: pre-trial detention can be ordered against persons if there is a reasonable suspicion that a criminal offence has been committed 1. if defendant is in hiding or it is impossible to determine his identity, or the circumstances imply to danger of escape 2. If there are circumstances indicating that defendant is to destroy, hide, alter or forge evidence of criminal proceeding or other evidence; or if specific circumstances indicate to disruption of criminal proceeding by defendant through the influence on witnesses, accomplices or aiders and abettors 3. If specific circumstances indicate that defendant shall repeat a criminal offence or

complete the attempted one, or perpetrate criminal offence he threatens to commit 4. . if duly summoned defendant avoids appearing at trial, or the Court tried on several occasions to serve the defendant with summons, and all circumstances indicate that defendant is avoiding receiving the summons 5. If sentence prescribed by the Code for the criminal offense is 10 years of imprisonment and order of detention is unavoidable because of the way of execution, consequences or other especially severe circumstances of criminal offense 6. if defendant has been sentenced by the first instance court to five years in prison or more, and ordering detention is obviously justified because of the manner of execution, consequences or other particularly severe circumstances of the criminal offense. Its duration must be reduced to the shortest possible time. During the entire procedure, detention shall be vacated as soon as evidence because of which detention was ordered, have been obtained. In such cases all bodies are due to act urgently.

When the conditions from Article 142 of the Criminal Procedure Code (hereinafter: LCP), police may deprive suspect of liberty order him/her restrict of movement not later than 48 hours. The ruling is issued immediately, or no later than two hours. The suspect must have the legal council as soon as the ruling is issued, against which they have the right to appeal, which shall immediately be submitted to the Investigative Judge who shall decide on the appeal within a term of four hours from the receipt of the appeal.

If the ruling is not canceled, police is obliged to bring the suspect before the Investigative Judge before the expiry of 48 hours. The Investigative Judge is first obliged to interrogate the person, and subsequently decide on the detention. He can order detention no longer than a month. That detention may be extended, upon elaborated proposal of the Investigative Judge or Public Prosecutor, by the ruling of the Chamber, for not longer than two months. When a criminal offense was committed for which a penalty of five years of imprisonment or a more severe penalty is stipulated, the Chamber of the Higher Court, may, upon elaborated proposal, for important reasons, extend the detention for not more than 3 months. Against the ruling on detention or extension of the detention, the party has a right to appeal.

Thus, the detention in the investigation cannot last longer than 6 months. If the Public Prosecutor fails to raise an indictment upon expiry of that deadline, the defendant shall be released.

Upon submission of the indictment to the Court, until the end of the final hearing, the Chamber is due to investigate if there is grounds for the detention and bring the decision, without the motion of the parties, on vacation or extension of the detention and particularly upon expiry of 30 days since the indictment became effective, and after it becomes final upon expiry of every 2 months.

If the ruling on detention was brought without interrogation of the defendant (for example if he/she is at large, and the wanted notice has been issued), and the defendant is deprived of liberty, the court is obliged to interrogate him/her within 48 from his/her depriving of liberty and bring a decision on the extension or vacation of the detention.

Duration of detention is specified in Article 144 of the CPC as follows:

(1) Based on the ruling of the Investigative Judge, the defendant may be kept in detention not longer than one month from the day of his depriving of liberty. After that term the defendant may be remanded in custody only based on the ruling on the extension of the detention.

(2) Detention according to the ruling of the Chamber of Judges may be extended for maximum two months. The defendant can appeal the ruling which does not stay the execution of the ruling.

(3) If the proceeding is conducted for the criminal offense punishable with up to five years in prison or more, the Chamber of the Supreme Court of Serbia may, upon a explained motion of the Investigative Judge or Prosecutor, for very important reasons, extend the detention no longer than for three months.

(4) Defendant shall be released from detention if, by the end of terms stipulated in paragraphs 2 and 4 of this Article, the indictment has not been raised.

Independence and integrity of the court in relation to the position of the competent judge is protected by the special provision of Article 145 of the CPC as follows:

(1) In the course of investigation, Investigative Judge can vacate detention with consent of the competent Prosecutor. If there is no consent between Investigative Judge and the Prosecutor, Investigative Judge shall request the Trial Chamber to decide thereof which shall render a decision within 48 hours.

(2) If detention has been vacated due to expiration of the term it was set for, the decision thereof shall be rendered by the Investigative Judge.

The reasons for the grounds of the detention in the course of the main procedure are constantly reviewed based on Article 146 of the CPC which reads as follows:

(1) After the indictment has been submitted to the Court, until the termination of trial, the ruling on ordering, extension or vacation of detention is brought in accordance with the Article 142a hereof.

(2) Even without a motion submitted by parties, the chamber is bound to review whether the grounds for detention still exist and to extend or vacate it by a ruling every month from the moment the last ruling on detention becomes final, and every two months from the moment the indictment becomes final.

(3) Appeal to the ruling from Paragraphs 1 and 2 hereof does not stay the execution of the ruling.

(4) Against the ruling of the Trial Chamber which dismisses the motion for vacating the detention there shall be no appeal.

The obligation of the state bodies to the family of the defendant or organizations which are obliged to be familiarized with the action leading to depriving of liberty of the defendant is regulated by the provision of Article 147 of the CCP which reads as follows:

(1) Public Prosecutor, Police, i.e. Court, shall immediately, inform the family or the spouse of the person under arrest, about the arrest, unless arrested person explicitly objects it.

(2) On the deprivation of liberty of the legal council, Police shall, without delay, notify the competent chamber of lawyers.

(3) Authorized social services shall be informed about the arrest, if it is necessary to undertake measures for securing children and other family members that arrested person is taking care of.

Violation of the right of freedom and security from Article 5 of the European Convention for the Protection of Human Rights and Fundamental Liberties has been proved in the following judgements which the European Court for Human Rights brought regarding the applications brought against the Republic of Serbia:

Vrenčev against Serbia, no. 2361/05

-The verdict was reached on 23rd of September 2008

-The applicant complained of violations of the right to liberty and security under Article 5 of the European Convention regarding continued detention set in the criminal proceedings led against him for the criminal offense of illicit production, possession and distribution of narcotic drugs (for it has been found 4.3 grams of cannabis)

European Court of Human Rights found that:

1. There was no violation of Article 5, Paragraph 1, or that there was no illegality in determining detention
2. Article 5, Paragraph 3 was violated since alternative measures for securing the presence at the proceedings were not considered, although the applicant had proposed a guarantee, and it was minor criminal offense
3. Article 5, Paragraph 4 was violated since 48 hours legal deadline was not respected to be decided on appeals against detention (Supreme Court decided after 4 days)
4. Article 5, paragraph 5 was violated since the applicant was not entitled to compensation in the proceedings initiated against him even though legal provisions related to prolonging the detention have been violated

The applicant was sentenced to pay a fine in the sum of 2,000 EUR for pecuniary damage and 1,603 EUR for the costs of the proceedings.

Milosevic against Serbia, no. 31320/05

-The verdict was reached on April 28th 2009

-The applicant complained of violations of the right to liberty and security under Article 5 of the European Convention regarding the continued detention set in criminal proceedings led against him for more serious theft crimes.

-Upon reaching the verdict, European Court of Human Rights found Article 5 Paragraph 3 of the European Convention violated, although applicant was legally put in detention in the legal proceedings, he remained more than 41 days in detention since his

arrest without being brought before the judge, who would be authorized to review his remaining in detention.

-Applicant was sentenced to pay a fine in the sum of 3,000 EUR for pecuniary damage and 500 EUR for the costs of the proceedings.

Dermanović vs. Serbia, the number of application 48497/06

-The verdict was reached on 23rd of February 2010

-The applicant complained about the violation of Article 3 (prohibition of torture and inhuman treatment), violation of Article 5, paragraph 3 related to remaining in detention for a long time, as well as the violation of Article 6 (right to a fair trial)

-The applicant was put in detention during the investigation of criminal proceedings for abuse of official position and forgery of documents.

-Upon reaching the verdict, the European Court of Human Rights found Article 5 Paragraph 3 of the European Convention violated, since the District Court in Novi Sad during the prolongation of the legal proceedings when the applicant was put in detention, on a routine basis and without any review, cited "risk of breaking free" as the reason applicant continues to remain in detention. Also, the request for release has not been accepted even after subsequently imposing more than $\frac{3}{4}$ of the punishment and despite the deterioration of his health.

-Applicant was sentenced to pay a fine in the sum of 1,500 EUR for pecuniary damage and 1,500 EUR for the costs of the proceedings.

Measures which the Republic of Serbia has taken relating to reaching the verdicts are as follows:

-Reached verdicts were published in the *Official Gazette*, in English and Serbian, and on the site of the Proxy and *Paragraph net* site.

-The applicants were granted with the amount of the sentenced fines

-A Proxy drew attention to paragraphs 26 to 28 to the Supreme Court regarding Vrenčev case pointing to the shortcomings of the Criminal Procedure Code (Official Gazette. FRY, no. 70/2001 and 68/2002 and Official Gazette of RS, No. 58/2004, 85/2005, 115/2005, 85/2005 – Other Law, 49/2007, 20/2009 - Other Law, 72/2009, 76/2010) as regards the powers of investigating judges and Pre-Trial Chamber when deciding on the prolongation of the detention and proposed to the Supreme Court to take a stance on violations of Article 5 of the Convention set forth in the Vrenčev and Milosevic verdicts.

-Ministry of Human and Minority Rights, at the proposal of the Proxy, initiated amendment to the Criminal Procedure Code. The essence of these changes is that one authority must be competent to decide on all three aspects of detention, determination, prolongation and termination. Any decision on detention must be reached at the hearing. Thus, a person in detention must be heard at the hearing by the person / authority authorized to release him/her within maximum 4 days. The flaw of the Code is such that the investigative judge decides on putting in detention whereas Committee decides on its prolongation or termination. Also, the Code prescribes hearing only

during determining detention and not during its prolongation or termination, which is not in accordance with the European Convention and the requirements of the Court.

d) How are human and secure conditions for detainees (in respect of international human rights standards) ensured by the police, justice, prosecution and penitentiary systems? What measures are taken if such standards are not respected?

(Higher Competent Court)

Serbia has ratified the following international instruments relevant to torture and other inhuman or degrading treatments: the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Official Gazette of FRY, International Agreements, No. 9/1991), Optional Protocol along with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Official Gazette, International Treaties, No.16/2005 and 2/2006) and the Council of Europe Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Official Gazette, International Treaties, No.9/2003).

Constitution of the Republic of Serbia (Official Gazette, No.98/2006) contains provisions related to human right to personal freedom and security (Article 27):

“Everyone has the right to personal freedom and security. Depriving of liberty shall be permitted 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.”

Under Article 28 contained in the Constitution, 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.

In 2005 the System Reform Strategy for the Enforcement of Penal Sanctions was adopted and it is being implemented in cooperation with the OSCE Mission in the Republic of Serbia. This strategy is an integral part of the Judicial Reform Strategy and involves change of the laws regulating criminal and legal as well as execution matters, system implementation change in treating those bereft of freedom and prison staff training at implementing regulations, as well as professional performance of duties, compliance with statutory laws, human rights and the rights of vulnerable groups of those deprived of liberty.

Appropriate conditions for detainees are provided by implementing existing regulations which define this area, before anything else.

Pursuant to the Law on Amendments and Additions to the Criminal Procedure Code (Official Gazette RS, No. 72/2009) passed in 2009, a person deprived of liberty without a court decision, is immediately advised that he is not obliged to make any statement, that any statement he makes may be used as evidence against him and that he has the right to be interrogated in presence of a counsel who shall be appointed at the expense of budget funds, if he cannot afford one.

A person deprived of liberty without a court decision must without delay within 48 hours be brought before the competent investigating judge otherwise shall be released.

A person deprived of liberty shall have the following additional rights:

- 1) at his request time, location and any change of location of deprivation of liberty shall be communicated, without deferral to the family member or another close person, as well as to the diplomatic-consular representative of the state whose citizen he is, i.e. the international organization representative if the person is a refugee or an ex-patriot;
- 2) To have undisturbed communication with his defense counsel, diplomatic-consular representative, the representative of international organizations and the Ombudsman;
- 3) To be checked up, at his own request, without deferral, by freely selected physician, and if that is not possible, by a physician designated by the authority of detention, or the Investigative Judge;
- 4) To initiate proceedings before the court or to appeal to the court in charge to urgently decide on the legality of detention.
- 5) Any violence against persons deprived of liberty or persons with limited freedom is prohibited and punishable. Such a person must be treated humanly, respecting dignity of his personality.

Any person deprived of liberty without a court decision must, without delay and not later than within 48 hours, be handed over to the competent Investigative Judge or otherwise be released.

In 2006 Ministry of Interior adopted Rulebook on Police Authorities ("Official Gazette, No.54/2006) where special attention is devoted to people in detention and the official record kept by police officer which shows detainee's personal data; start and termination of retention, the reason of admission and retention; meeting a person in terms of admission and retention and his/her rights, achieved rights of detainees and informing the relevant institutions, bringing the detainee to the competent authority; visible injuries or other visible signs, the reason the detainee would be given medical or first aid; dangerous means retained for detainee's safety, termination of retention. Police officer is authorised to put the person in detention and writes the official record that both the policer officer and detainee sign.

In accordance with the recommendation of the Committee for the Prevention of Torture of the Council of Europe, as set out in the report submitted to the Government of Serbia referring to the obligation of the Ministry to prepare a form that will clearly explain the basic rights of persons deprived of liberty by the police and to ensure that the form be

given at the time of arrest or ordering detention, the Commission of the Ministry of Interior for supervising the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has developed the following patterns:

1. "Rights of the persons deprived of liberty",
2. "Rights of detained persons" ,
3. "Rights of juveniles deprived of liberty",
4. "Rights of the minora as citizen",
5. "Rights of the juvenile as a suspect".

The Commission has implemented the patterns in the police practice and made them available on the internet site of the Ministry of Interior in pdf format - see "Documents" under the title "The Commission of the Ministry of Interior for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment", in Serbian (Cyrillic and Latin script) and English language. During the inspecting Ministry's organisational units, the Commission had a chance to gain direct access into their implementation in routine police practice and concluded that they are being organised in accordance with the recommendations;

In February 2010 Commission prepared Draft of the Project entitled "Improving standards and professional treatment of persons deprived of liberty in detention facilities" which was applied for the use of funds from the Matra-flex Programme, sponsored by the Ministry of Foreign Affairs of the Netherlands; however, in February 2010 the Ministry of Foreign Affairs of the Netherlands has suspended further sponsoring from this fund. In late 2010 the donor programme was reactivated and the Ministry of Interior reapplied for the use of funds from this programme still awaiting response.

Pursuant to the Law on Criminal Procedure ("Official Journal FRY", No. 70/2001 и 68/2002 и "Official Journal RS", No. 58/2004, 85/2005, 115/2005, 85/2005 – Other Law, 49/2007, 20/2009 - Other Law, 72/2009, 76/2010) the conditions of accommodation and treatment of detainees, their rights and status are defined. If the Law and adopted international standards are not respected, all possible measures to remedy deficiencies (renovation of detention, transfer of detainees with the approval of the court in less populated detention, etc.) are taken. The requirement and rights are regularly supervised by a competent court.

Treatment of detainees is prescribed under Articles 148 to 153 pursuant to the Criminal Procedure Code ("Official Journal FRY", No. 70/2001 и 68/2002 и "Official Gazette", No. 58/2004, 85/2005, 115/2005, 85/2005 - Other Law, 49/2007, 20/2009 - Other Law, 72/2009, 76/2010) (hereinafter Criminal Procedure Code).

Regularity of the detention regime is the obligation of the competent court in terms of the provision under the Article 152 pursuant to the CPC and regulated in the following way:

- (1) Detainees are supervised by the authorised President of the court.
- (2) The President of the court or the judge appointed by him shall inspect detainees on

the spot at least once a week and, if he deems it necessary, without the presence of the supervisor and the guard inform on how the detainees are fed, or supplied and how they are being treated. President of the court or a judge appointed by him shall inform the Ministry of Justice of the irregularities he has observed during his inspection of the prison on the spot without delay and notify the President of the court or a judge of the measures taken for their elimination within 15 days upon detainees' receipt. The judge must not be the Investigatory judge.

(3) The president of the court and the judge may visit all detainees or talk to them at any time and to receive complaints from them.

Under Article 153 pursuant to the CPC, Ministry of Justice (Administration for Enforcement of Criminal Sanctions) is authorized to more specifically define the detention regime. Namely, the existing by-law act which specifies the house rules for the implementation of detention measures in the Offices for Enforcement is being enforced. Given that there is an increasing number of detainees in the Republic of Serbia in 2009 and 2010, thus preventing the enforcement of their right to adequate accommodation in accordance with the international standards, the adaptation, renovation of existing and construction of new facilities for detainees' in accordance with the flow of funds from the budget.

In order to reduce the overload of the Criminal Accommodation facilities in the penal institutions for criminal sanctions enforcement as well as more effective enforcement of detainee's rights, the Government adopted a strategy to reduce overloading of the Criminal Accommodation facilities in the penal institutions for criminal sanctions enforcement in the period from 2010 to 2015 ("Official Gazette" No. 53/10), which includes specific actions and measures to be taken in order to unburden the Criminal Accommodation facilities, which shall provide more humane conditions for the enforcement of detention measures.

According to the Law on Enforcement of Penal Sanctions ("Official Gazette RS", No. 72/2009) the Criminal Accommodation of detainees is regulated under Article 237. A detainee shall be placed in a separate division of the penal institution, organised as a closed-type division, separate from prisoners, according to scheduled Act of the Minister of Justice. When housing detainees, it is taking into account previous convictions, health, personal preferences, the language he speaks and understands and the type of crime he is charged with which puts him on the burden.. Detainees who jointly committed a criminal offence shall be placed separately.

Pursuant to the Law on Enforcement of Criminal Sanctions under Article 245, supervision over implementation of the detention measure is regulated. Implementation of the detention measure is supervised by the president of the district court on whose territory is headquarters of the penal institution where detention is being enforced.

In 2010, Commission submitted a proposal to form a working group, placing a priority on developing the strategic project "Construction, adaptation and equipping detention facilities under the jurisdiction of Ministry of Interior of the Republic of Serbia " as well as records, rulebooks and guidelines in respect to treatment of police officers of the persons deprived of liberty in the penal institutions, complying with the European standards.

Commission of Ministry of Interior appointed to supervise implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides an insight into and controls facilities for detention of persons as well as their interviewing or given access into their records, three times a month in Police Directorates and Police Stations by submitting the fact sheet to the Cabinet of the Minister.

Criminal status of juvenile criminal offenders and juvenile detainees:

On 29th of September 2005 National Assembly of the Republic of Serbia adopted The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles ("Official Gazette of RS", No. 85/2005). This special act for the first time in our country regulates a criminal status of juveniles, not only perpetrators but also victims of such crimes, and represents a separate entity in terms of integrating the provisions of pecuniary, procedural legislation as well as its enforcement.

Adoption of this law has made a significant step in aligning national legislation with international documents, among which some are mandatory, such as the Convention on the Rights of the Child, signed on 18th of June 2009, and the European Convention on Human Rights and Fundamental Freedoms, signed on 3rd of April 2003, ratified on 3rd of March 2004, entered into force on the 1st of April 2005, and many others that include standards which no civilized country can denounce: UN *Standard Minimum Rules* for the Administration of Juvenile Justice, UN Guidelines for Prevention of Juvenile Delinquency, the *UN Rules for the Protection of Juveniles Deprived of their Liberty*, UN *Standard Minimum Rules* for alternative measures of institutional treatment, the European rules on community sanctions and measures.

In this way, realised legislative assumptions for the development and creation of a new system of justice in the Republic of Serbia is established to a large extent and its main goal is the establishment of juvenile justice, that is:

- based on the Rights of the Child;
- respects the juveniles' best interest as a basic principle of this system;
- focuses on prevention as the main goal;
- detention of juveniles as the last available measure in the shortest duration possible;
- applying principles: diversion and restorative justice aimed at deterring children from the formal criminal justice system and conflict resolution within the local community;
- aimed at strengthening the competences and training of all of the juvenile justice system authorities
- based on strict enforcement of international norms and standards.

Since the very beginning of implementation of The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, the duties of prevention and

suppression of juvenile delinquency and criminal protection of juveniles who are crime victims, are usually performed by police officers specially trained to work with minors (1750 police officers upon the training provided between 2005 and 2010 has acquired certificates for the treatment of minors), whereas extraordinarily, other police officers could be recruited (with no certificate) under circumstances in which specially trained police officers cannot work with minors.

In order to provide professional, ethical and law-based police treatment of minors, the Ministry of Interior adopted two internal binding documents: Guidance on the police officers treatment of minors and young adults (01 No. 4898/06 as of 1st of May, 2006) and the Special Protocol on the police officers treatment to protect minors from abuse and neglect.

Within the pretrial proceedings, pursuant to the Law on Minors, some limitations have been introduced regarding police powers enforcement to the juveniles

Retention of juvenile suspects has been abolished for up to 48 hours, which had previously been prescribed by the provisions pursuant to the Law on Criminal Procedure (Official Gazette. FRY, No. 70/2001 and 68/2002 and Official Gazette of RS, No. 58/2004, 85/2005, 115/2005, 85/2005 – Other Law, 49/2007, 20/2009 – Other Law, 72/2009, 76/2010).

A juvenile, as a citizen or a suspect, is summoned through his parents and/or legal guardian, unless this is unfeasible due to need for exigent action or other circumstances.

The law enforcement officer in civilian clothes is authorised to summon the juvenile to appear before the Juvenile Court bench for penal sanction enforcement with full respect for the dignity of the minor and without stigmatization that could have negative consequences for his/her development and social status.

Gathering information from the minor as a citizen, as well as hearing the juvenile as a suspect related to crimes that are prosecuted ex officio, shall be conducted exclusively in the presence of a parent, adoptive parent or guardian, police officer trained to work with minors who has acquired special skills in the field of child rights and juvenile delinquency, with mandatory attendance of juvenile defence counsel that has acquired such knowledge.

If the juvenile is in detention, gathering information or hearing are conducted on a prior written consent of the Juvenile judge or the President of the bench.

The Ombudsman's position is that housing conditions of persons deprived of liberty are not satisfactory, or that they threaten their human rights, with a lack of financial resources that cannot be endlessly used as an excuse to justify such a situation. The capacity of all prisons in Serbia is about 6000 people, and at present there is over 11,000 people.

The Ombudsman noted that some police stations do not have adequate premises for detained persons.

The current, overcrowded prisons are mostly old, many of them are built in the 19th century and most of them are located in the city center - so it is less likely to build necessary amenities for facilities that are constructed without a previous plan – they are inflexible to current standards, many are ruined – not maintained, humidity is

common in almost all prisons, because of overcrowding there is no possibility that persons deprived of liberty spend two hours a day in the fresh air, whereas a certain number of people do not have their own bed and sleep on mattresses on the floor. Persons deprived of liberty expressed dissatisfaction with hygiene, quantity and quality of food, treatment, unemployment and health care.

Stationary social and health institutions for treatment of mental disorders in Serbia are too large, overcrowded, dilapidated and their operation is not completely legally regulated. Very often they may be described as asylums that permanently separate such persons from the community of free people.

e) What measures have been put in place to prevent or prosecute occurrence of torture and other inhuman or degrading treatment?

Serbia has ratified the following international instruments relevant to torture and other inhuman or degrading treatments: the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Official Gazette of FRY, International Agreements, No.9/1991), Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Official Gazette, International Treaties, No.16/2005 and 2 / 2006) and the Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Official Gazette, International Treaties, No.9/2003).

Prevention of Torture and Inhuman or Degrading Treatment or Punishment is stipulated under Article 25 pursuant to Constitution of the Republic of Serbia (Official Gazette, No. 98/2006), according physical and mental integrity is inviolable. "Nobody may be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical and other experiments without their free consent."

Pursuant to Criminal Code under Article 137 criminal offence - abuse and torture are defined. The most serious form of the specified criminal offence is the one committed by an official in discharge of duty. The imposed fines are heavier than are those in case of the minor crime where the offender may be any natural entity. Given that it is a criminal offence prosecuted ex officio, there is a legal obligation to report the perpetrator of such a crime. In addition, excessive use of coercive power by the employed in the Administration for Enforcement of Criminal Sanctions constitutes a gross violation of working obligations, for which the disciplinary measure of termination of employment may be imposed.

Table 1

Acting of the Public Prosecution Service upon committed criminal offences under Article 137 pursuant to the CRIMINAL CODE for a period from the 1st of September 2009 until the 1st of December 2010 in pre-trial and preliminary proceedings.

Appellate Public Prosecution Office	Number of applicants by applications written / oral	Rejected applicati ons	Investig ations	<u>Injured.</u> <u>by</u> <u>prosecutio</u> <u>n</u> <u>Article</u> <u>64./1 CCP</u>	Persecut ion by Public Prosecut or Article 64 / 2	Indictm ent Proposal	Indictment s
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Belgrade	83	33	49	3		19	
Novi Sad	71	17	42	2	2	11	
Nis	57	23	12			19	
Kragujevac	79	45	18	2		11	2
Total	290	118	121	7	2	60	2

Table 2

Acting of the Public Prosecution Service upon committed criminal offences under Article 137 pursuant to the Criminal Code for a period from the 1st of September 2009 until the 1st of December 2010 in the main proceedings and on appeal.

The Appellate Public Prosecution Office	Prison	Verdicts fines	probation	Total of verdicts	Acquittal/dismissal	Total of appeals filed	Per Penal Sanction
Belgrade		3	9	12		1	1
Novi Sad	2			1	1	1	
Nis	1			1			
Kragujevac			1			1	1
Total	3	3	10	14	1	3	2

In addition to the criminal offence stipulated by the Criminal Code, there are other criminal offences against rights and freedoms of man and citizen (Chapter 14). Group protective object of these criminal acts are human rights, which, inter alia, complies with the obligations of States Parties of the above mentioned Convention that: "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture (Article 3, Paragraph 1), and that each State Party through the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights," to which the person may be extradited.(Article 3, Paragraph 2)

According to the Criminal Act of Coercion under Article 135:

(1) Whoever by use of force or threat coerces another to do or refrain from doing something, or to endure, shall be punished with imprisonment up to three years.

(2) Whoever commits the offence specified in paragraph 1 of this Article in a cruel manner or by threat of murder or grievous bodily harm or abduction, shall be punished with imprisonment of six months to five years.

(3) If the offence specified in paragraphs 1 and 2 of this Article result in grievous bodily harm or other serious consequences, the offender shall be punished with imprisonment from one to ten years.

(4) If the offence specified in paragraphs 1 and 2 of this Article results in death of the person under coercion or if committed by an organised group, the offender shall be punished with imprisonment from three to twelve years.

Criminal act of **Extortion of Confession under Article 136** is prescribed as follows:

(1) Whoever acting in an official capacity uses force or threat or other inadmissible means or inadmissible manner with the intent to extort a confession or another statement from the accused a witness, an expert witness or other person, shall be punished with imprisonment of three months to five years.

(2) If extortion of confession or statement is aggravated by extreme violence or if extortion of statement results in particularly serious consequences for the accused in criminal proceedings, the offender shall be punished with imprisonment from two to ten years.

Criminal act of Endangerment of Safety under 138 Article pursuant to the CC (Criminal Code):

(1) Whoever endangers the safety of another by threat of attack against the life or body of such person or a person close to him, shall be punished with fine or imprisonment up to three years.

(2) Whoever commits the offence specified in paragraph 1 of this Article against several persons or if the offence causes anxiety of citizens or other serious consequences, shall be punished with imprisonment of three months to five years.

(3) Whoever commits an act referred to in Paragraph 1 under this Article against the President of the Republic, Member of Parliaments, Prime Minister, Minister's Cabinet, Judge of the Constitutional Court, Judge, Public Prosecutor and Deputy Public Prosecutor as well as the person who is entitled to deal with information of public importance, shall be punished with imprisonment of one to eight years.

In accordance with the recommendations of the Committee for the Prevention of Torture of the Council of Europe, the Commission for supervising implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in the period between 2005 and 2010, implemented the following activities:

1) Between 2006 and 2010 the Commission made a sudden and unannounced inspection and control of all 27 regional Police Directorates (PPU) and their organizational units. Thus, it has gained the access into records of detainees, and their cases, stating in detail the current state of affairs explained in the PPU study for each case (total of 1189 pages). It had informed 730 police officers on the circumstances of the procedure of respecting fundamental human rights of detainees. During the inspection of regional Police Directorates and their organizational units, Commission also informed the detainees, found in the detention facilities, on the circumstances of their treatment by the police officers.

2) The Commission within the Regional Police Directorates inspected on the spot facilities of Emergency Service and Criminal Police (Division and Sector) Directorates

and pointed to irregularities and deficiencies related to finding unconventional means instantly requiring from the Chief of the Police that the same be removed and placed in appropriate facilities.

3) It examined five cases in which there were elements of excessive use of coercion by police officers, submitting the report to the Minister in a timely manner ;

4) In cooperation with the Police Directorate in the Ministry headquarters, the Commission actively participated in the project "Upgrading and renovation of the detention facilities", which competed for the donation of the Kingdom of Norway;

5) To assure the removal of identified deficiencies noted by the Commission during its first inspection, as well as irregularities contained in the report of the Delegation of the Committee for the Prevention of Torture of the Council of Europe, which was after the second official visit, delivered to the Government of the Republic of Serbia at the meeting (from 2006 to 2007), in the period from 2008 until December 2010 the Commission suddenly and without previous notice inspected to the spot and took control over 27 Police Directorates and all of their organizational units.

The special control is carried out in the treatment of police officers trained to work with minors and keeping the records along the line of the criminal police. It also informed a number of police officers on the circumstances of treatment procedures in case of inspection of the Committee for the Prevention of Torture of the Council of Europe and the Commission, as well as respect for fundamental human rights of detainees.

6) The Commission considered the case from the Report submitted to the Serbian Government regarding the inspection of the delegation of the Committee for the Prevention of Torture, carried out between 19 to 27 November 2007, bas end on allegations of abuse of minors during interrogation at the police station in Belgrade. It has been recommended that the same report should be submitted to the competent Prosecutor's Office;

7) During the inspection of Regional Police Directorates, the Commission has exercised control and supervision of the processed cases with elements of torture, inhuman or degrading treatment or punishment;

8) It has undertaken the activities to implement the recommendations and standards of treatment contained in the official reports (UN Committee on the Prevention of Torture, the UN Committee on the Rights of the Child, the Committee for the Prevention of Torture of the Council of Europe, the conference on "Prevention of Torture in Serbia", (held on 23th and 24th of March in 2009 in Belgrade), addressed to the Ministry of Interior of the Republic of Serbia ;

9) In accordance with the concluding recommendations of the UN Committee on the Rights of the Child in collaboration with the Judicial Training Centre and Professional Development and UNICEF Belgrade Office, by December 2009 within the implementation of the third final stage of professional training of 415 police officers, 159 of them have finished the training, being granted a permanent certificate for the treatment of juveniles after the test. Since November 2009, 202 police officers have been trained out of 1308 trainees who have not had this kind of training before;

10) The Commission has prepared a handbook for police officers, "The prohibition against torture in international documents" and "Collection of recommendations from international authorities to the Republic of Serbia in the field of human rights and prevention of torture", which in accordance with to the professional training programme of police officials in the Ministries are introduced as supplementary materials for education of police officers from the Ministry of subject areas relating to the protection of human rights".

11) The Commission has established a network of officers to contact the Commission from all Regional Police Directorates (27), who shall act according to the guidelines of the Commission and contribute to more efficient implementation of recommendations of international treaty authorities.

In 2009 Division for International Cooperation and Legal Aid within Public Prosecutor's Office continued participating in the Interportfolio Working Group on systematic processing of individual applications before the UN treaty authorities.

The Division acted according to the Conclusions of the UN Committee against Torture from the point of application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment pursuant to the Acts of the Serbian justice system stipulating that it is necessary to either reach or correct the final judgments or decisions regarding these persons.

The decision was made to introduce the regulations on procedure in cases where the decision was made by the UN treaty bodies, as well as in the case of future decisions of the Court of Justice in Strasbourg, and until it happens it should act by investing in extraordinary legal remedies thus trying to obtain that Supreme Court of Serbia adopt the best practice of European courts.

The Institutes for Enforcement of Penal Sanctions shall keep the records on implementation of coercive measures, which means implementation of coercive measures taken against the arrested as well. Division for Supervision at the headquarters of the Administration for Enforcement of Criminal Sanctions has jurisdiction, in cooperation with the President of the court to supervise the implementation of the detention measure, inspect the records as well as legality of the implementation of coercive measures by the employees of the Institutes. If there are grounds to suspect that a criminal offence has been committed and prosecuted ex officio or a commercial offence, an authorised official for supervision of the Division of Supervision at the headquarters of the Administration are required to file criminal charges with the competent public prosecutor, or to initiate appropriate proceedings (Article 272, Law on Enforcement of Penal Sanctions). In addition, given that it is a criminal offence prosecuted ex officio; there is a legal obligation to report the perpetrators of such crimes. Furthermore, excess in the application of coercive measures by the employees in the Administration for Execution of Criminal Sanctions constitutes a gross violation of work duties, for which a disciplinary measure of termination of employment may be imposed.

In order to prevent torture, the Administration for Execution of Criminal Sanctions in the Centre for Training and Professional Training in Nis organises a periodic training

of employees in the Administration, which includes treatment of persons deprived of liberty, training for proper and lawful use of coercive measures and protection of persons deprived of liberty.

109. In cases where there is a pre-trial detention, in average how long have the suspected persons been deprived of their freedom before a competent judicial authority has decided on the detention? What is the average duration between the lawful arrest and the start of the trial?

Pursuant to the Police Act Detention may last up to 24 hours, pursuant to the Criminal Procedure Code (*Official Gazette*. FRY“, No. 70/2001 and 68/2002 as well as *Official Gazette* of RS, No. 58/2004, 85 / 2005, 115/2005, 85/2005 – Other Law, 49/2007, 20/2009 - Other Law, 72/2009 and 76/2010) and no longer than 48 hours pursuant to the Misdemeanour Law (*Official Gazette*, No. 101/2005, 116/2008 and 111/2009) up to 12 hours or longer than 24 hours.

Pursuant to the Criminal Procedure Code – under Articles 227 and 229 there are rules prescribed with the aim that no innocent person be convicted and that penal sanctions be enforced to the offender under conditions provided for by the Criminal Code and based on the legally prescribed procedure. Detention is determined by a decision reached by the competent court, whereas police authority can exceptionally hold individuals for gathering information and hearing no longer than 48 hours upon detention or response to summons.

In cases where a decision on detention has been rendered, and the most common cases are those when the defendant is a fugitive, the authority orders the issuance of arrest warrant, and he becomes deprived of liberty, whereas the court must hear him within 48 hours of arrest and decide on the detention, whether to prolong or abolish it. The investigation of detention may not last longer than six months. Investigations terminate before the end of that period. When the charge comes to have legal force and effect the hearing (trial) shall be scheduled within a maximum period of two months, provided that the detention cases are scheduled urgently and on an expedited basis.

110. Imprisonment after conviction:

a) What is the average number of prisoners per cell square meter? What is the present size of the prison population?

It is not possible to determine the average number of prisoners per cell square meter, given that housing conditions vary from one cell to another. In some Penal Institutions the number of detainees per one cell is from 2 to 40 persons. Institutions for Execution of Criminal Sanctions in the Republic of Serbia are overloaded, regarding steady and dramatic increase in the number of prisoners in recent years. **At this point the number of persons deprived of liberty in the Republic of Serbia is 11,500 while the accommodation capacity of the penal institutions is 6500 persons.**

b) Are inquiries into cases and allegations of ill treatment of detainees followed up? If so, how is this done? What is done to ensure a thorough, transparent and independent process?

Under Article 152 pursuant to the Criminal Procedure Code ("Official Gazette ", No. 70/2001, 68/2002, Official Gazette of RS, no. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122 / 2008, 20/2009, 72/2009, 76/2010) ,the President of the court or the judge appointed by him shall inspect detainees on the spot at least once a week and, if he deems it necessary, without the presence of the supervisor and the guard inform on how the detainees are fed, supplied and how they are being treated. President of the court or a judge appointed by him shall without delay inform the Ministry of Justice of the irregularities he has observed during his inspection of the prison on the spot and notify the President of the court or a judge of the measures taken for their elimination within 15 days upon detainees' receipt. The President of the court and the judge may visit all detainees or talk to them at any time and receive complaints from them. In addition, the organizational unit within the Administration for Execution of Penal Sanctions has the right to control them. This supervision, among other things, include status control and protection of the rights of prisoners, treatment of persons deprived of liberty, security of the Bureaus and persons deprived of liberty.

According to the provisions pursuant to the same Code, this restriction does not apply to letters exchanged by detainee with his defence counsel, as well as letters that a detainee sends to international courts, international organizations dealing with human rights, Ombudsman and domestic legislative, judicial and executive authorities, or which he receives from them.

Please note that in addition to all the rights of the suspect provided by the CPC the Ministry of Interior formed "the Commission to supervise implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment", which consists of representatives of the Internal Controls of the Police Department, Financial Department, Human Resources Joint Activities Department, the Criminal Police Directorate and Police Directorate

The duties of the Commission are as follows:

- inspecting on the spot of the detention cells in the the organizational units of the competent Ministry
- establishing direct access to the facilities and cells used for temporary stay of detainees;
- controlling the hygienic conditions in the detention cells;
- inspecting the premises used for interviewing detainees in order to find unconventional means (baseball bats, metal bars, etc..), and gain direct access to the buildings and places designated for their disposal and storage;
- inspection of keeping detention records, applied authorisation and the cases;
- Upon estimation, inspection and supervision of processed cases with elements of torture, inhuman or degrading treatment enforced by police officers of the Ministry;•
- organization and initiating training for the prevention of torture, inhuman or degrading treatment or punishment and ill treatment of the police officers in the Ministry of the detainees ;
- carry out activities aimed at prevention and promotion of the rights of the persons deprived of liberty and detained juveniles.

Also, the Commission has prepared the patterns: "Rights of the persons deprived of liberty", "Rights of detainees" and "Rights of juveniles deprived of liberty", in

accordance with the Criminal Procedure Code, which Ministry of Interior implemented. These patterns have been placed on the internet site of the Ministry of Interior in pdf format, section - "Documents", entitled "Commission of the Ministry of Interior for Prevention of Torture, Inhuman or Degrading Treatment or Punishment", both in Serbian and English.

When it comes to convicted persons, Articles 114, 114a and 114b pursuant to the Law on Execution of Criminal Sanctions (Official Gazette of RS, No. 85/2005 and 72/2009) stipulate their right to submit the written statement complaint and appeal. In order to exercise their rights, the convicted person may submit the written statement to departmental head or other authorised person in the respective service of the institution, who shall, within five days from the day of submitting the written statement give an explanation by replying to it. Also, every prisoner has the right to file complaints to the institution's warden due to violations of his rights or other irregularities affecting him, whereas the prison governor or a person authorised by him is required to carefully consider a complaint and make a decision thereupon within 15 days.

Convicted persons who fail to receive a reply to their complaints or are not satisfied with the ruling are entitled to file an appeal with the director of the Administration within eight days of the date of receiving the ruling.

Where a convicted person believes that his right or rights have been violated by an action of the institution's warden, he is entitled to submit a complaint to the director of the Administration. Director of Administration or person duly authorised by him may examine the admissibility of the complaint also by direct inspection of all relevant documentation of the penal institution, discussion with the Head and staff of the penal institution, conversation with the convict who has filed the complaint and other convicts, without presence of the penal institution employees. If it is established that the complaint is admissible, Director of Administration shall order that violations of the convict's rights be eliminated.

The convicted person is entitled to complain to the authorised person in charge for supervision of the penal institution operations, without presence of employees. The content of the complaint is a secret.

Pursuant to the Law on Execution of Criminal Sanctions under Article 165 convicted persons are entitled to judicial review of any final decision whereby any of their rights determined by this Law were restricted or violated. The judicial review shall be realised in an administrative procedure.

Upon complaints of persons deprived of liberty which indicate that their rights have been violated and upon his own initiative when learning about the violation of the rights from any source, Ombudsman institutes proceedings and seeks the plea on violation of the rights from the institution. Also, if necessary, the Ombudsman goes to the institution for immediate confirmation of the relevant facts and issues act that establishes the violation of specific rights and gives recommendations to the institution in case to rectify identified deficiencies and protect such future violation of rights. The institution is bound to inform the Ombudsman about acting upon his recommendation in due course.

Ombudsman is an independent state body that carries out its duties independently that no one has the right to influence. Ombudsman is permitted to unrestricted visits to the institutions for housing persons deprived of liberty, unsupervised conversation with all these persons as well as employees, and to have at his disposal all the information required, regardless of the degree of confidentiality. In this way a detailed, transparent and independent procedure for the control of institutions where persons are deprived of their liberty is provided.

c) Are pre-trial detainees separated from convicted prisoners?

Under Article 237 pursuant to the Law on Execution of Criminal Sanctions, a detainee shall be placed in a separate division of the penal institution, organised as a closed-type division, separate from prisoners. Upon placement of detainees, special attention shall be paid to their previous convictions, health, personal preferences, language he speaks and understands and type of criminal offence he is charged with. Detainees who jointly committed a criminal offence shall be placed separately.

d) Is special attention devoted to female prisoners and young offenders? If yes, please provide a detailed description.

In the system of enforcement of criminal sanctions in the Republic of Serbia, special attention is paid to women and minors. In terms of execution of detention measures, women and minors in detention are placed separately from other detainees.

When it comes to prison sentence execution of female convicted persons in the Republic of Serbia, they serve a sentence in one institution – the Correctional Institution for Women in Pozarevac. As for the minors, there are also special institutions, the only of its kind in Serbia. Juvenile imprisonment shall be served in the Correctional Institution for Juveniles in Valjevo, whereas the educational measure of committal to a correctional institution is implemented in the Educational and Correctional Institution in Kruševac. Both institutions have a specialized and individualized treatment programmes that apply to juveniles.

e) Are there special provisions for prisoners with mental disabilities? Are such prisoners incarcerated? Are they separated from others?

Within the system of criminal sanctions in the Republic of Serbia, inter alia, there is a security measure of compulsory psychiatric treatment and incarceration in a medical institution. This measure is imposed to an offender who has committed a crime in the state of significantly reduced mental capacity or mental disorder, provided, with respect to criminal offence and the state of mental disorder, the court finds that there is a serious risk that the offender shall make a more serious criminal offence in the future and that in order to eliminate this danger he/she needs treatment in this kind of institution.

The above mentioned security measure for the entire territory of the Republic of Serbia is implemented in a separate institution - the Special Prison Hospital in Belgrade. Given that other security measures are implemented in this Institution (the compulsory treatment of alcohol and narcotics addicts), as well as treatment of convicted and detained persons, persons on whom the security measure of compulsory psychiatric treatment and custody in health-care institution have been imposed, is carried out in a

separate division that is physically and organisationally separate from other divisions of the Institute.

Along with the execution of the penitentiary sanction, security measures of compulsory psychiatric treatment at liberty may be imposed on the offenders as well. This measure is imposed on the offender who, due to mental disorder, committed unlawful act prescribed by the Law as a criminal offence, if there is a serious risk that the offender shall make another illegal act prescribed by the Law as a criminal offence and that in order to eliminate this danger in the future it is enough his treatment at liberty.

If persons who were sentenced to imprisonment happen to have psychological disturbances during the execution of a sentence, they shall be treated in the correctional institution. The convicted person is obliged to ask for the psychiatrist services, and in case of serious illness, he/she is sent to the Special Prison Hospital in Belgrade which has a special division physically and organizationally separate from other divisions of the Institute.

111. Do you have a system of alternative sanctions (instead of prison)? What is the ratio of prison sentences compared with alternative sentences? Are alternative measures to pre-trial detention and imprisonment being developed or in place? If yes, please describe the measures.

The Criminal Code (*Official Gazette of RS* No. 85/05, 88/05, 107/05, 72/09, and 111/09) recognizes community service as a type of penalty. Article 52 of this Code prescribes for which crimes community service may be imposed, the duration of this penalty, circumstances which are taken into consideration when imposing this penalty, replacement of community service by a term of imprisonment if the offender fails to meet his/her obligations, as well as a possibility to reduce the pronounced duration of community service if the offender meets all his/her obligations. There is an explicit provision that community service may not be pronounced without the consent of the offender.

Articles 71 to 76 of the Criminal Code provide for suspended sentence with protective supervision as one of cautionary measures. The listed provisions define this sanction, prescribe conditions when it can be imposed, its content, circumstances that the court considers when selecting the measure of protective supervision, the duration of protective supervision, and consequences of the offender failing to meet the obligations if he/she does not meet the measures set by the court.

Furthermore, Article 4, paragraph 5 of the Criminal Code enables the court, if the convicted person was sentenced to imprisonment of up to one year, to impose that the penalty shall be enforced without the offender leaving the premises where he/she lives. This way of enforcement may be applied with the measures of electronic surveillance. It is also prescribed that, if the convicted person arbitrarily leaves the premises where he/she lives, the court shall decide that the rest of the sentence will be served in prison. Article 37 of the Law on Enforcement of Criminal Sanctions, that, among other things, regulates enforcement of imprisonment without leaving the premises where the convicted person lives, prescribes cases when the convicted person is allowed to leave the premises, and the procedure for the relevant organisational unit of the

Administration for Enforcement of Criminal Sanctions in the process of enforcement of such sentence.

Appropriate bylaws have been passed laying down more detailed rules on enforcement of community service sentence, suspended sentence with protected supervision and enforcement of imprisonment sentence without leaving the premises where the convicted person lives.

The listed sanctions are enforced in cooperation with the local self governments and public companies and the enforcement is fully in accordance with the enforcement of corresponding sanctions in European countries. It is expected that the court practice will impose a greater number of these sanctions than it is the case today which will enable easing the overburdened accommodation capacities of bureaus for enforcement of criminal sanctions as well as budgetary savings. Other measures and sanctions with application of electronic surveillance are being introduced and a greater use of measures for ensuring the presence of the defendant in the criminal proceedings, other than the pre-trial detention, is expected. The current number of imposed so called alternative sanctions in comparison with the imposed prison sentences is very small.

In addition to the measure of pre-trial detention, provisions of the Criminal Procedure Code laid down other measures for ensuring presence of the defendant in the criminal proceedings. As one of these measures, Article 136 of the given Code provide for measure of prohibition to leave a residence which defines that the court may issue a ruling with a statement of reasons prohibiting the defendant to leave his/her residence without prior permission. In addition to this measure, the defendant may be prohibited from visiting certain places or meeting certain persons or approaching certain persons, or he/she may be ordered to report periodically to a certain state authority, or his/her passport or driving license may be temporarily seized.

It is also planned to further specify the applicable legal provisions related to this measure and its enforcement in order to ensure its greater application in court practice.

112. When a case is remanded from the Supreme Court to a lower court for retrial, is the lower court then obliged to respect the positions of the Supreme Court on the legal issues the Supreme Court has dealt with? Does it happen often that one and the same case is remanded several times from the Supreme Court. If so, do you consider that this is a problem which you need to rectify?

Pursuant to the Law on Organization of Courts ("*Official Gazette of RS*", No. 116/2008, 104/2009 and 101/2010) the General session of the Supreme Court of Cassation of Serbia shall adopt general legal views; reviews the application of laws and other regulations and the work of courts; appoints judges to the Constitutional Court; gives an opinion on candidates for the President of the Supreme Court of Cassation; issues the Regulation on the Organisation and Operation of the Supreme Court of Cassation and performs other tasks set forth by law and the Regulation on the Organisation and Operation of the Supreme Court of Cassation. A general legal opinion adopted at the General Session is binding to all chambers and departments of the

Supreme Court of Cassation and may be revised only at the General Session. However courts of lower instance are not obliged to observe those opinions.

In the civil proceedings a court of first instance is only obliged to conduct all litigate actions and hear all contentious issues indicated by the court of second instance in its decision (Article 384, Paragraph 2 of the Civil Procedure Law). Appropriate application of this provision is stipulated in the revision procedure (Article 411 of the Civil Procedure Law). The Civil Procedure Law ("*Official Gazette of RS*", No. 125/2004, 111/2009) in Article 369, Paragraph 2 provides for multiple cancellation of the first instance judgement in the appellate proceedings, but such prohibition is not stipulated for the revision proceedings. There have been cases where the case has been brought back to the Supreme Court of Cassation several times (up to two times), which requires further reform of the civil proceedings.

Criminal legal beliefs, positions and conclusions adopted at the session of the Supreme Court of Cassation department oblige all departments within that department not only belonging to that court in the sense of Article 37, Paragraph 8 of the Rules of Procedure and Organization of the Supreme Court of Cassation, and the same relates to the principle legal positions adopted at the General Session of this Court. Pursuant to the Criminal Procedure Code ("*Official Gazette of RS*", No. 70/2001, 68/2002, " *Official Gazette of RS*", No. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2008, 20/2009, 72/2009, 76/2010) with regard to the positions expressed in particular decisions of the Supreme Court of Cassation, they are binding for courts of lower instance, and so if the final judgment is cancelled and the subject is remanded for retrial, the court of lower instance, in the sense of Article 427, Paragraph 2, is obliged to carry out all procedural actions and debate issues remanded to it by the Supreme Court of Cassation in its decision. In the practice thus far there were no cases that the High Judicial Council remanded the same case to lower instance courts several times for review. If that had happened, the High Judicial Council would undertake all necessary measures to solve that problem.

Pursuant to the Law on Administrative Disputes ("*Official Gazette of RS* ", No. 111/2009) judgment brought in the administrative dispute shall be binding. Against the judgment brought in the administrative dispute no appeal can be made (finality).

113. How is the right to a fair trial enshrined in the legislation?

The Constitution of the Republic of Serbia ("*Official Gazette of RS*", No. 98/06) stipulates that Everyone shall have the right to a public hearing before an independent and impartial tribunal established by the law within reasonable time which shall pronounce judgment on their rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against them. Everyone shall be guaranteed the right to free assistance of an interpreter if the person does not speak or understand the language officially used in the court and the right to free assistance of an interpreter if the person is blind, deaf, or dumb.

The basic tenet on which conducting of criminal proceedings is based is the presumption of innocence regulated in the Constitution and legal regulations. Everyone shall be presumed innocent for a criminal offence until convicted by a final judgment of the court. State bodies, public information media, associations of citizens, public personalities and other persons shall abide by the rules on the presumption of innocence and not insult in their declaration on criminal procedure in progress other rules of the proceedings, the rights of the accused and the aggrieved, as well as the authority and

independence of the court. Furthermore, the Constitution and the Criminal Procedure Code ("*Off. Journal FRY*", No. 70/2001 и 68/2002 and " *Official Gazette of RS* ", No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 - other law, 72/2009, 76/2010) guarantee the rights of the defendant. Any person charged with criminal offense shall have the right to be informed promptly, in accordance with the law, in the language which this person understands and in detail about the nature and cause of the accusation against him, as well as the evidence against him. Any person charged with criminal offense shall have the right to defend himself personally or through legal counsel of his own choosing, to contact his legal counsel freely and to be allowed adequate time and facilities for preparing his defense. Any person charged with criminal offense without sufficient means to pay for legal counsel shall have the right to a free legal counsel when the interests of justice so require and in compliance with the law. Any person charged with criminal offense available to the court shall have the right to a trial in his presence and may not be sentenced unless he has been given the opportunity to a hearing and defense. Any person prosecuted for criminal offense shall have the right to present evidence in his favor by himself or through his legal counsel, to examine witnesses against him and demand that witnesses on his behalf be examined under the same conditions as the witnesses against him and in his presence. Any person prosecuted for criminal offense shall have the right to a trial without undue delay. Any person charged or prosecuted for criminal offense shall not be obligated to provide self-incriminating evidence or evidence to the prejudice of persons related to him, nor shall he be obliged to confess guilt. The presumption of innocence is also confirmed by the Public Information Law which stipulates that no one may be indicated to be the perpetrator of a punishable offence that is announced guilty or responsible before the final judgment of the court or other competent body.

Pursuant to the Civil Procedure Law ("*Official Gazette of RS*", No. 125/2004 and 111/2009) parties shall be entitled to legal, equal and just protection of their rights. The court cannot refuse to decide on the case for which it is competent.

Law on Judges ("*Off. Gazette of RS* ", No. 116/08, 58/2009 – decision of the CC, 104/2009 and 101/2010) stipulates that the judge shall impartially conduct the proceedings according to his/her conscience, in accordance with his/her own assessment of facts and interpretation of the law, with observance of the right to a fair trial and process rights the process rights of parties guaranteed by the Constitution of the Republic of Serbia, law and and international acts.

Pursuant to the Law on Public Prosecution ("*Off. Gazette of RS*", No. 116/2008, 104/2009 and 101/10) Public Prosecution Service shall be in the public interest for the sake of securing the application of the Constitution of the Republic of Serbia and laws, whereas the observance and protection of human rights and fundamental liberties must be secured. Public Prosecution Service shall be performed impartially.

Breach of the right from Article 6, Paragraph 1 (right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms was determined in most judgements which the European Court of Human Rights brought against Serbia.

Those cases are as follows: Dimitrijevic and Jakovljevic (349220/07), Cižikova (8044/06), Nemet (22543/05), Vincic (44698/06), Simic (299908/05), Salontai-

Drobnjak (36500/05), M.V. 45251/07, Grisevic and others (16909/06...), Felbab (14011/07), Doric (33029/05), Crnisanin and others. (35835/05...), Vlahovic (426197/04), Stankovic (29907/05), Ceh (9906/04), Cvetkovic (17271/04), Bulovic (14145/04), Kacapor and others (2269/06), ZIT enterprise (37343/05), Jovicevic (2637/05), Popovic (38350/04), Ilic (30132/04), Stevanovic (26642/05), Mikuljanac, Malisic and Safar (41513/08), Samardžic and a.d. Plastika (28443/05), Jevremovic (3150/05), Tomic (25959/06), EVT (3102/05), V.A.M. (39177/05) and Matijasevic (23037/04) and finally Rakic and others(47460/07) and Motion Pictures Guarantors Ltd. (28353/06)

Cases in which the breach of the right to a fair trial was determined are vary substantially: family and legal proceedings, labour disputes and particularly disputes for the execution of the final judgements. Furthermore, the breach of the right to a fair trial also occurs in cases of inconsistent actions of the courts regarding the legal matter and, in one case, due to absence of oral debate in court.

In most cases the Europisan Court of Human Rights (hereinafter: ECHR), apart from the breach of the right to a trial within a reasonable time, also determined the breach of the right to an effective legal remedy (Article 13 of the European Convention), which is to say that prolonged duration of the procedure and inefficiency of certain legal are the fundamental shortcomings of the national legal system.

In the procedure of the enforcement of judgements, the Sector for Representation before the ECHR cooperates with the Department for enforcement of the Committe of Ministers of the Council of Europe which oversees the enforcement of judgements of the European Court of Human Rights. In relation to the enforcement of judgements, so called individual and general measures are applied. As against individual measures, the purpose of which is to remove the breach of rights in the particular case of an applicant, the general measures are aimed at the prevention of future breaches which would certainly occur if shortcomings of the legal system were not removed. Since the breach of the right to a fair trial, espically the trial within a reasonable time and lack of effective legal remedy, have proved to be the systemic problems, the general measures practically boil down to the fundamental reform of the legal system of the Reupublic of Serbia.

The measures undertaken thus far are as follows:

Legislative measures: The right to a fair trial is stipulated by the Article 32 of the Constitution of the Republic of Serbia which was promulgated on 8 November 2006, the right to a trial within a reasonable time is stipulated by Article 10 of the Civil Procedure Law („*Official Gazette No. 125/04*). Furthermore, urgent actions in certain kinds of disputes are stipulated in legal provisions, such as in Article 435 (labour disputes) or Article 447 (obstruction of possession actual) of the Law on Criminal Procedure. Furthermore, the Family Law („*Official Gazette No. 18/2005*) in Article 204 stipulates urgent actions of the court in every procedure which relates to child or parent excercising parental right.

The Enactment of the Law on Mediation in 2005 („*Official Gazette No. 18/2005*“) is also considered a step ahead in contributing to efficient solving of disputes.

The National Judicial Reform Strategy was adopted on the session of the National Assembly of the Republic of Serbia on 25 May 2006 and its fundamental goal is establishing of the rule of law and legal security which will restore trust in the state's legal system to people. The national strategy is based on four principles: independence, transparency, accountability and efficiency. Its execution has been entrusted to a ten member commission comprised of the representatives from all relevant judicial institutions. The Strategy provides for the period of 6 years the period of 6 years within which the application of these principles is to be secured.

In 2008, a good deal of judicial laws were adopted, such as the Law on High Judicial Council, the Law on Judges and the Law on Organisation of Courts („Official Gazette No. 116/08) the application of which has commenced successfully.

The measures being undertaken are as follows:

The Law on Enforcement and Security is being drafted whereby in the judicial system of the Republic of Serbia the institution of private bailiffs is introduced. Among other things, this decision is looked upon as being able to overcome the problem of prolonged procedure.

Furthermore, amendments are being planned to the Civil Proceedings Law dealing with efficiency of judicial proceedings and overcoming problems that judges encounter in practice. Representative of the Republic of Serbia participated in the debate which was held in the Ministry of Justice regarding the drafts of these laws and drew attention to the position of the European Court of Human rights and Committee of Ministers of the Council of Europe regarding the fundamental problems of the Serbian judicial system that had hitherto been spotted. Further, a series of laws are to be adopted leading to the establishment of modern and efficient judiciary the Republic of Serbia, such as the Attorney-at-Law Act, The Law on Public Notaries, the Law on Bar Exam and the Law on Free Legal Aid.

The problems that persist are as follows:

Department for the Application of the Committee of Ministers of the Council of Europe particularly points to the problem of inobservance of regulations on reporting domicile, which is crucial for the submission of briefs and securing the presence of parties in judicial proceedings.

Constitutional Appeal

Since in relation to the breach of the right to a fair trial from Article 6 of the European Convention, breach of Article 13 is also often determined, it is worth noting that in the judgement *Vincic vs. Serbia* (44698/06), in Paragraph 59, the European Court of Human Rights ruled that the constitutional appeal, which by Article 167, Paragraph 4 and Article 170 of the Constitution may be submitted to the Constitutional Court due to breaches of human rights guaranteed by the Constitution, may be deemed to be the efficient legal remedy in the sense of Article 35, Paragraph 1 of the European Convention for all applications filed from 7 August 2008. This position of the Court indicates that the Republic of Serbia has made a significant improvement for the purpose of the protection of human rights within the domestic legal system.

114. Elaborate on the legislative structures in place to ensure effective access to legal aid, commenting on the scope and resources of the legal aid service.

The Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/06) from 2006 made the first necessary step to approximation of our law in the area of legal aid to the modern notion of legal aid and the European standard. The right to legal aid became a human right, as a right of every person, guaranteed by the Constitution and followed by the legal obligation of the state. Article 67 of the Constitution of the Republic of Serbia provided for that everyone shall be guaranteed legal aid under conditions stipulated by the law, the legal aid shall be provided by attorneys, as an independent and autonomous service, and legal aid services established in the units of local self-government in accordance with the law. The law defines when the legal aid is provided free of charge. Furthermore, the Constitution contains another specific provision of this right in Article 29 laying down that "Any person deprived of liberty without decision of the court shall be informed promptly about the right to remain silent and about the right not to be questioned without the presence of a defence counsel of his/her own choice or a defence counsel who will provide legal assistance free of charge if he/she is unable to pay for it." The constitutional rank of the right to legal aid is made specific through provisions of procedural laws on criminal and civil matters, the Court Rules of Procedure and the Law on Local Self Government (*Official Gazette of RS* No. 129/07) that in Article 20, paragraph 1, point 31 stipulated that municipality through its authorities organises the legal aid service for citizens (Ministry of Public Administration and Local Self Government is in charge of monitoring application of this law). The special law on legal aid is being drafted. In this area the Government of the Republic of Serbia has passed the Strategy of Development of Free Legal Aid System (*Official Gazette of RS* No. 74/10) where it defined an action plan with activities related to implementation and development of the system of free legal aid in the Republic of Serbia.

115. How is effective access to free legal aid in criminal cases ensured? Can free legal aid also be obtained in civil cases? Please give details on the criteria for receiving legal aid in civil matters.

The Criminal Procedure Code (OJ of FRY No. 70/2001 and 68/2002 and OJ of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other laws, 49/2007, 20/2009 – other laws, 72/2009 and 76/2010), within its basic principles in provisions of Article 4 paragraphs 3 and 4 stipulates that if the defendant or the suspect does not obtain a defence counsel, the court shall appoint him a defence counsel as provided for by the law and if the defendant cannot afford a counsel, he/she shall be, at his/her request, assigned a defence counsel at the expense of the court budgetary funds. This right is made more specific by Article 71 of the given Code and it is laid down that if the defendant is mute, deaf or otherwise unable to defend himself/herself or if the proceedings are carried out for a criminal offense punishable by more than ten years of imprisonment, the defendant must have a defence counsel – cases of mandatory defence. If in these cases the defendant fails to retain a defence counsel by himself/herself, the president of the court shall appoint an ex officio defence counsel to represent him/her. The defence counsel is appointed following the order from the list provided to the president of the first instance court by the appropriate Bar Association.

The text of the new Criminal Procedure Code, which is currently on the public debate, elaborates further on this right in Article 75 by listing eight reasons when the court has to provide a defence counsel.

The Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (*Official Gazette of RS* No. 85/05) stipulates that a juvenile shall have defence counsel during the first interrogation and throughout the proceedings. If the juvenile fails to retain a counsel, such counsel shall be appointed ex officio by the Juvenile Judge from attorneys with special qualification in the field of the rights of the child and juvenile delinquency.

The Law on Litigation Procedure (*Official Gazette of RS* No. 129/04 and 111/09) in civil matters, in provisions of Article 166 recognizes the right of the party to free representation when the party is fully exempted from paying the costs of the proceedings and if this is necessary for protection of its rights. Exemption from payment of the costs of the proceedings is granted to a party that due to its financial situation is not capable of bearing the costs and it also includes exemption from paying fees and depositing an advance payment for costs of witnesses, witness experts, investigation, and court ads. When deciding on exemption from paying the costs of proceedings, the court evaluates all the circumstances, especially the value of the litigation subject, number of persons that the party provides for, income and assets that the party and its family members have. The party has to attach a certificate on financial situation issued by a competent authority to the request. When needed, the court may obtain the information and data on the financial situation of the party ex officio and it may interview the opposite party on this issue. If the party is fully exempted from paying the costs of proceedings, an advance payment for costs of witnesses, witness experts, investigation and publicising court ads and the actual expenses of the appointed proxy will be paid from the funds of the court.

The Court Rules of Procedure (*Official Gazette of RS* No. 110/09) regulates organisational issues of provision of legal aid to citizens. Thus provisions of Article 101 laid down that every court is obliged, out of the court proceedings, to provide general legal information and initial legal advice to citizens regardless of their financial situation in especially assigned and visibly marked places in the court building. Legal aid may be provided by judicial assistants and other judicial personnel in the court. In civil proceedings, the court may forward a written notification containing instruction on the right to exemption from payment of the costs of proceedings, whilst in criminal proceedings the court may forward a written notification to the suspect or defendant prior to the first interrogation informing him/her in which cases he/she had the right to mandatory defence counsel.

116. How are defence lawyers appointed in cases where their fees are paid through the legal aid system? Are they entitled to fees according to normal lawyer tariffs?

Attorneys – ex officio defence counsels in the pre-criminal proceedings (police investigation) conducted before officials of the Ministry of Interior are assigned by the police official running the pre-criminal proceedings from an alphabetical order list made by the competent first instance bar association.

Attorneys – ex officio defence counsels are appointed by decision of the court in charge of the criminal proceedings from an alphabetical order list made by the competent first instance bar association.

Fees for attorneys - ex officio defence counsels in the pre-criminal proceedings (police investigation) are provided from the budgetary funds of the Ministry of Interior. Attorney fees are paid with difficulties and with great delay that is in the majority of cases longer than two years.

Fees for attorneys - ex officio defence counsels in criminal proceedings are provided from the budgetary funds of the court in charge of the criminal proceedings. Based on the information received from courts, the Ministry of Justice plans the necessary funds for this purpose in the budget. Attorney fees are paid with difficulties and with great delay that is in the majority of cases longer than two years.

The attorney tariff is set by the Bar Association of Serbia as an autonomous, independent and mandatory professional organisation (association) of attorneys. The amount of the reward for attorneys in criminal proceedings in the attorney tariff is set based on the potential punishment for the criminal offence that the defendant is charged with.

The amount of the reward for the work of attorney – ex officio defence counsel is set in accordance with the Rulebook adopted by Ministry of Justice and in these cases it amounts to 50% of the applicable attorney tariff.

The reward for the work of attorneys – ex officio defence counsels in pre-criminal proceedings (police investigation) is set in the same way and based on the same regulations as in the criminal proceedings.

117. Regarding the rights of defence, please provide information on how the following rights are guaranteed in legislative and practical terms. *(Please comment on the allocation of resources and the institutional framework in place to facilitate the exercise of these rights.)*

a) The right of the defendant to be informed promptly in a language which he/she understands of the nature and cause of the charges against him/her;

According to the Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/06) a person deprived of liberty by a state authority shall be informed promptly in a language he/she understands about the grounds for the deprivation of liberty, charges against him/her, and his/her rights to inform any person of his/her choice about his/her deprivation of liberty without delay. Everyone shall be guaranteed the right to free assistance of an translator if he/she does not speak or understand the language officially used in the court and the right to free assistance of an interpreter if the person is blind, deaf, or dumb. Any person charged with criminal offense shall have the right to be informed promptly, in accordance with the law, in the language which this person understands and in detail about the nature and cause of the charges against him/her, as well as the evidence against him/her.

Pursuant to the Criminal Procedure Code (OJ of FRY No. 70/2001 and 68/2002 and OJ of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other laws, 49/2007, 20/2009 – other laws, 72/2009 and 76/2010) any defendant or suspect is entitled to be informed about the offence he/she is charged with, as soon as possible and no later than the first interrogation, in details and in a language he/she understands, about the nature and cause of charges and evidence collected against him/her, to get a translator and interpreter if he/she does not understand and speak the language used in the proceedings.

Pursuant to the Law on Minor Offences (OJ of RS No. 101/2005, 116/2008 and 111/2009) misdemeanour proceedings is run in accordance with provisions of the law regulating official use of spoken and written language. Defendants, witnesses, and other persons participating in the misdemeanour proceedings are entitled to use their own language in performing certain actions in the proceedings or verbal hearing. If the action in the misdemeanour proceedings or the verbal hearing is not conducted in the language of that person, interpretation of what the person or someone else is stating shall be provided as well as translation of documents and other written evidence. Person from paragraph 2 of this article shall be instructed on the right to interpretation and translation and he/she may wave that right if he/she speaks the language used in the misdemeanour proceedings. The fact that the information has been provided and the statement of the party will be recorded in the minutes. Interpretation shall be provided by an interpreter assigned by the court in charge of the misdemeanour proceedings.

b) The right to have the free assistance of an interpreter, if one cannot understand or speak the language used in the court;

The Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/2006) guarantees to everyone the right to free assistance of an translator if the person does not speak or understand the language officially used in the court and the right to free assistance of an interpreter if the person is blind, deaf, or dumb.

In accordance with the Criminal Procedure Code (OJ of FRY No. 70/2001 and 68/2002 and OJ of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other laws, 49/2007, 20/2009 – other laws, 72/2009 and 76/2010) any defendant or suspect is entitled to get a translator and interpreter if he/she does not understand and speak the language used in the proceedings. The court or other state authority is obliged to ensure exercise of this right of defendant or suspect and to warn the defendant or suspect before the first interrogation that everything that he/she states may be used as evidence against him/her and to instruct him/her on the right to retain a defence counsel and that the defence counsel may attend his/her interrogation.

The Law on Minor Offences (*Official Gazette of RS* No. 101/2005, 116/2008 and 111/2009) regulates that if the action in the misdemeanour proceedings or the verbal hearing is not conducted in the language of that person, interpretation of what the person or someone else is stating and translation of documents and other written evidence shall be provided. Defendants, witnesses, and other persons participating in the misdemeanour proceedings shall be informed on the right to interpretation but they may wave that right if they speak the language used in the misdemeanour proceedings. The fact that the information has been provided and the statement of the party will be recorded in the minutes. Interpretation shall be provided by an interpreter assigned by the court in charge of the misdemeanour proceedings.

c) The defendant's right to have adequate time and facilities for the preparation of his/her defence;

According to the Constitution of the Republic of Serbia (OJ of RS No. 98/06) any person charged with criminal offence shall have the right to defend himself/herself and the right to retain a defence counsel of his/her choice, to communicate with his/her defence counsel freely and to be provided with adequate time and conditions for

preparing his/her defence. The defendant who cannot afford a defence counsel has the right to a free defence counsel when the interests of justice require so and in accordance with the law.

Pursuant to the Criminal Procedure Code (OJ of FRY No. 70/2001 and 68/2002 and OJ of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other laws, 49/2007, 20/2009 – other laws, 72/2009 and 76/2010) the suspect who requires so shall be enabled immediately before the first interrogation to read the crime report, the crime scene investigation report, findings and opinion of the witness expert and the request to initiate investigation. Any defendant or suspect has the right to defend himself/herself or to obtain professional assistance of a defence counsel of his/her choice from the list of attorneys, to have his/her defence counsel present at his/her interrogation, to be brought before the court as soon as possible, tried impartially, fairly and within a reasonable timeline, to be provided with sufficient time and facilities to prepare his/her defence, to communicate freely with his/her defence counsel, diplomatic or consular representative, representative of an international organisation or the Ombudsman. Defendant is interrogated verbally and has the right to use his/her notes during interrogation. During investigation defendant should be enabled to provide undisturbed presentation declaring himself/herself on all the incriminating circumstances and presenting all the facts in favour of his/her defence.

d) The right to defend oneself in person or through legal assistance of one's own choice;

Pursuant to the Constitution of the Republic of Serbia (OJ of RS No. 98/06) it is prohibited to extort a statement. A person deprived of liberty without decision of the court shall be immediately informed about the right to remain silent and about the right to be questioned only in the presence of a defence counsel of his/her choice or a defence counsel who will provide legal assistance free of charge if he/she is unable to pay for it. Any person charged with criminal offence shall have the right to defend himself/herself and the right to take a defence counsel of his/her choice, to communicate with his/her defence counsel freely and to be provided with adequate time and conditions for preparing his/her defence. Any person tried for criminal offence has the right to present evidence in his/her favour by himself/herself or through his/her defence counsel, to question prosecution witnesses and demand that defence witnesses should be examined under the same conditions as the prosecution witnesses and in his/her presence.

Pursuant to the Criminal Procedure Code (OJ of FRY No. 70/2001 and 68/2002 and OJ of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other laws, 49/2007, 20/2009 – other laws, 72/2009 and 76/2010) every defendant or suspect has the right to defend himself/herself alone or to obtain professional assistance of a defence counsel of his/her choice from attorneys list, to have his/her defence counsel present at his/her interrogation, to be provided with sufficient time and facilities to prepare his/her defence, to declare himself/herself on all the incriminating facts and evidence and present facts and evidence in his/her favour, either by himself/herself or through his/her defence counsel, to question prosecution witnesses and request that defence witnesses are questioned under the same conditions as the prosecution witnesses and in his/her presence, to get a translator and interpreter if he/she does not understand and speak the language used in the proceedings. If defendant or suspect does not obtain a defence counsel, the counsel shall be appointed by the court. The defendant who cannot afford a

counsel, shall be, at his/her request, assigned a defence counsel at the expense of the court budgetary funds in accordance with this Code. A person deprived of liberty without decision of the court shall be immediately informed about the right to remain silent, that everything he/she says may be used as evidence against him/her and that he/she has the right to be interrogated in the presence of a defence counsel of his/her choice or an assigned defence counsel provided at the expense of the budget if he/she cannot afford a defence counsel and that he/she has the right to communicate freely with his/her defence counsel, diplomatic or consular representative, representative of an international organisation or the Ombudsman. Defendant may be interrogated without the presence of a defence counsel if he/she explicitly waves this right and the defence is not mandatory if the defence counsel is not present although he/she has been informed of the interrogation and there is no possibility for the defendant to retain another defence counsel or if the defendant has not ensured the presence of a defence counsel for the first interrogation within 24 hours from the moment when he/she had been informed of this right, except in case of mandatory defence.

Pursuant to the Law on Minor Offences (OJ of RS No. 101/2005, 116/2008 and 111/2009) defendant is a person against whom a misdemeanour proceedings is being run. Defendant has the right to submit evidence, submit motions and use remedies. Defendant without legal capacity shall be represented in the procedure by a legal representative. Defendant has the right to defend himself/herself or with professional assistance of a defence counsel. Defendant may take an attorney for defence counsel and in accordance with the law the defence counsel may be replaced by lawyer's apprentice. Defence counsel for the defendant may be taken by his/her legal representative, spouse, next of kin relative in linear relations, adoptive parent, adoptive child, brother, sister and foster parent of defendant and common marriage spouse of defendant. Defence counsel is authorised to take on behalf of defendant all the actions that may be taken by the defendant. Defendant has to submit the power of attorney to the court, i.e. administrative authority handling the proceedings. Defendant may provide the defence counsel with a verbal power of attorney to be entered in the minutes at the court, i.e. administrative authority handling the proceedings. Rights and duties of defence counsel shall cease when defendant withdraws power of attorney.

e) The right to free assistance of a translator, if one cannot understand or speak the language used in the court;

According to the Constitution of the Republic of Serbia (OJ of RS No. 98/06) any person tried for criminal offence has the right to present evidence in his favour by himself or through his defence counsel, to question prosecution witnesses and demand that defence witnesses should be examined under the same conditions as the prosecution witnesses and in his presence.

Pursuant to the Criminal Procedure Code (OJ of FRY No. 70/2001 and 68/2002 and OJ of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010) any defendant or suspect has the right, to declare on all the incriminating facts and evidence and present facts and evidence in his favour, either by himself or through his defence counsel, to question prosecution witnesses and request that defence witnesses are questioned under the same conditions as the prosecution witnesses and in his presence.

118. Provide information about the elaboration and implementation of legislation regarding the following legal concepts:

a) The principle that a person cannot be prosecuted for something that was not a criminal offence in national or international law at the time when it took place;

The Constitution of the Republic of Serbia (*Official Gazette of RS* No 98/2006) is the supreme legal act that all the laws and other general acts passed in the Republic of Serbia must be complied with. Ratified international treaties and generally accepted rules of international law are part of the legal order of the Republic of Serbia. Ratified international treaties must not be contrary to the Constitution, whilst laws and other general acts passed in the Republic of Serbia must not be contrary to ratified international treaties and generally accepted rules of the international law.

The Constitution of the Republic of Serbia guarantees that no person may be found guilty of any act which did not constitute a criminal offence under the law or any other regulation based on the law before it was committed nor may he/she be sentenced to a penalty which was not prescribed for this act.

The Criminal Code (*Official Gazette of RS* No. 85/2005, 88/2005 – corrigendum, 107/2005 - corrigendum., 72/2009 and 111/2009) as early as in Article 1 stipulates that there shall be no crime nor punishment without the law, i.e. that no penalty or other criminal sanction may be imposed for an offence that did not constitute a criminal offence before it was committed, nor may penalty or other criminal sanction be imposed if it was not prescribed by the law before the criminal offence was committed.

The Law on Minor Offences (*Official Gazette of RS* No. 101/2005, 116/2008 and 111/2009) regulates that no one may be punished for a minor offence nor other minor offence sanction may be applied if that act was not defined as a minor offence by the law or a regulation based on the law before it was committed and if the law or a regulation based on the law did not prescribe what type and form of sanction may be imposed to the offender.

b) Non-application of a more severe sentence than the one applicable at the time the criminal offence was committed;

The Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/2006) guarantees that penalties shall be determined pursuant to a regulation in force at the time when the act was committed, unless the subsequent regulation is more lenient for the offender. Criminal offences and sanctions are laid down by the law.

The Criminal Code (*Official Gazette of RS* No. 85/2005, 88/2005 - corrigendum, 107/2005 - corrigendum, 72/2009 and 111/2009) stipulates that the law that was applicable at the time when the offence was committed shall be applied to the offender. If the law was amended once or more times after the criminal offence had been committed, the law that is the most lenient for the offender shall apply. A person who commits an offence provided for by the law with a definite period of application shall be tried under such law, regardless of the time of trial, unless otherwise provided by such law.

The Law on Minor Offences (*Official Gazette of RS* No. 101/2005, 116/2008 and 111/2009) regulates that the law, i.e. regulation applicable at the time when the minor offence was committed shall be applied to the offender. If the regulation was amended once or more times after the minor offence had been committed, the law that is the most lenient for the offender shall apply.

c) Proportionality of the severity of the penalty to the criminal offence;

The Criminal Code (*Official Gazette of RS* No. 85/2005, 88/2005 - corrigendum, 107/2005 - corrigendum, 72/2009 and 111/2009) laid down that a criminal offence is an offence set forth by the law as criminal offence, which is unlawful and committed with guilty mind. There is no criminal offence without an unlawful act or culpability, notwithstanding the existence of all essential elements of a criminal offence stipulated by the law.

In accordance with the law, criminal sanctions are: penalties, cautionary measures, security measures and rehabilitation measures. The general purpose of prescribing and imposing criminal sanctions is to suppress acts that violate or endanger the values protected by the criminal legislation. Within the general purpose of criminal sanctions, the purpose of punishment is: to prevent an offender from committing criminal offences and deter him/her from future commission of criminal offences; to deter others from commission of criminal offences and to express social condemnation of the criminal offence, enhance moral strength and reinforce the obligation to abide by the law.

Criminal sanctions may not be imposed on a person who has not turned fourteen at the time of the commission of the offence. Rehabilitation measures and other criminal sanctions may be imposed on a juvenile under the conditions prescribed by a special law.

The following sanctions may be imposed to a perpetrator of criminal offence: imprisonment, fine, community service, and revocation of driving licence.

The court shall determine a penalty for a criminal offender within the limits set forth by law for such criminal offence, with regard to the purpose of punishment and taking into account all circumstance that could have bearing on severity of the punishment (mitigating and aggravating circumstances), and particularly the following: degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his/her personal situation, his/her behaviour after the commission of the criminal offence and particularly his/her attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender. In determining the fine in particular amount, the court shall consider particularly the financial status of the offender.

A circumstance which is an element of a criminal offence may not be taken into consideration either as aggravating or mitigating, unless it exceeds the degree required for establishing the existence of the criminal offence or particular form of the criminal offence or if there are two or more of such circumstances, and only one is sufficient to define the existence of a severe or less severe form of a criminal offence.

The court may pronounce to a perpetrator of a criminal offence a penalty which is under statutory minimum or a mitigated penalty, if: mitigation of penalty is provided by the law, the law provides for remittance from punishment of the offender and the court decides otherwise and establishes that particularly mitigating circumstances exist and determines that the purpose of punishment may be achieved by a mitigated penalty. When requirements for mitigation of penalty are met, the court shall mitigate the penalty within the limits laid down by this law.

The court may remit from punishment a perpetrator of a criminal offence only when this is explicitly provided for by the law. The court may also remit from punishment a perpetrator of a crime of negligence if the consequences of the offence affect the offender so severely that imposing a penalty would obviously not serve the purpose of punishment. The court may also remit from punishment the perpetrator of a criminal offence punishable by imprisonment of up to five years if following the commission of the offence, and before learning that he/she has been uncovered, the offender eliminates the consequences of the offence or compensates for the damage caused by the criminal offence.

The Law on Minor Offences (*Official Gazette of RS* No. 101/2005, 116/2008 and 111/2009) provided for the following sanctions for minor offences: penalties, warning, protection measures, and rehabilitation measures. The purpose of prescribing, pronouncing and applying sanctions for minor offences is to ensure that citizens respect the legal system and that no one commits a minor offence in the future. Minor offence may be punished by imprisonment, fine, community service, or penalty points with revocation of driving licence.

Within the general purpose of sanctions for minor offences the purpose of punishment is to express social rebuke of the perpetrator for the committed minor offence and to deter him and all other persons from committing minor offences in the future. One minor offence may be punished by both imprisonment and fine and both may be pronounced simultaneously. Only fine may be imposed for a minor offence of a legal entity.

Penalty for minor offence is determined within the limits set forth for such minor offence, with regard to all the circumstances influencing more or less severe penalty, and particularly: severity and consequences of the minor offence, circumstances under which the minor offence was committed, the level of guilt of the perpetrator, personal situation of the perpetrator and his behaviour after the minor offence had been committed. Previously pronounced penalty or protection measure may not be considered as an aggravating circumstance if more than two years have elapsed from the day when the judgement had become final to the day the new judgment was rendered. In determining the fine financial status of the offender shall also be taken into consideration.

If it is established during determining the penalty that the minor offence has not caused graver consequences and if there are mitigating circumstances indicating that the purpose of punishment may be achieved by a more lenient penalty, the imposed penalty may be exceptionally mitigated by imposing a penalty below the minimum penalty prescribed for that minor offence, but not below the statutory minimum for that type of penalty.

119. Please provide details on how the right not to be tried or punished twice in criminal proceedings for the same criminal offence is interpreted in your domestic law.

The Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/2006) guarantees that no person may be prosecuted or sentenced for a criminal offence for which he/she has been acquitted or convicted by a final judgment, for which the charges have been rejected or criminal proceedings dismissed by final decision, nor may court ruling be altered to the detriment of the defendant by an extraordinary legal remedy. The same prohibition applies to all other proceedings conducted for any other act punishable by the law. Exceptionally, reopening of proceedings shall be allowed in accordance with the criminal legislation if evidence is presented about new facts which could have influenced significantly the outcome of proceedings had they been disclosed at the time of the trial, or if serious miscarriage of justice occurred in the previous proceedings which might have influenced its outcome.

In accordance with the Criminal Procedure Code (OJ of FRY No. 70/2001 and 68/2002 and OJ of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other laws, 49/2007, 20/2009 – other laws, 72/2009 and 76/2010) no one shall be prosecuted and punished for a criminal offence for which he has already been acquitted or convicted by a final judgment or for which criminal proceedings has been discontinued by a final decision or the charge has been rejected by a final judgment. In the criminal proceedings instituted upon the extraordinary judicial remedy, a final court judgment cannot be revised to the detriment of the defendant.

The Law on Minor Offences (*Official Gazette of RS* No. 101/2005, 116/2008 and 111/2009) regulates that no one may be punished in misdemeanour proceedings two or more times for the same misdemeanour act. A person who has been found guilty by a final judgement in criminal proceedings or commercial malfeasance proceedings for an offence that also has features of a minor offence shall not be punished for minor offence.

120. Please provide details on how the rights of victims of crime are ensured in criminal proceedings. Is there legislation in place concerning the fair and appropriate compensation for the injuries that crime victims have suffered?

Title XV of the Criminal Procedure Code (OJ of FRY No. 70/2001 and 68/2002 and OJ of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other laws, 49/2007, 20/2009 – other laws, 72/2009 and 76/2010), regulates the restitution request. A request for restitution arising from the commission of a criminal offense shall be considered in criminal proceedings upon the motion of authorized persons, provided that this does not considerably delay the proceedings. The request for restitution may relate to damage claim, recovery of an object or annulment of a certain legal transaction. A motion to assert a claim for restitution in criminal proceedings can be made by a person who is entitled to litigate an issue in litigation proceedings. A motion to assert the claim for restitution in criminal proceedings shall be submitted to the authority charged with receiving a crime report or to the court in charge of the proceedings. The motion may be submitted prior to the conclusion of the main trial before the first instance court, at the latest. The person entitled to submit a motion must specify his/her claim and submit evidence. The court conducting the proceedings shall interrogate the defendant with

respect to the facts set out in the motion and explore the circumstances which are of importance for the decision on the request for restitution. Even before such a motion is submitted, the court is bound to collect evidence and carry out inquiries into circumstances necessary for deciding on the request. If an inquiry into a request for restitution would considerably delay criminal proceedings, the court shall collect only the information which cannot be discovered in a later stage or where such discovery would be considerably impeded. The court shall decide on the request for restitution. In the judgement of conviction the court may fully grant the restitution request to the authorized person or it may grant partially while referring the authorized person to assert the rest of the claim in litigation proceedings. If the information from criminal proceedings does not provide reliable grounds for either full or partial adjudication, the court shall direct the authorized person to assert his/her request in its entirety in litigation proceedings. When rendering a judgment of acquittal, a judgment rejecting the charge, or a ruling discontinuing criminal proceedings, the court shall direct the authorized person to assert his/her restitution request in litigation proceedings. When the court declares itself incompetent to conduct criminal proceedings, it shall instruct the authorized person that he/she may assert his/her restitution request in criminal proceedings which shall be instituted or continued by a competent court. In criminal proceedings the court may alter a final judgment which decides on a restitution request only in case of reopening of criminal proceedings, protection of legality or request for the review of legality of the final judgment. Except in these cases, a final judgment which decides on a restitution request may be revised only in litigation proceedings on the request of the convicted person or his/her heirs, provided that there are grounds for reopening the proceedings pursuant to the provisions governing the litigation procedure.

121. How is the principle of non-discrimination and equal treatment of minorities ensured? Please provide details of constitutional and legislative provisions as well as the institutional framework.

According to the provisions of the article 21 of the Constitution of the Republic of Serbia ("Official Gazette of RS", No. 98/2006) all are equal under the Constitution and before the law and are entitled to equal legal protection without any discrimination. In Paragraph 3 of the same Article, the Constitution stipulates that every form of discrimination is prohibited, be it direct or indirect, on any grounds whatsoever, in particular on the grounds of race, sex, national affiliation, social origin, birth, religion, political or some other conviction, financial status, culture, language, age and mental or physical disability. In the part of the Constitution which particularly elaborates on the constitutional protection of members of national minorities, the prohibition of discrimination is repeated by virtue of the provisions set out in Article 76 paragraph 2, which prohibit any kind of discrimination on the grounds of affiliation to the national minority. With regard to minority rights, especially significant Constitutional provision is the one stipulating that special regulations and temporary measures the state might introduce in economic, social, cultural and political life in order to achieve full equality between national minorities and the citizens comprising the majority of the population, shall not be considered an act of discrimination if they are aimed at removing exceptionally unfavourable living conditions afflicting them (article 76 paragraph 3 of the Constitution).

The Law on the Prohibition of Discrimination ("Official Gazette of RS", No. 22/2009) regulates the general prohibition of discrimination, the forms and cases of discrimination, as well as the procedures of protection against discrimination. Provision

of the Article 2, paragraph 1, point 1 of the Law on the Prohibition of Discrimination defines the notions of “discrimination” and “discriminatory treatment” as any kind of unjustified differentiation or inequitable treatment, i.e. an act of omission (exclusion, limitation or giving precedence to) in relation to persons or groups as well as members of their families or persons close to them which is performed in an overt or concealed manner and which is based on the grounds of race, skin colour, descent, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, sex, gender identity, sexual orientation, financial status, birth, genetic characteristics, health status, disability, marital or family status, previous convictions record, age, physical appearance, membership in political, trade union and other organizations and other actual or imputed personal characteristics. Article 5 of the Law on Prohibition of Discrimination seeks to define the forms of discrimination. In that sense, all forms of discrimination, direct or indirect, as well as a violation of the equal rights and obligations principle, calling to account, associating for the purpose of practising discrimination, hate speech, harassment and humiliating treatment are prohibited. Article 24 Paragraph 1 of The Law on the Prohibition of Discrimination prohibits discrimination of national minorities and their members on the grounds of national affiliation, ethnic origin, religious beliefs and language. Inciting and encouraging inequality, hatred and intolerance on the grounds of national, racial or religious affiliation and language is qualified as grave form of discrimination (Article 13 point 1). The Law on the Prohibition of Discrimination prescribes that special measures introduced in order to achieve full equality and the protection and progress of individuals and groups in unequal position are not considered discrimination (Article 14).

Article 3 Paragraph 1 of The Law on the Protection of Rights and Freedoms of National Minorities (“Official Gazette of RS” No. 11/02 and “Official Gazette of RS”, No. 72/09 – other law) strictly prohibits every form of discrimination on national, ethnic, racial or linguistic grounds, of persons belonging to national minorities. Provisions of the Paragraph 2 of the same article stipulate that the federal, republic, and the authorities of provinces, city or municipality may not adopt legal acts, nor take measures contrary to Paragraph 1 of that Article.

In the legal system of the Republic of Serbia, discrimination is sanctioned under the Criminal Code (“Official Gazette of RS”, No. 85/05, 88/05, 107/05, 72/09 and 111/09). Article 128 prescribes the sentence of up to 3 years of imprisonment for persons, who inter alia, deprive the other or limit the rights of man or a citizen laid down by the Constitution, laws or other regulations and general acts or ratified international treaties based on national or ethnic affiliation, race or religion or due to the absence of this affiliation or differences in terms of beliefs, language, education, social status, etc., or grant benefits or privilege based on these differences.

The regulations of the Republic of Serbia governing particular areas of social life include provisions pertaining to the prohibition of discrimination. Thus, for instance, discrimination is prohibited in the field of employment relations. The Law on Labour (“Official Gazette of RS”, No. 24/05, 61/05 and 54/09 in Article 18 determines the prohibition of discrimination by prescribing that the person seeking employment, as well as employees, cannot be put in a less favourable position than others on the grounds of their birth, language, race, national affiliation, religion, etc.

The Law on Employment and Insurance in Case of Unemployment (“Official Gazette of RS”, no. 36/09 and 88/10) stipulates that the Government, i.e. the relevant authority of the territorial autonomy or local self-government, may adopt the programme of active employment policy which regulates priorities, measures, resources and competences for their implementation, especially concerning the employment of certain categories of the unemployed, the employment of refugees and displaced persons, the employment of national minorities with whom there is a higher unemployment rate. The employer who gives employment to persons seeking their first job, or to persons who have waited for employment for considerable time, or to the persons older than 50 years of age, to refugees and displaced persons, to members of national minorities whom have the higher rate of unemployment, to disabled persons and persons with decreased working ability, may be entitled to subsidy contribution for pension and disability insurance, health insurance and insurance in the case of unemployment which are obtained through the National Employment Service (art. 31. and 34).

One of the basic principles of The Law on Health Care (“Official Gazette of RS”, No. 107/05 and 88/10) laid down in Article 20 is the principle of health care fairness, which is realized through prohibition of discrimination in health care provision, inter alia, on the grounds of race, national affiliation, religion, culture and language, etc.

The Law on the Fundamentals of the Education System (“Official Gazette of RS”, No. 72/09) under Article 44 prohibits activities which threaten, belittle, discriminate or exclude groups or individuals, inter alia, on the grounds of race, national, linguistic or religious affiliation, as well as inciting to such activities or failure to prevent such activities. This Law prescribes fines for institutions which fail to take adequate measures or take untimely measures in cases of violation of prohibition laid down in Article 44 of the Law.

Discrimination is prohibited in the field of public information. The Law on Broadcasting (“Official Gazette of RS”, No. 42/02, 97/04, 76/05, 62/06, 85/06, 86/06 and 41/09) provides in its Article 3, point 6 that relations in the field of broadcasting are governed based on, inter alia, the principles of objectivity, prohibition of discrimination and publicity of the procedure for issuing broadcasting licences. The prohibition of discrimination is regulated in more detail by a range of other provisions of this Law. In accordance with Article 38 Paragraph 2 licences for broadcasting radio and TV programmes are issued under equal conditions. Article 77 Paragraph 3 stipulates that general interest in the public broadcasting service is realized in a manner that programmes produced and broadcasted within the public broadcasting service must ensure diversity and mutual compliance of contents supporting democratic values of the modern society, particularly the respect of human rights and cultural, national, ethnic and political pluralism. For the purpose of realizing public interest in the field of public broadcasting service, Article 78 of this Law stipulates that public broadcasting service institutions are, inter alia, obliged to produce and broadcast programmes intended for all segments of the society, without discrimination, particularly bearing in mind specific social groups, such as children and youth, minority and ethnic groups, persons with disabilities, the socially and physically vulnerable, etc.

The Law on Public Information (“Official Gazette of RS”, No. 43/03, 61/05 and 71/09), Article 2, paragraph 3 stipulates that no person may, even in an indirect manner, curtail the freedom of public information, in particular by abuse of public or private powers,

abuse of rights, influence or control over the funds intended for printing and circulating the public media or over devices used for broadcasting and radiofrequencies, as well as by employing any other means suited to restrict the free flow of ideas, information and opinions. Article 16 of the Law on Public Information provides that discrimination regarding the distribution of public media shall be prohibited, that is to say, it stipulates that a person engaged in distribution of public media shall not refuse to distribute someone's public media without a valid commercial reason, or to impose conditions contrary to market principles for the distribution. Inciting discrimination in ideas, information and opinions is prohibited pursuant to the Article 38 of this Law.

Institutional framework in the field of protection of human and minority rights was strengthened simultaneously with the adoption of legislation. According to the Law on Ministries ("Official Gazette of RS", No. 65/08), in the mid 2008, the Ministry of Human and Minority Rights was established. Pursuant to the Article 26 of this Law, the Ministry of Human and Minority Rights performs activities from the purview of public administration that pertain to: general matters concerning the status of members of national minorities; maintaining the Register of National Councils of National Minorities; electing National Councils of national minorities; protection and fostering of human and minority rights; drafting of legislation covering human and minority rights; monitoring harmonization of national legislation with international legislation; representing the Republic of Serbia before the European Court of Human Rights; the position of members of national minorities living in the territory of the Republic Serbia and the exercise of minority rights; fostering relations between national minorities and their mother countries; anti-discriminatory policy; status of National Councils of national minorities and the exercise of their powers; coordination of work of public administration bodies in the field of human rights protection and other activities provided for under the law.

Provincial Secretariat for Regulations, Administration and National Minorities was founded in 2002, as a part of the Executive Council of the AP Vojvodina. Activities performed in the Secretariat in the field of promotion of national minorities' rights include drafting rules and regulations, conducting research and analysis, statistical, recording and documenting tasks that pertain, in the first place, to the exercise of collective and individual rights of national minorities in the AP Vojvodina. The Provincial Secretariat is in charge of supervising the enforcement of regulations governing the official use of languages and scripts in the AP Vojvodina.

The Commissariat for Refugees is a special institution established under the Law on Refugees in 1992 ("Official Gazette of RS", No. 18/92 and 30/10). The Commissariat for Refugees performs activities that relate to the establishment of refugee status, refugee care, keeping records established under the aforementioned Law, coordinating the provision of humanitarian aid for refugees by other bodies and organizations in the country and abroad and making sure that such aid is provided in an even and timely manner, providing refugees with accommodation, i.e. providing their relocation within territorial units, providing conditions for the return of refugees to the areas they had left or to other areas determined by the Commissariat for Refugees, that is, until they have been permanently provided for in some other manner; and performs other activities from its purview established under this law.

Council for National Minorities of the Republic of Serbia was founded in 2009 its members being the Prime Minister, who is the Council President at the same time, ministers from six relevant ministries, presidents of National Councils and the President of the Federation of Jewish Municipalities of Serbia, which has the status of the national council. The Council is responsible for preserving, fostering and protecting national, ethnic, religious, linguistic and cultural specificities of national minorities in the Republic of Serbia.

For the purpose of preservation, promotion and protection of national, ethnic, religious, linguistic and cultural specificities of national minorities in the territory of AP Vojvodina, Provincial Council of National Minorities was established in 2006 as an occasional working group with the Government of AP Vojvodina.

Council for the Promotion of the Status of Roma of the Government of the Republic of Serbia was formed in 2008 and it has 22 members, among whom there are representatives from the Ministry of Finance, Health, Education, Public Administration and Local Self-government, as well as from other ministries which could have an influence on the improvement of the status of Roma minority.

Pursuant to the Decision the Assembly of AP Vojvodina passed in 2006, Roma Inclusion Office was established for the purpose of implementing action plans for integration of Roma and to develop and implement programmes for advancing position of the Roma in the sectors of education, health care, employment, housing, human and other rights. Council for Roma Integration in AP Vojvodina was set up in 2005 as a working group of the Executive Council of AP Vojvodina, its task being: to propose measures and activities the aim of which is to integrate Roma in the AP Vojvodina; to give opinions concerning measures and activities that have been taken; to cooperate with the National Council of the Roma national minority and carry out other activities with the view of improving general position of Roma in the AP Vojvodina.

Following the democratic changes, pursuant to the law, independent state institutions for human rights protection have been established in the Republic of Serbia. The institution of Ombudsman was introduced into the legal system of the Republic of Serbia under the Law on Ombudsman ("Official Gazette of RS", No. 79/05 and 54/07). Pursuant to this Law, in the performance of their duty the Ombudsman is assisted by four deputies, specializing in the fields of protection of rights of persons deprived of liberty, gender equality, child's rights, rights of members of national minorities and rights of persons with disabilities. According to the Constitution of the Republic of Serbia (Article 138) the Ombudsman is an independent state authority which protects the rights of citizens and monitors the performance of public administration bodies, bodies responsible for the protection of economic rights and interests of the Republic of Serbia, as well as other bodies and organisations, companies and institutions endowed with public powers. The Ombudsman is not authorised to monitor the work of the National Assembly, the President, the Prime Minister, the Constitutional Court, courts and public prosecution offices. The Ombudsman is appointed and dismissed by the National Assembly. The Ombudsperson is accountable for their work to the National Assembly and enjoys the immunity of a member of the Parliament.

The Provincial Ombudsman was established in 2002 by virtue of the Decision of Provincial Assembly on Provincial Ombudsman ("Official Journal of AVP", No. 23/02,

5/04 and 16/05). The seat of the Provincial Ombudsman is in Novi Sad, and two branch offices have been set up in Pancevo and Subotica. The Ombudsman has five deputies (general affairs, gender equality, the protection of rights of national minority members and child protection) appointed by the Assembly of AP Vojvodina for the period of six years.

The Law on Local Self-government ("Official Gazette of RS", No.129/07) envisages the institution of ombudsman at the local level. The institution of ombudsman can be established in the local self-government unit with the task of monitoring the respect of citizens' rights, establishing violations done by effecting regulations, administrative bodies' and public services' actions or failure to act, if these violations refer to the regulations or general legislation of local self-government units. (Article 97, Paragraph 1). Local Ombudsman offices have been established in 11 towns so far.

The Commissioner for the Information of Public Importance and the Protection of Personal data was established by the Law on Free Access to the Information of Public Importance ("Official Gazette of RS", No. 120/04, 54/07, 104/09 and 36/10) as an autonomous and independent state authority. The Law on Personal Data Protection ("Official Gazette of RS", No. 97/08) broadened the scope of competence of the Commissioner for the Access to Information of Public Importance to include the protection of personal data. The Commissioner now has the supervisory role over actions that relate to processing of personal data, and has the right to rule in the case of appeal and other competences regarding the collection, keeping and protection of personal data (Article 44).

The Law on Prohibition of Discrimination established the Commissioner for the Protection of Equality appointed by the National Assembly who shall receive and review complaints pertaining to the violation of the Law and provide opinions and recommendations in specific cases and pass measures of caution (in case the person fails to redress the violation in question within 30 days of having been cautioned, the Commissioner may notify the public about it); shall provide information to the person lodging the complaint concerning his/her rights and the possibility of initiating court proceedings or some other proceedings for the purpose of protection or shall propose a reconciliation procedure; shall file charges pertaining to violations of rights guaranteed by this Law, in his/her own name and with the agreement and on behalf of the person discriminated against, unless proceedings before a court of law have already been initiated or concluded by passing an enforceable decision; shall submit misdemeanour charges on account of violations of rights guaranteed by this Law; shall submit an annual report and special reports to the National Assembly about the situation concerning the protection of equality; shall draw the public's attention to the most frequent, typical and severe cases of discrimination; shall monitor the implementation of laws and other regulations, initiate the passing of or amendment of regulations for the purpose of implementing and enhancing protection against discrimination, and provide opinions concerning the provisions of draft laws and other regulations pertaining to the prohibition of discrimination; shall establish and maintain cooperation with bodies authorised to ensure equality and the protection of human rights in the territory of the autonomous province or a local self-government; shall recommend measures to public administration bodies and other persons aimed at ensuring equality. The National Assembly appointed the Commissioner for the Protection of Equality in 2010.

122. Please indicate when you plan to hold the next population census. Have the Law and all implementing measures on the Census questionnaire been adopted and when? Is its financing ensured? Does the questionnaire include a question on ethnic origin? How do you expect to protect personal data while gathering the needed statistics on minorities? Please explain.

The census of population, households and apartments will be held in the period of 1st to 15th April 2011 as a traditional census (face to face interview which will be conducted by trained enumerators) based on the **Law on Census of Population, Households and Apartments** adopted by the Republic Parliament in December 2009 (*Official Gazette of RS* No. 104/09).

Pursuant to the Law on Census, the funds for financing the census activities are provided in the budget of the Republic of Serbia. However, there is concern that failure to follow the planned payment dynamics of necessary funds (due to the restrictive budget) may hamper implementation of activities related to preparing and conducting the census.

Questions related to ethnic characteristics of the population (ethnicity, religion and mother tongue) are included in the content of the census forms and designed as open answers. Question on ethnic origin is not included.

The census form contains legal instruction that pursuant to Article 47 of the Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/2006) citizen is not obliged to declare his/her ethnicity and that pursuant to Article 43 of the Constitution of the Republic of Serbia citizen is not obliged to declare his/her religious beliefs.

Measures undertaken for protection of personal data:

Pursuant to the Law on Census, the data collected in the census shall be used exclusively for statistical purposes. All persons conducting census activities are obliged to keep all the data collected from enumerated persons a secret. The law also defined the penalty provisions for persons who conduct census activities if they fail to perform the census activities in timely and prescribed manner or if contrary to the will of the person covered by the census demand that that person declares his /her ethnicity or religion (Article 30).

Furthermore, the **Law on Official Statistics** (*Official Gazette of RS* No. 104/2009) stipulates that the responsible statistics producers are obliged to prevent the possibility of direct or indirect individual identification of reporting unit (Article 45), defines protection of classified information (Article 46), limited access to classified information (Article 47) and conditions for releasing individual data without an identification (Article 49).

The Republic Statistical Office passed the Rulebook on free access to statistical data and the Rulebook on protection of statistical data regulating the issue of data protection. All the employees are obliged to observe the data protection measures in all the stages of statistical researches from data collection through processing to dissemination.

123. Please provide statistical information, if available, on the situation of minorities as compared with the majority population in respect of

- housing (appendix in the Annex to the Chapter: table T1. Population by nationality and conditions of the dwellings they live in (water supply, sewerage, electricity, bathroom and toilette) – the data from the 2002 Census of Population, Households and Dwellings)

- education - participation in primary, secondary and tertiary education (appendix in the Annex to the Chapter) tables: T2. Students by language of classes, primary and secondary schools in the Republic of Serbia, end of school year, **T2.1** Students by the language of classes, primary and secondary schools in the Republic of Serbia, end of school year in %, **T3.** Students in the Republic of Serbia by nationality and T3.1 Students in the Republic of Serbia based on nationality in %),

- health services;

We do not have the data on health services for minorities at our disposal.

- employment and unemployment rates;

LFS (Labour force survey)

The Labour Force Survey conducted by the Republic Statistical Office contains a question on ethnicity. However, under the Constitution of the Republic of Serbia ("Official Gazette of RS" No. 98/2006) a person is not obliged to respond to this question, therefore there is a small percentage of responses and the data is not reliable or representative on the national level.

- infant mortality and life expectancy – infants who died and expected life span (appendix in the Annex to the Chapter: table T4. Infant mortality, 1998-2009 **and table T5.** Life expectancy of live born children by gender 2002-2009)

APPENDIX FOR ANNEX TO CHAPTER 23

Question 123

T1. Population by nationality and conditions of the dwellings they live in (water supply, sewerage, electricity, bathroom and toilette) – the data from the 2002 Census of Population, Households and Dwellings)

	Water supply		Sewerage		Electricity		Bathroom		Toilette		Total population*
	Has	Doesn't have	Has	Doesn't have	Has	Doesn't have	Has	Doesn't have	Has	Doesn't have	
Total	6537978	560421	6114238	984161	7069443	28956	5867185	1231214	5530021	1568378	7498001
Serb	5434931	450508	5102565	782874	5867870	17569	4909875	975564	4642777	1242662	6212838
Montenegrin	64848	908	63858	1898	65692	64	62691	3065	61195	4561	69049
Yugoslav	74372	2089	72163	4298	76248	213	69932	6529	68217	8244	80721
Albanian	42858	11382	33409	20831	53958	282	31555	22685	23798	30442	61647
Bosniac	114934	16227	103303	27858	130708	453	98511	32650	88343	42818	136087
Bulgarian	16166	3573	13469	6270	19592	147	11905	7834	11026	8713	20497
Bunjevci Croat	18143	1057	17026	2174	19048	152	16182	3018	15684	3516	20012
Vlah	29279	10146	23357	16068	39015	410	20824	18601	18317	21108	40054

Gorani	3858	64	3792	130	3922		3603	319	3591	331	4581
Hungarian	270423	10703	249780	31346	279550	1576	234903	46223	210505	70621	293299
Macedonian	23819	829	22961	1687	24584	64	22415	2233	21509	3139	25847
Muslim	16129	2247	15082	3294	18240	136	14209	4167	13590	4786	19503
German	3606	110	3468	248	3707	9	3371	345	3250	466	3901
Roma	68408	29467	52570	45305	92062	5813	41607	56268	38091	59784	108193
Romanian	28396	4782	24821	8357	32615	563	23885	9293	21957	11221	34576
Russian	2368	66	2296	138	2431	3	2243	191	2177	257	2588
Ruthenian	14794	359	14076	1077	15109	44	13425	1728	12912	2241	15905
Slovak	53007	2443	49853	5597	55305	145	47992	7458	43405	12045	59021
Slovenian	4745	122	4614	253	4857	10	4526	341	4442	425	5104
Ukrainian	4925	118	4774	269	5028	15	4664	379	4490	553	5354
Croat	64230	2693	60937	5986	66620	303	58805	8118	57051	9872	70602
Czech	1994	96	1893	197	2080	10	1856	234	1724	366	2211
Undeclared 45	96141	4226	92218	8149	99944	423	89145	11222	86207	14160	107732
Regional affiliation	10692	212	10466	438	10885	19	10212	692	9955	949	11485
Unknown	64414	5449	61435	8428	69419	444	59120	10743	56426	13437	75483
Other	10498	545	10052	991	10954	89	9729	1314	9382	1661	11711

*The difference of the total population consist of persons living in collective housing units and persons who work/stay abroad for less than a year, an have no dwellings in the Republic of Serbia.

T2. Pupils by language of classes, primary and secondary schools in the Republic of Serbia, end of school year						
Language of classes	Regular primary schools			Regular secondary schools		
	2006/2007	2007/2008	2008/2009	2006/2007.	2007/2008	2008/2009
Serbian	588073	575738	565943	274555	272690	273333
Albanian	8441	8775	8337	2724	3121	3277
Bulgarian	723	692	33	-	-	-
Hungarian	17020	16714	16355	6301	6364	6097
Romanian	1470	1410	1338	196	211	230
Ruthenian	585	502	542	69	71	132
Slovakian	3260	2936	2674	373	335	265
Croatian	199	224	292	-	-	38
Serbian-Bulgarian	-	-	642	-	-	-
Serbian-Hungarian	-	-	-	-	15	-

T2.1 Students by language of classes, primary and secondary schools in the Republic of Serbia, end of school year in %						
Language of classes	Regular primary schools			Regular secondary schools		
	2006/2007	2007/2008	2008/2009	2006/2007	2007/2008	2008/2009
Serbian	100	100	100	100	100	100
Albanian	1.4	1.5	1.5	1.0	1.1	1.2
Bulgarian	0.1	0.1	0.01	-	-	-
Hungarian	2.9	2.9	2.9	2.3	2.3	2.2
Romanian	0.2	0.2	2.2	0.01	0.01	0.01
Ruthenian	0.1	0.1	0.1	0.01	0.01	0.01
Slovakian	0.6	0.5	0.5	0.01	0.1	0.01
Croatian	0.01	0.01	0.01	-	-	0.01
Serbian-Bulgarian	-	-	0.1	-	-	-
Serbian-Hungarian	-	-	-	-	0.01	-

T3. Students by nationality in the Republic of Serbia			
	2007/2008	2008/2009	2009/2010
Serbs	214756	215555	208625
Montenegrins	2701	2224	1780
Yugoslavs	231	170	139
Albanians	53	64	68
Bosniacs	2539	2812	2771
Hungarians	3585	3238	3214
Muslims	655	589	497
Austrians	-	1	1
Belgians	-	1	3
Bulgarians	107	96	73
Bunjevci Croats	153	137	134
Vlahs	9	10	8
Gorani	82	85	58
Greeks	60	57	54
Egyptians	1	-	-
Italians	9	9	6
Jews	17	17	15
Chinese	7	6	2
Macedonians	362	316	262
Germans	51	44	41
Norwegians	1	2	1
Poles	11	12	10
Roma	159	190	182
Romanians	284	251	239
Russians	50	43	47
Ruthenians	316	316	309
Slovaks	731	600	592

Slovenians	50	55	50
Turks	6	9	10
Ukrainians	98	89	88
Finns	1	1	1
French	2	-	3
Croats	927	897	828
Czechs	32	24	18
Sokci Croats	2	4	5
Other	125	111	171
Undeclared	998	1782	1489
Regional affiliation	75	66	56
Aromunians	4	3	1
Unknown	8346	6054	4921

T3.1 Students by nationality in the Republic of Serbia in %

	2007/2008	2008/2009	2009/2010
Serbs	100	100	100
Montenegrins	1.3	1	0.9
Yugoslavs	0.1	0.01	0.01
Albanians	0.01	0.01	0.01
Bosniacs	1.2	1.3	1.3
Hungarians	1.7	1.5	1.5
Muslims	0.3	0.3	0.2
Austrians	0.01	0.01	0.01
Belgians	0.01	0.01	0.01
Bulgarians	0.01	0.01	0.01
Bunjevci Croats	0.01	0.01	0.01
Vlahs	0.01	0.01	0.01
Gorani	0.01	0.01	0.01
Greeks	0.01	0.01	0.01
Egyptians	0.01	-	-
Italians	0.01	0.01	0.01
Jews	0.01	0.01	0.01
Chinese	0.01	0.01	0.01
Macedonians	0.2	0.1	0.1
Germans	0.01	0.01	0.01
Norwegians	0.01	0.01	0.01
Poles	0.01	0.01	0.01
Roma	0.01	0.01	0.1
Romanians	0.1	0.1	0.1
Russians	0.01	0.01	0.01
Ruthenians	0.1	0.1	0.1
Slovaks	0.3	0.3	0.3
Slovenians	0.01	0.01	0.01
Turks	0.01	0.01	0.01
Ukrainians	0.01	0.01	0.01
Finns	0.01	0.01	0.01

French	0.01	-	0.01
Croats	0.4	0.4	0.4
Czechs	0.01	0.01	0.01
Sokci Croats	0.01	0.01	0.01
Other	0.01	0.01	0.1
Undeclared	0.5	0.8	0.7
Regional affiliation	0.01	0.01	0.01
Aromunians	0.01	0.01	0.01
Unknown	3.9	2.8	2.4

NB: The percentage of pupils who have classes in languages of national minorities in primary and secondary schools and the percentage of pupils by nationality is calculated in relation to Serbs (Serbs=100)

All those whose share is less or equal to one per mil are shown as 0.01.

T4. Infant mortality, 1998-2009

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	
REPUBLIC OF SERBIA													
Total	882	792	785	799	790	711	633	579	525	484	460	366	
Male	499	458	473	484	470	392	370	358	311	288	262	215	
Female	383	334	312	315	320	319	263	221	214	196	198	151	

The expected life span by nationality of mother is not counted. This indicator is calculated for the total number of live born children.

T5. Life expectancy of live born children by gender 2002-2009

	2002	2003	2004	2005	2006	2007	2008	2009	
REPUBLIC OF SERBIA									
Total	72,3	72,5	72,6	72,7	73,2	73,4	73,7	73,7	
Male	69,7	69,9	69,9	69,9	70,6	70,7	71,1	71,1	
Female	75,0	75,1	75,4	75,4	75,9	76,2	76,3	76,4	

124. What is the size of the Roma population in Serbia? What are the measures taken or planned for their integration?

108,193 citizens declared as Roma in 2002 census in Serbia. In the same year the Centre for Research of Ethnicity, with the support of the Federal Ministry of National

and Ethnic Communities, conducted a research in 593 settlements where 201,353 domicile and 46,238 internally displaced Roma lived. The majority of researches estimates that there are 450,000 Roma living in Serbia.

By the Law on Protection of Rights and Freedoms of National Minorities (*Official Gazette of RS* No. 11/2002, *OJ of Serbia and Montenegro* No. 1/2003 – Constitutional Charter and *OJ of RS* No. 72/2009 - other laws) the Roma were recognized the status of a national minority in Serbia in 2002. In January 2005 the Government of the Republic of Serbia adopted four national action plans in the area of education, housing, health and employment, while in 2009 it adopted the Strategy for Improving the Status of Roma (*Official Gazette of RS* No. 27/2009 (hereinafter referred to as: Strategy) and the Action Plan for Implementation of the Strategy for Improving the Status of Roma.

The Strategy sets the foundation for improving the status of Roma in the Republic of Serbia and reducing disparities between the Roma population and the other population. In special chapters this document deals with the issues of education, housing conditions, employment, displaced persons, problems related to readmission, issues of availability of identity documents, social insurance, and social protection, health protection, position of women, information, culture, political participation and representation of the Roma, and tackling discrimination.

Over 5 million euro was allocated in 2009 and around 4 million euro in 2010 for implementation of the Strategy.

The following institutional structures have been established for implementation of the Strategy: Council for improving the position of the Roma and implementation of the Decade of Roma Inclusion; Office for implementation of the Strategy for improving the status of Roma has been established within the Ministry of Human and Minority Rights; working groups for implementation of the Strategy have been established within 10 Ministries and the Commissariat for Refugees; Office for Roma Inclusion has been established on the provincial level, while 54 local self government units hired coordinators for Roma issues.

Some of the measures of the Action Plan that have been implemented to date are: hiring 83 health mediators; 179 teaching assistants in preschool and elementary school education; line ministries implemented open competitions for Roma civil sector projects and system institutions in the area of healthcare, employment (within public works), housing (preparation of planning documents), education, culture, media and information. In the area of education since school year 2003/2004 measures of affirmative action have been applied for enrolment of students in high schools and two-year colleges and universities.

In addition to target approach, the Roma are included in other programs covering socially vulnerable groups. Several laws of importance for the position of the Roma have been passed, including the Law on the Foundations of Education and Upbringing (*Official Gazette of RS* No. 72/2009), Law on Prohibition of Discrimination (*Official Gazette of RS* No. 22/09), Law on National Councils of National Minorities (*Official Gazette of RS* No. 72/2009).

125. What measures have been taken to improve birth registration data for minorities, particularly the Roma and the Egyptians? Is the ethnic origin

sometimes registered in the birth certificate, especially for Roma? Do you know of cases when this happens at local level?

In accordance with Article 36, paragraph 1 of the Constitution of the Republic of Serbia (Official Gazette of RS, No. 98/2006), the Law on Registers (Official Gazette of RS, No. 20/2009) provides for equal protection of all citizens regardless of their nationality before the holders of public authorities (cities and municipalities) in terms of civil register keeping activities and decision-making in first instance administrative proceedings relating to civil registers, as well as for the right to file a complaint against decisions of the holders of public authorities with the Ministry of State Administration and Local Self-Government. The decision of the Ministry of State Administration and Local Self-Government is final and an administrative dispute before the Administrative Court may be initiated against it.

It should also be noted that this law provides for all legal assumptions for the exercise of the right to registration. Compared to prior solutions, the new Law on Civil Registers has significantly improved the exercise of the right to registration in the birth register, especially when it comes to the registration of the fact of birth of children whose parents are unknown or children without parental care, as well as the registration of the fact of birth reported after the legal timeframe (subsequent entry of the fact of birth into the birth register).

In view of the constitutional right of minorities to preserve their identity, for the first time the Law on Civil Registers explicitly regulates the entry of minority members' personal names into the birth register, by way of prescribing that minority members have the right to have their personal names registered in their own language and alphabet, which however does not exclude parallel registration in the Serbian language and Cyrillic alphabet.

Given that excerpts from civil registers are issued based on data contained therein, the personal name of a minority member registered in the language and alphabet of respective minority is entered as such in the excerpt from the birth register.

Apart from this, the Guidelines on Civil Register Keeping and Forms envisage the possibility of printing the names of sections of the excerpt from the birth register on the back of the excerpt form in the minority language and alphabet for local government units where the minority language is in official use. According to the data of the National Bank of Serbia – Institute for Manufacturing Banknotes and Coins, which produces and prints excerpt from the birth register forms pursuant to the Law on Civil Registers, from the introduction of these forms – 1 March 2010 to 1 December 2010, a total of 102,200 excerpt forms in minority languages were printed at the request of bodies in charge of register keeping and issue of register excerpts.

One of the basic human rights and freedoms guaranteed by the Constitution of the Republic of Serbia is the freedom to express one's national identity. Pursuant to Article 47 of the Constitution, national affiliation may be expressed freely, while at the same time no one is obliged to declare his nationality. In accordance with the said provision of the Constitution, the Law on Civil Registers does not prescribe registration of data on ethnic origin or nationality. More specifically, data entered in the birth register are as follows: data about the birth (first and last name of the child; abbreviated personal

name; sex; day, month, year and hour of birth; place and municipality of birth, and name of the country of birth if the child is born abroad; unique personal identification number and citizenship), data about the child's parents (first and last name and if the parents are married to each other, last name prior to the marriage; personal identification numbers; day, month and year of birth; place and municipality of birth, and name of the country of birth if the parents were born abroad; citizenship; permanent place of residence and address), as well as other data relating to the change in personal status of a person registered in the birth register. Given the above, register forms prescribed by the Guidelines on Civil Register Keeping and Forms contain no section for ethnic origin or nationality.

Furthermore, as register excerpts are issued based on data contained in the registers, data on one's ethnic origin or nationality are not entered in the birth register excerpts. The excerpt from the birth register form, also prescribed by the Guidelines on Civil Register Keeping and Forms, contains no section for ethnic origin or nationality either.

The enforcement of the Law on Civil Registers is monitored by the Ministry of State Administration and Local Self-Government. No cases of entering data on ethnic origin or nationality in the birth register or excerpt therefrom have been observed so far.

126. Please provide a description of existing language legislation and language training programmes for minority languages. Is language legislation in line with the Council of Europe's recommendations? What arrangements have been taken to ensure translation and interpretation?

The Constitution of the Republic of Serbia ("Official Gazette of RS", No. 98/2006) prescribes that the members of national minorities are entitled to, among other things, use their own language and script, and to have official bodies, organizations endowed with public powers, the bodies of autonomous provinces and the units of local self-governments conduct the court proceedings in their own language in the environments where they make up the significant population (Article 79 Paragraph 1). Furthermore, in line with the Constitution, provincial legislation may establish additional rights for persons belonging to national minorities (Article 79 Paragraph 2).

Besides the rights guaranteed by the Constitution of RS to all citizens, members of national minorities are guaranteed with additional individual and collective rights, by virtue of which members of national minorities participate in the decision making or they make decisions themselves on certain issues regarding their culture, education, information and official use of language and scripts, either directly or through their representatives in line with the law.

The provisions of Articles 13-15 of the Law on the Protection of Rights and Freedoms of National Minorities ("Official Gazette of RS", No. 72/2009) regulated the right to education for persons belonging to national minorities at all levels in their mother tongue. The part of the school curriculum regarding the national content, contains a significant amount of topics related to history, art and the culture of a national minority. In designing the syllabus intended for subjects through which the specificities of national minorities are displayed taught in the language of a national minority, bilingual learning and the study of the languages of national minorities with the elements of

national culture the participation of the National Councils of national minorities is obligatory.

The Law on National Councils of National Minorities ("Official Gazette of RS", No. 72/2009) defines the competences of the National Council in the field of education. In line with the law, National Councils may establish educational institutions, and institutions of pupil's and student's standard and enjoy the right of the founder of these institutions. The Republic, autonomous province and the local self-government unit may, fully or in part, confer their founders' rights to National Councils with regard to these institutions.

National Councils have special authority in educational institutions in which the learning process is carried out in the language of a national minority or those in which the speech, the language and the culture of a national minority are being studied. The National Council proposes to National Education Council general principles of the preschool curriculum, primary and secondary school curriculum, the primary and secondary school curriculum for the language of a national minority and gives opinion to the National Education Council on the syllabus for Serbian as the non-native language. Only with the prior consent of the National Council of a national minority can the National Education Council propose that the Minister of Education allows the use of textbooks and teaching aids whose contents express the specificity of a national minority. The Minister allows the use of domestic or imported textbooks in the language of a national minority at the suggestion of a National Council.

The Law on Preschool and Elementary Education ("Official Gazette of RS", No. 18/2010) prescribes that the educational process intended for the members of national minorities be carried out in their mother tongue, or bilingually or in Serbian, if the minimum of 50% of parents, or guardians choose to do so.

Within the preschool curriculum special and specialized syllabi can be carried out, including the ones pertaining to the preservation of the language and culture of a national minority.

The Law on the Fundamentals of the Educational System ("Official Gazette of RS", No. 72/2009) prescribes that the educational process intended for the members of national minorities is carried out in their mother tongue, or it can be exceptionally carried out bilingually or in Serbian. (This question was answered in more detail in Chapter Political Criteria, questions no. 144. and 145.)

The Law on University Education ("Official Gazette of RS", No. 76/2005, 100/2007, 97/2008, 44/2010) stipulates that the curriculum taught at the institution of higher education may be carried out in the language of a national minority as long as the curriculum has been accredited.

All legislation adopted within the educational reform is in line with the recommendations of the European Council. As a part of the process of harmonization with the provisions and terminology of the Law on the Fundamentals of the Educational System and the provisions of other laws, the adoption of new laws on primary and secondary schools is pending,

The amendments to the Law on Official Use of Languages and Scripts (“Official Gazette of RS”, No. 30/10) prescribe that in the territory of the local self-government unit traditionally inhabited by the members of national minorities, their language and script can be in equal official use.

By virtue of its Statute, a local self-government unit is obliged to introduce the language and the script of a national minority in equal official use if the population of that particular national minority amounts to 15% of the total population in that territory according to the latest population census.

According to the Law on Official use of Languages and Scripts and the Law on Establishing Competences of the Autonomous Province of Vojvodina, (“Official Gazette of RS”, no. 99/2009), the Assembly of the Autonomous Province of Vojvodina passed the Provincial Assembly Decision on more detailed regulation of the issues concerning the official use of languages and scripts of national minorities in the territory of the Autonomous Province of Vojvodina (“Official Journal of AVP”, No. 08/03, 09/03 and 18/09 – the change in the name of the regulation), that govern certain issues in the area of official use of languages and scripts of national minorities in the territory of the Autonomous Province of Vojvodina, the following in particular: the ways of achieving the official use of languages and scripts of national minorities in the operation of provincial bodies, bodies and organisations of local self-government units, organizational units of public administration bodies, public companies, institutions and agencies established for the whole territory of the Republic of Serbia, as well as for the territories of local self-government units; the right to use personal name of the national minority members, and the right to issuance of public documents and other documents of interest for exercising citizens’ rights as defined by the law; the use of language in the field of economy and rendering of services, writing the names of towns, and other geographical names, the names of squares, streets, the names of authorities, organisations and companies, making public appeals, announcements and warnings intended for the public as well as the writing of other public inscriptions; the conditions for the introduction of languages and scripts of national minorities in the official use in local self-government units, performances by the Provincial body in charge of monitoring the status and the exercise of the national minority rights, submitting reports to the Assembly of the Autonomous Province of Vojvodina on the exercise of right to official use of languages and scripts of national minorities and other issues.

Provincial Secretariat for Regulations, Administration and National Minorities oversees the implementation and enforcement of the provisions of the said Decision through Provincial inspectors.

In line with the provisions of the Provincial Assembly Decision on provincial administration, the Provincial Secretariat for Regulations, Administration and National Minorities, provides the translation of regulations and other acts to languages of national minorities intended for the needs of the Assembly of APV, Provincial government and provincial administration bodies. In addition, it is responsible for the publication of regulations and other rules of the Assembly of AVP, provincial Government and the provincial administration bodies in the “Official Journal of the Autonomous Province of Vojvodina” in languages that are in official use in the bodies and organisations of AP Vojvodina according to its Statute, these languages being Hungarian, Slovakian, Croatian, Romanian, and Ruthenian.

The official use of languages of national minorities particularly implies the following: the use of the language of a national minority in the administrative or court proceedings and the conducting of these proceedings in the language of a national minority; the use of the language of a national minority in the communication between bodies with public powers and the citizens; issuance of public documents and keeping official records and collections of personal data in the languages of national minorities and recognition of these documents in the languages as valid; the use of languages of a national minorities on ballot papers in the electoral material; the use of languages of national minorities in the activity of representative bodies.

Members of the national minority which makes up a minimum of 2% of the total population of the Republic of Serbia according to the latest population census results can address state bodies in their language and are entitled to the reply in that same language.

The member of the National Assembly, belonging to a national minority, has the right to speak in their mother tongue at the National Assembly's sessions and to submit written documents, prescribed by the Rules of Procedure of the National Assembly in their mother tongue in the course of work of the National Assembly. When the member of the National Assembly is using their mother tongue in the National Assembly, continuously or in a particular situation, the general secretary of the National Assembly is obliged to provide simultaneous translation into Serbian language of his/her speech or the document submitted.

At the suggestion of the parliamentary group of a minority, the draft budget for the National Assembly for 2011 envisages funds for translating the most important laws to languages of national minorities.

127. Is the right of translation of all proceedings and documents in criminal and civil judicial proceedings ensured in accordance with the relevant Council of Europe documents? If so, how is this done?

Constitution of the Republic of Serbia ("*Official Gazette*", No. 98/2006) stipulates that Serbian language and Cyrillic Script shall be in official use in the Republic of Serbia. Official use of other languages and scripts shall be regulated by the law based on the Constitution. Furthermore, the Republic of Serbia protects the rights of national minorities. The State shall guarantee special protection over national minorities for the purpose of achieving complete equality and preservation of their identity. In line with the right of a fair trial, everyone shall be guaranteed the right to free assistance of an interpreter, if he/she does not understand or speak the language which is in official use in court and the right to free assistance of an interpreter if he/she is blind, deaf and dumb.

Pursuant to the Criminal Procedure Law ("*Off. Journal of FRY*", No. 70/2001 and 68/2002 and "*Off. Gazette of RS*", no. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 - other law, 72/2009 и 76/2010), Serbian language and Cyrillic script shall be in official use in the Republic of Serbia. Other languages and scripts shall be officially used in accordance with the law. In courts located in the areas where national minorities live, in the official use in the criminal procedure shall be their

languages and scripts, in accordance with the Constitution and Law, lawsuits, appeals and other filings are referred to the court in the language which is in official use in the court.

Criminal procedure shall be conducted in the language which is in official use in the court. Parties, witnesses and other persons involved in the procedure are entitled to use their own language. If the proceeding is not conducted in the language of a person, interpretation shall be provided for anything that the person may state, or anyone else might state, as well as the translation of personal documents and other written evidence. The person shall be advised of his rights regarding translation/interpretation, and the person may waive that right if he speaks and understands the official language of the proceedings. The records shall note that the advice has been given, as well as the statement of the participant.

Court shall send summons, decisions and other briefs in Serbian language. If the language of a national minority is also in the official use at the court, the court shall submit briefs to persons who are national minority, but who used that language in the procedure. Those persons may require that the briefs should be submitted in the language in which the procedure is conducted. Accused persons that is held in detention, serving sentence or executing security measures in health institution shall be provided with the translation of the documents into the language used in the proceedings.

Also, every accused person, or suspect, has a right to a translator and interpreter if he/she does not understand and does not speak the language used in the procedure. The court of another state body must secure the exercise of this right of the defendant, or suspect, as well as warn the defendant, i.e. suspect prior the first hearing, that everything he declare may be used against him and evidence and advise him of the right to hire legal council and the council may be present at the hearing.

The Misdemeanor Law („*Official Journal of SR*", No. 101/2005, 116/2008 and 111/2009) regulates that misdemeanor procedure is conducted in accordance with the provisions of the law which governs the official use of language and scripts. The defendant, witnesses and other persons involved in the misdemeanor procedure are entitled to use their own language during the execution of certain actions in the proceedings or during the hearing.

If the action in the misdemeanor procedure, that is oral hearing is not conducted in the language of the defendant, witnesses and other persons involved in the minor offence procedure, oral translation of what the person or other person says will be provided for as well as other written evidence material. The accused person, witnesses and other persons involved in the misdemeanor procedure, shall be advised of the right of translation, but they may waive that right if they speak and understand the official language of the proceedings. The records shall note that the advice has been given, as well as the statement of the participants. The translation is conducted by an interpreter appointed by the court conducting the minor offence procedure.

Civil Procedure Law ("*Official Journal of SR* ", No. 125/2004 and 111/2009) stipulates that Serbian language and Cyrillic shall be in official use in the criminal proceedings. Other languages and scripts shall be officially used in accordance with the law. In the

courts having jurisdiction over territory where members of national minorities live, languages and scripts of national minorities are also in official usage in criminal proceedings and shall be used in accordance with law. Parties and other participants to the proceedings shall have the right to use their own language and script in the proceedings, in accordance with the provisions of the law.

Parties and other participants involved to the proceedings are entitled to use their language at hearings and when orally undertaking other actions before the court. If such proceedings is not in the language of the parties or other participants to the proceedings, they will, upon request, be provided with an interpretation of the proceedings in their own language, including oral translations of all, documents used as evidence during the proceedings. Parties and other participants in the proceedings who are blind, deaf or dumb are not entitled to free assistance of an interpreter in the proceedings.

Summons, decisions and all other briefs are submitted to parties and other participants in the proceedings in Serbian language. If one of the languages of national minorities is in official use in court, the court shall deliver briefs to parties or other participants in the proceedings who are members of that national minority and who use that language.

Parties and other participants to the proceedings must submit their complaints, appeals and other filings with the court in a language which is in official use at the court. Parties and other participants to the proceedings may also write their filings in the language of a national minority which is not in official use at the court, provided it is in accordance with the law.

The court bears the costs of interpretation into the language of a national minority incurred in accordance with the provisions of the Constitution and this Law governing the rights of members of national minorities to use their own language.

128. Are there any professional restrictions for minorities (*de jure* or *de facto*)?

The Labour Law (*Official Gazette of RS* No. 24/2005, 61/2005 and 54/2009) prohibits both direct and indirect discrimination against persons seeking employment and employees in respect to, among other things, birth, language, race, colour of skin, ethnicity, religion, or any other personal quality.

Within the meaning of this law, discrimination is prohibited in relation to: employment conditions and selection of candidates for a certain job; working conditions and all rights resulting from the labour relationship; education, training and advancement; promotion at work; termination of labour contract. Provisions of the labour contract establishing discrimination pursuant to some of the listed grounds shall be null and void.

129. How is the full participation in political life of persons belonging to minorities ensured?

The Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/2006) in Article 77 (1) explicitly stipulates that members of national minorities shall have the right to participate in administering public affairs and to come into office, under the same conditions as other citizens.

The Constitution of the Republic of Serbia contains special provisions creating the legal ground for participation of members of national minorities in representative bodies on all levels of public authorities. Pursuant to Article 100 (2) of the Constitution, in the National Assembly of the Republic of Serbia, as the highest representative body and holder of constitutional and legislative power, equality and representation of different genders and members of national minorities shall be ensured. In Article 180 (4) the Constitution laid down that in autonomous provinces and local self-government units with the population of mixed nationalities, a proportional representation of national minorities in assemblies shall be enabled, in accordance with the law. Furthermore, in the Republic of Serbia provisions of the law, provincial decisions and practical measures have created conditions for efficient participation of members of national minorities in representative bodies on different levels of public authorities.

The Law on Election of Members of Parliament (*Official Gazette of RS* No. 35/00 and 18/04) that regulates the election and cessation of mandate of MPs of the National Assembly of Serbia, laid down that only candidate lists that polled at least 5% of votes of the total number of voters who voted in a constituency shall participate in distribution of mandates. Pursuant to Article 81 (2) of the law, political parties of national minorities and coalitions of political parties of national minorities participate in distribution of mandates even if they polled less than 5% of votes of the total number of voters who voted. The Law on Election of Members of Parliament in paragraph 3 of the same article stipulates that political parties of national minorities are all parties whose main goal is representation of interests of a national minority and protection and improvement of rights of members of the national minority in accordance with the international standards, whilst paragraph 4 of the same article stipulates that the decision on whether the submitter of a candidate list shall have the position of a political party of national minority, i.e. coalition of parties of national minorities, shall be made by the Republic Electoral Commission when declaring the candidate list upon proposal of the submitter. The solutions provided for in the election law are much more favourable in comparison with the previous period and affirmative for members of national minorities as they facilitate election of their representatives to the National Assembly of the Republic of Serbia.

In the Autonomous Province of Vojvodina the identical solution in terms of distribution of mandates is contained in the Provincial Assembly Decision on the election of MPs to the Assembly of the Autonomous Province of Vojvodina ("Official Journal of APV" No. 12/04, 20/08, 05/09 and 18/09 – the change in the title of the regulation). In the Provincial Assembly Decision on the election of MPs to the Assembly of the Autonomous Province of Vojvodina a mixed election system has been adopted, that is to say, MPs are elected by application of proportional and majority electoral system.

The part of the Decision regulating the election of MPs through proportional electoral system prescribes that political parties of national minorities and coalitions of national minorities political parties may propose candidates for MPs supported by the signatures of minimum 3,000 voters per electoral list, while political parties and multi-party coalitions which are not national minority parties, may propose candidates for MPs who have been supported by the signatures of minimum 6,000 voters per electoral list.

The part of the Decision concerning the distribution of won mandates prescribes that the electoral lists that polled at least 5% of votes of the total number of voters who voted participate in the distribution of mandates, while political parties of national minorities and coalitions of political parties of national minorities participate in the distribution of mandates even if they polled less than 5% of votes of the total number of voters who voted.

Political parties of national minorities are all those political parties whose main goal is the representation of interests of a national minority and the protection and promotion of the national minorities rights in accordance with domestic and international standards. The Decision stipulates that the decision on whether the submitter of a candidate list shall have the status of a political party of a national minority, i.e. a coalition of parties of national minorities, shall be made by the Provincial Electoral Commission when declaring the electoral list upon the proposal of the submitter.

In March 2010, the Assembly of the Autonomous Province of Vojvodina passed the Provincial Assembly Decision on the Council of National Minorities ("Official Journal of AVP", No. 04/10). In November 2010, The Assembly passed the Decision on the election of the members to the Council of National Minorities ("Official Journal of AVP", No. 21/10).

When resolving the issues within the jurisdiction of the Assembly, directly or indirectly linked to the exercise of rights of the national minorities which comprise numerical minority in the total population of AP Vojvodina, especially in the fields of culture, education, public information and official use of languages and scripts, it is mandatory to obtain the opinion of the 30-member Council of National Minorities. One half of members are elected from the MPs who have declared themselves as the members of Serbian nationality, while the other half is elected from MPs who have declared themselves as belonging to the national minorities making up a numerical minority in the total population in AP Vojvodina.

Pursuant to the Law on Local Elections (*Official Gazette of RS* No. 129/2007) election of deputies in local assemblies is conducted in the municipality as a unique election unit and deputy mandates are distributed amongst candidate lists in proportion to the number of votes polled by each candidate list. Article 40 (4) of the law prescribes that candidate lists that polled at least 5% of votes of the total number of voters who voted participate in distribution of mandates, and paragraph 5 of the same article set out that political parties of national minorities and coalitions of political parties of national minorities participate in distribution of mandates even if they polled less than 5% of votes of the total number of voters who voted. Paragraph 6 of the same article defines that political parties of national minorities are all those political parties whose main goal is representation of interests of a national minority and protection and promotion of rights of members of national minorities in accordance with the international legal

standards. The decision on whether the submitter of a candidate list shall have the position of a political party of national minority, i.e. collation of parties of national minorities, shall be made by the Electoral Commission of the unit of the local self government upon proposal of the submitter that has to be provided prior to submission of the candidate list. The listed solutions facilitate participation of members of national minorities in representative bodies on the local level.

The Law on Political Parties (*Official Gazette of RS*, No. 36/2009) that was passed in May 2009, for the first time regulated the notion of political party of national minority in the legal system of the Republic of Serbia. Political party is defined as an organisation of freely and voluntarily associated citizens established for achievement of political goals by democratic formation of political will of citizens and for participation in elections (Article 2). It is laid down in Article 3 of the Law that political party of national minority is a party whose action, in addition to the listed features, is especially focused on representation of interests of a national minority and advancement of rights of that national minority in accordance with the Constitution, law and international standards, regulated by constituent instrument, programme and statute of the political party. Pursuant to Article 9, political party of a national minority may be established by at least 1,000 adult and legally capable citizens of the Republic of Serbia, *unlike other political parties that may be established by at least 10,000 adult and legally capable citizens*. The title of the political party of a national minority, if provided for by the statute, may be in the language and alphabet of the national minority that is entered in the Register after the title in Serbian and in Cyrillic.

130. What is the legislative and institutional framework for measures against racism and xenophobia?

The Constitution of the Republic of Serbia (*Official Gazette of RS*, No. 98/2006) provides that all are equal before the Constitution and law and that 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 affiliation, social origin, birth, religion, political or other conviction, property, culture, language, age, mental or physical disability shall be prohibited (Article 21(1), (2) and (3)). In addition, Article 23 of the Constitution provides that human dignity is inviolable and everyone shall be obliged to respect and protect it. Everyone shall have the right to free development of personality if it does not violate the rights of others guaranteed by the Constitution.

The Republic of Serbia has ratified the International Convention on the Elimination of All Forms of Racial Discrimination. The Initial Report on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination was submitted to the Committee on the Elimination of Racial Discrimination in June 2009.

The Law on the Prohibition of Discrimination (*Official Gazette of RS*, No. 22/2009) regulates the general prohibition of discrimination, the forms and cases of discrimination, as well as the methods of protection against discrimination (Article 1) and establishes the Commissioner for the Protection of Equality, as an independent state authority, autonomous in performing the tasks prescribed by this Law.

The Law on the Prohibition of Discrimination defines the terms "discrimination" and "discriminatory treatment" as any unjustified differentiation or unequal treatment, that is to say, omission (exclusion, limitation or preferential treatment) in relation to individuals or groups, as well as their families or persons close to them, be it overt or covert, on the grounds of race, skin colour, ancestors, citizenship, national affiliation or ethnic origin, language, religious or political convictions, sex, gender identity, sexual orientation, property, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, trade union and other organisations, as well as other real or presumed personal characteristics (Article 2(1), point (1)).

The Law on the Prohibition of Discrimination provides that forms of discrimination are direct and indirect discrimination, as well as violation of the principle of equal rights and obligations, calling to account, associating for the purpose of exercising discrimination, hate speech, harassment and humiliating treatment (Article 5). Inter alia, the following shall be considered to constitute severe forms of discrimination: instigating and inciting inequality, hatred and enmity on the grounds of national, racial or religious affiliation, political convictions, sex, gender identity, sexual orientation or disability; slavery, human trafficking, apartheid, genocide, ethnic cleansing, as well as advocating any of the above, as well as advocating or exercising discrimination on the part of state authorities or in the course of proceedings before state authorities (Article 13).

The Law on the Prohibition of Discrimination regulates court protection against discrimination and everyone who has suffered discriminatory treatment shall have the right to initiate a lawsuit. The litigation proceedings shall be conducted urgently (Articles 41-46). The Ministry in charge of human and minority rights shall monitor the implementation of the Law on the Prohibition of Discrimination (Article 47).

Provisions of the Criminal Code of the Republic of Serbia (*Official Gazette of RS*, No. 85/2005, 88/2005 – corrigendum, 107/2005 – corrigendum, 72/2009 and 111/2009):

- Criminal offence of **violation of equality** is provided for under the provision of Article 128 of the Criminal Code of the Republic of Serbia, within Chapter Fourteen, which defines criminal offences against freedoms and rights of man and citizen. Under this criminal offence, any denial or restriction of the rights of man and citizen guaranteed by the Constitution, laws, other legislation, general acts or ratified international treaties, on the grounds of national or ethnic affiliation, 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 some other personal characteristics is criminalized, as well as granting privileges or benefits pursuant to such differences. The prescribed punishment is imprisonment up to three years. A more severe form of this criminal offence is if the act specified above is committed by an official in discharge of duty, in which case the prescribed punishment is imprisonment of three months to five years.

- The provision of Article 174 within the same Chapter of the Criminal Code provides for the criminal offence of **ruining reputation due to racial, religious, national or other affiliation**. It criminalises the act of exposing to derision persons or a groups on the grounds of race, skin colour, religion, nationality, ethnic origin or some other

personal characteristic. The prescribed punishment is a fine or imprisonment up to one year.

- Within Chapter Twenty Eight, which defines criminal offences against the constitutional order and security of the Republic of Serbia, the provision of Article 317 provides for the criminal offence of **instigating national, racial and religious hatred and enmity**.

The basic form of this criminal offence is instigating or exacerbating national, racial or religious hatred or enmity among peoples and ethnic communities living in Serbia. The prescribed punishment for this criminal offence is imprisonment of six months to five years.

If this offence is committed by coercion, maltreatment, compromising security, ridiculing national, ethnic or religious symbols, damaging another persons' goods, desecration of monuments, memorials or graves, the prescribed punishment is imprisonment of one to eight years.

In case the offences are committed by abuse of position or authority, or if the offences result in riots, violence or other grave consequences for the coexistence of peoples, national minorities or ethnic groups living in Serbia, the prescribed punishment is imprisonment - one to eight years for the first form and two to ten years for the second form of the offence.

- Furthermore, within Chapter Thirty One, which comprises criminal offences against public peace and order, the provision of Article 344a provides for the criminal offence of **violent behaviour at sporting events or public assemblies**. Under this criminal offence, a range of acts of violent behaviour that can occur at sporting events or public assemblies is criminalised. One of these acts is instigating national, racial, religious or other form of hatred or enmity by one's behaviour or slogans, on some discriminatory grounds, which results in violence or physical attack on participants. The prescribed punishment is imprisonment of six months to five years and a fine. The leader of the group shall be punished by imprisonment of three to twelve years.

In case the offence is committed by a group, the prescribed punishment is imprisonment of one to eight years, whereas if the offence results in riots during which someone suffers serious bodily injuries or assets of greater value are damaged, the prescribed punishment is imprisonment of two to ten years.

In case the responsible person or official who fails to apply security measures during the organization of a sporting event, in order to prevent or stop riots, and therefore endangers the lives or bodies of a larger number of people or assets of greater value, he/she shall be punished by imprisonment of three months to three years and a fine.

- Chapter Thirty Six, which defines criminal offences against humanity and other values protected by international law, provides for the criminal offence of **racial and other forms of discrimination**, stipulated under Article 387 of the Criminal Code.

Any violation of fundamental human rights and freedoms guaranteed by generally accepted rules of international law and ratified international treaties, on the grounds of

difference in race, skin colour, religious affiliation, nationality, ethnic origin or some other personal characteristic is criminalised, as well as persecution of organisations or individuals because of their commitment to the equality of people. The prescribed punishment for these two forms of the criminal offence is imprisonment of six months to five years.

Propagation of the idea of superiority of one race over another, propagation of racial hatred and inciting to racial discrimination, as well as propagation or making publicly available texts, pictures or any other presentation of ideas or theories advocating or exacerbating hatred, discrimination or violence against any person or group of persons on the grounds of race, skin colour, religious affiliation, nationality, ethnic origin or some other personal characteristic, as well as public threatening of a person or group of persons on the same grounds are considered commitment of criminal offences punishable by imprisonment of over four years. The prescribed punishment for these cases is imprisonment of three months to three years.

- It should be noted that this Chapter of the Criminal Code defines also the criminal offences of **genocide and crime against humanity** (Articles 370 and 371), for which the prescribed punishment is imprisonment of at least five years or imprisonment of thirty to forty years.

The Law on the Protection of Rights and Freedoms of National Minorities (*Official Gazette of RS*, No. 11/02) regulates the protection of national minorities against all forms of discrimination in exercising their rights and freedoms, establishes instruments that guarantee and protect special rights of national minorities to self-governance in the fields of education, use of language, information and culture, and establishes institutions for fostering the participation of national minorities in authorities and management of public affairs (Article 1(2)).

The Law on the Foundations of Education and Upbringing System (*Official Gazette of RS*, No. 72/09) under Article 46 prohibits activities which threaten or belittle groups or individuals on the grounds of race, national, linguistic or religious affiliation, as well as inciting to such activities. This Law prescribes fines for persons who threaten or belittle groups or individuals on the grounds of race, national, linguistic, religious affiliation or sex. Discrimination of a child, i.e. student shall imply each and every direct or indirect differentiation, their indulgence, exclusion or limitation aimed at preventing the child, i.e. student from exercising his/her rights. Physical violence, insulting the personality of children, students and employees are prohibited, and organisation of political parties is not allowed either.

The provisions of Article 18 of the Law on Labour (*Official Gazette of RS*, No. 24/05 and 61/05) prohibits direct and indirect discrimination against persons seeking employment, as well as against employees on the grounds of sex, birth, race, language, skin colour, age, pregnancy, health or disability, national affiliation, religion, marital status, family obligations, sexual orientation, political or other convictions, social origin, property, membership in political organisations, trade unions or some other personal characteristic. In accordance with Article 20 of this Law, discrimination is prohibited in respect of the conditions of employment and the selection of candidate for performing a certain job, working conditions and all rights of the employment relationship, education, training and additional training, work promotion, termination of

the employment contract. Provisions of the employment contract establishing discrimination on any of these grounds shall be considered void.

Regarding public information, the Law on Broadcasting (*Official Gazette of RS*, No. 43/03 and 61/05) under Article 3 point (6) provides that the regulation of relations in the field of broadcasting is based, inter alia, on the principles of objectivity, prohibition of discrimination and publicity of the procedure of issuing broadcasting licences. The prohibition of discrimination is regulated in more detail by a range of other provisions of this Law. In accordance with Article 38(2) licences for broadcasting radio and TV programmes are issued under equal conditions. Provisions of Article 77(3) of the Law provide that general interest in the public broadcasting service is realized in a manner that programmes produced and broadcast within the public broadcasting service shall ensure diversity and mutual compliance of contents supporting democratic values of the modern society, particularly regarding the respect of human rights and cultural, national, ethnic and political pluralism. Provisions of Article 78 of this Law provide that public broadcasting service institutions are, inter alia, obliged to produce and broadcast programmes intended for all segments of the society, without discrimination, taking into consideration, in particular, specific social groups, such as children and youth, minority and ethnic groups, persons with disabilities, socially and physically vulnerable groups.

Article 16 of the Law on Public Information provides that discrimination regarding the distribution of public media shall be prohibited, that is to say, it provides that a person engaged in distribution of public media shall not refuse to distribute someone's public media without a valid commercial reason, or to impose conditions contrary to market principles for the distribution.

Under the provision of Article 6 of the Law on Free Access to Information of Public Importance (*Official Gazette of RS*, No. 120/04) everyone shall be able to exercise the rights in this Law under equal conditions, notwithstanding his/her citizenship, temporary or permanent residence or seat, or some personal characteristic such as race, religion, national and ethnic affiliation, sex etc.

One of the basic principles of the Law on Health Care (*Official Gazette of RS*, No. 107/05) defined by Article 20 of the Law is the principle of health care fairness, which is realized through prohibition of discrimination in health care provision, inter alia, on the grounds of race, national affiliation, religion, culture and language.

The provision of Article 7 of the Law on Civil Servants (*Official Gazette of RS*, No. 79/05) prohibits preferential treatment or discrimination against a civil servant in his/her rights and obligations, particularly on the grounds of racial, religious, sexual, national or political affiliation or some other personal characteristic.

The Law on Churches and Religious Communities (*Official Gazette of RS*, No. 36/06) provides for the prohibition of religious discrimination. Provisions of this Law provide that no one shall be either subject to coercion which could threaten the freedom of religion or be coerced into declaring his/her religion, religious convictions or their absence thereof. No one shall be harassed, discriminated or privileged due to his/her religious convictions, affiliation or non-affiliation to a religious community,

participation or non-participation in worship and observance, or due to practicing or not practicing guaranteed religious freedoms and rights (Article 2).

The Law on the Prevention of Discrimination against Persons with Disabilities (*Official Gazette of RS*, No. 33/06; Article 1) regulates the general regime of prohibition of discrimination on the grounds of disability, special cases of discrimination against persons with disabilities, the procedure of protection of persons subject to discrimination and measures taken to foster equality and social inclusion of persons with disabilities. This Law provides for special rules of civil proceedings in disputes for protection against discrimination on the grounds of disability. Proceedings in disputes for protection against discrimination on the grounds of disability shall be initiated by a claim which can be filed by the person with disability discriminated against or his/her legal representative. Under certain conditions stipulated by law, this claim can also be filed by the attendant of the person with disability. The claim for protection against discrimination on the grounds of disability may demand: prohibition of an activity that poses the threat of discrimination, prohibition to proceed with a discriminatory activity, or prohibition to repeat a discriminatory activity; taking steps to redress the consequences of discriminatory treatment; establishing that the defendant has treated the plaintiff in a discriminatory manner; compensation for material and non-material damage. Revision shall always be allowed in a dispute for protection against discrimination on the grounds of disability (Articles 39-45).

The Law on Gender Equality (*Official Gazette of RS*, No. 104/09) provides for the establishment of equal opportunities in exercising rights and obligations, special measures for the prevention and elimination of discrimination on the grounds of sex and gender and legal protection of persons subject to discrimination (Article 1).

Article 12 of the Law on Police (*Official Gazette of RS*, No. 101/05) provides that when performing police tasks, the police shall comply, inter alia, with international treaties and conventions adopted by the Republic of Serbia, international standards of police conduct and requirements laid down by international acts referring to the exercising of human rights and anti-discrimination in performing police tasks. Under the provision of Article 35, when exercising police powers, the authorised officer shall act impartially, providing everyone with equal legal protection, without exercising discrimination on any grounds.

Under the Law Ratifying the Additional Protocol to the Convention on Cybercrime (*Official Gazette of RS*, No. 19/09) addressing the criminalization of acts of racist and xenophobic nature committed through computer networks, use of computer networks for the promotion of ideas or theories advocating, promoting or exacerbating hatred, discrimination or violence against individuals or groups, on the grounds of race, skin colour, hereditary, national or ethnic origin and religion shall be prohibited in Serbia.

Prohibition of organisations and activities inciting discrimination:

Under the Constitution of the Republic of Serbia, activities of political parties aiming at violent overthrow of the constitutional system, violation of guaranteed human or minority rights, or instigating racial, national or religious hatred (Article 5(3)) shall be prohibited. The Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of the constitutional order, violation of guaranteed

human or minority rights, or instigating racial, national or religious hatred (Article 55(4)). The Constitutional Court decides on the prohibition of the activity of political parties, trade union organisations, citizens' associations or religious communities on the basis of a proposal of the Government of the Republic of Serbia, the Republic Public Prosecutor or the authority in charge of the registration of political parties, trade union organisations, citizens' associations or religious communities (Law on the Constitutional Court - *Official Gazette of RS*, No. 109/2007; Article 80(1)). So far, the Constitutional Court has not prohibited the activity of any of the several organisations which called to violence.

The Law on Public Assembly (*Official Gazette of RS*, No. 51/1992, 53/1993, 67/1993, 48/1994, 12/1997, 21/2001 and 101/2005; Articles 9 and 10) provides that the competent authority shall impose a temporary ban on any public assembly aimed at violent overthrow of the constitutional order, disrespect of the territorial integrity and independence of the Republic of Serbia, violation of freedoms and rights of man and citizen guaranteed by the Constitution, instigating and inciting national, racial and religious enmity and hatred. In accordance with the aforementioned Law, the District Court shall decide on the temporary ban or ban to be imposed on the public assembly. Considering that the District Court ceased to exist as of 1 January 2010, the day the Law on Organisation of Courts (*Official Gazette of RS*, No. 116/2008 and 104/2009) entered into force, the temporary ban or ban to be imposed on the public assembly is practically subject to the decision of the Higher Court, which is the "legal successor of the District Court".

Under the Law on Political Parties (*Official Gazette of RS*, No. 36/2009; Article 37(2)) the activity of a political party shall not be aimed at violent overthrow of the constitutional order and disrespect of the territorial integrity of the Republic of Serbia, violation of guaranteed human and minority rights or instigating and inciting racial, national or religious hatred.

Article 1 of the Law on the Prohibition of Events Staged by Neo-Nazi or Fascist Organisations and Associations and Prohibition of Use of Neo-Nazi or Fascist Symbols and Paraphernalia (*Official Gazette of RS*, No. 41/09), regulates the prohibition of events, display of symbols or paraphernalia or any other activity of neo-Nazi or fascist organisations and associations, which in any manner violate the constitutional rights or freedoms of citizens and prescribes sanctions for the violation of this Law.

Institutional framework for the implementation of the policy of combating discrimination:

Ministry of Human and Minority Rights, founded in mid-2008, performs tasks of public administration addressing the protection and promotion of human and minority rights and anti-discrimination policy.

Provincial Secretariat for Regulations, Administration and National Minorities, founded in 2002 within the Executive Council of the Autonomous Province of Vojvodina (hereinafter AP Vojvodina) performs tasks regarding the exercise of collective and individual rights of national minorities in AP Vojvodina.

The Ombudsperson of the Republic of Serbia was introduced in the legal order of the Republic of Serbia in 2005, as an independent state authority which protects the rights of citizens and monitors the performance of public administration bodies, as well as other bodies and institutions endowed with public powers. The Ombudsperson of the Republic of Serbia has four deputies specializing in the fields of protection of rights of persons deprived of liberty, gender equality, children's rights, rights of members of national minorities and rights of persons with disabilities. The Provincial Ombudsman was established in 2002 for the territory of AP Vojvodina. Protectors of citizens exist also at the local level, and they have been established in 11 towns so far.

National Minorities Council of the Government of the Republic of Serbia was formed in 2004 authorised, inter alia, to monitor and consider the situation regarding the exercise of the rights of national minorities and the situation pertaining to intra-national relations in the Republic of Serbia and to propose measures for the promotion of full and efficient equality of members of national minorities.

Gender Equality Council of the Government of the Republic of Serbia was set up in 2004, as well as the Council for Combating Human Trafficking. Children's Rights Council was established in 2002.

In March 2008, the Government of the Republic of Serbia established the Council for the Promotion of the Status of the Roma, which has 22 members, including representatives of the Ministries of Finance, Health, Education, State Administration and Local Self-Government, as well as other departments which could influence the improvement of the situation of the Roma national minority. Office for the Inclusion of Roma was formed by the Decision of the Assembly of AP Vojvodina in 2006, for the purpose of implementing the action plans for Roma integration, as well as for the development and implementation of programmes for improving the situation of Roma in the fields of education, health, employment, housing, human and other rights. Council for Roma Integration in AP Vojvodina was founded in 2005.

The Law on the Prohibition of Discrimination establishes the Commissioner for the Protection of Equality elected by the National Assembly for five years. The Commissioner for the Protection of Equality shall receive and review complaints pertaining to the violation of the Law and provide opinions and recommendations in specific cases and pass measures of caution (in case the person fails to redress the violation in question within 30 days of having been cautioned, the Commissioner may inform the public about it); shall provide information to the person lodging the complaint concerning his/her rights and the possibility of initiating court proceedings or some other proceedings for the purpose of protection; shall propose a reconciliation procedure; shall file charges pertaining to violations of rights guaranteed by this Law, in his/her own name and with the agreement and on behalf of the person discriminated against, unless proceedings before a court of law have already been initiated or concluded by passing an enforceable decision; shall submit misdemeanour notices on account of violations of rights guaranteed by this Law; shall submit an annual report and special reports to the National Assembly about the situation concerning the protection of equality; shall warn the public of the most frequent, typical and severe cases of discrimination; shall monitor the implementation of laws and other regulations, initiate the passing of or amending regulations for the purpose of implementing and developing protection against discrimination, and provide opinions concerning the

provisions of draft laws and other regulations pertaining to the prohibition of discrimination; shall establish and maintain cooperation with bodies authorised to ensure equality and the protection of human rights on the territory of the autonomous province or a local self-government; shall recommend measures to public administration bodies and other persons aimed at ensuring equality.

The National Assembly elected the Commissioner for the Protection of Equality in May 2010.

Court protection and constitutional appeal:

Article 22 of the Constitution of the Republic of Serbia provides that everyone shall have the right to court protection when any of his/her human or minority rights guaranteed by the Constitution have been violated or denied, as well as right to the elimination of consequences arising from the violation. Citizens shall have the right to address international institutions in order to protect their freedoms and rights guaranteed by the Constitution. Article 35(2) of the Constitution of the Republic of Serbia provides that everyone shall have the right to compensation of material and non-material damage inflicted on him/her by unlawful or irregular work of a state authority, entity exercising public powers, body of the autonomous province or a local self-government. Under Article 36 the Constitution guarantees equal protection of rights before courts and other state authorities, entities exercising public powers and bodies of the autonomous province and local self-governments. Everyone shall have the right to an appeal or other legal remedy against any decision on his/her rights, obligations or lawful interests.

Article 170 of the Constitution provides for the constitutional appeal. A constitutional appeal may be lodged against individual general acts or actions performed by state authorities or organisations 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.

The Law on Constitutional Court regulates the constitutional appeal procedure under Articles 82-92. Under the provisions of Article 84 of the Law, a 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 or minority rights 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 reason 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. In accordance with Article 89(1) the constitutional appeal is upheld or denied as unfounded by the decision of the Constitutional Court.

131. What is the practical experience with its implementation in Serbia?

In the period between 2007 and 2009 in the territory of Serbia, the total of **146 criminal offences regarding hatred, racism and xenophobia were committed**, 78 of which were **cleared up**. Criminal offence reports were filed for:

a) **140** criminal offences **for instigating national, racial or religious hatred or intolerance** from Article 317 of the Criminal Code. In 2007, - 48; in 2008 – 47; in 2009 - 45. **76** of these criminal offences were cleared up; in 2007 – 28; in 2008 – 23; and in 2009 - 25. Criminal complaints have been submitted against 142 persons (of which 121 are Serbian nationality, 8 Muslim, 5 Hungarian, 4 Croatian, and one of German, Wallachian, Albanian and) for:

- **13** physical attacks, of which 12 have been cleared up. 8 attacks against persons of the Roma nationality have been committed; 2 against Hungarian; 1 against Serbian nationality and in two cases against members of other nationalities. Criminal offence reports were filed against 25 persons of Serbian nationality and 1 against a person of Muslim and German nationality respectively. Of all criminal offences, 6 were committed in 2007 (5 of which were cleared up); 5 in 2008. (all of which were cleared up) and 2 in 2009 (both of which were cleared up);
- **2** brawls, both against persons of Roma nationality, which were cleared up (in 2008 and 2009 respectively). Criminal complaints have been submitted against 7 persons of Serbian and one person of Muslim nationality;
- **68** cases of slogan and graffiti writing directed to almost all nationalities in the Republic of Serbia. 18 cases have been cleared up; in 2007 – 24; in 2008 - 23 (9 were cleared up in 2007 and 3 in 2008); and in 2009 - 21 (6 of which were cleared). Criminal complaints have been submitted against 24 persons of Serbian and one against Croatian and Muslim nationality;
- **36** so called verbal threats, 34 of which were cleared up. In 2007 - 12 (11 of which were cleared up); in 2008 - 9 (all of which were cleared up) and in 2009 - 15 (14 of which were cleared up). Verbal threats were directed against persons of the following nationalities: against Roma - 12, Serbian - 9, Hungarian - 5, Croatian - 3, Albanian - 2 and one against persons of Ruthenian, Muslim, Croatian and Yugoslavian, as well as against a citizen of the Republic of Nigeria. Criminal complaints have been submitted against 38 persons of Serbian, 5 against Muslim, 3 against Hungarian, 2 against Croatian, one against Romanian and one against Ruthenian nationality ;
- **4** anonymous threats (two of which were cleared up), of which 2 were issued in 2008 and two in 2009. Anonymous threats were issued in two cases against persons of Serbian nationality, and one against a person of Roma and Hungarian nationality respectively. Criminal complaints have been submitted against one person of Serbian and Croatian nationality respectively;
- **6** cases of defiling religious facilities (3 of which were cleared up), of which 3 were committed in 2007; 2 in 2008; and 1 in 2009. In cases two Roman Catholic churches were defiled and Serbian Orthodox were defiled respectively, and in one case Christian Adventistic Church and Islamic Religious Community were defiled respectively. Criminal complaints have been submitted against two persons of Hungarian and Serbian nationality respectively and against one person of Albanian nationality;
- **1** case of defiling the monument bust dedicated to the founder of the Protestant Church (unknown offender) in 2009;
- **2** cases of defiling buildings belonging to persons of Roma nationality (both of which were cleared up, and the offenders were 11 persons of Serbian nationality);

- 2 cases of defiling buildings belonging to persons of Albanian nationality (both of which were cleared up, and the offenders were 3 persons of Serbian nationality);
- 3 cases of defiling other buildings (all were cleared up, and the offenders were 3 persons of Serbian nationality);
- 1 case of exhibiting Nazi insignia at a concert (the offenders were 3 persons of Serbian nationality) and
- 2 other cases (one of which was cleared up, the offenders were 3 persons of Serbian nationality).

b) **One criminal offence racial and other discrimination** from article 387 of the Criminal Code was committed by an unknown person at the expense of the Roma in 2007.

c) **2 criminal offences injury to reputation due to racial, religious, ethnic or other affiliation** from Article 174 of the Criminal Code. Writing a slogan at the expense of the Roma by an unknown person in 2007 and also writing a slogan at the expense of the Serbs by an unknown person in 2009.

d) **2 criminal offenses violation of the freedom of religion and performing religious service** from Article 131 of the Criminal Code. An unknown person broke a wooden cross on the Serbian Orthodox Church in 2007 and 9 persons of Serbian nationality hurled stones at the building of the religious community "Jehovah's Witnesses" in 2008.

e) **1 criminal offence attempted murder** from Article 113 in relation to Article 30 of the Criminal Code in 2008. Criminal complaints have been submitted against one person of Serbian nationality. The offense was committed at the expense of a person of Hungarian nationality.

Members of the Ministry of Interior, in accordance with the program and plan documents of the MUP (MOI), monitor the state and undertake all efficient measures in all cases of expressing intolerance between different nationalities. To that end, special attention is devoted to prevention, detection and clearing up of all incidents all incidents conducted between persons of different nationality, especially when they are suspected to be motivated by the national difference. The state is being monitored and efficient measures undertaken in all cases of disruption of public peace and order and other incidents, especially in mixed population areas and particularly since March 2004, when intensive measures and activities were ordered in prevention of criminal offences and offences between persons of different nationalities. In that period, the methodology of monitoring incidents between different nationalities was established, which entails recording all cases for which there is even slightest suspicion to have been committed due to national intolerance, but also all those cases committed against members of national minorities by unknown persons where the motive of commission is unknown at the same time. Therefore, one ought to bear in mind that the police only determines the presumed motive, while the final decision on the motive (personal gain, revenge, national, religious or racial hatred and other) is made by the judicial bodies.

The operational work has also been intensified and complete coordination of all lines of work has been achieved on gathering intelligence on possible causes of instigating provocations between different nationalities, with simultaneous preventive actions of police members thorough regular, patrol (multiethnic where appropriate), operational and other forms of police actions. The priority in work was given to clearing up the cases which have the makings of incidents and provocations between different

nationalities, as well as those which might upset the public. In practice it means that when incidents and provocations between different nationalities occur in all these cases between or against persons of different nationalities, priority measures are undertaken for the purpose of clarifying them as quickly and efficiently as possible, according to the special plan made for every such case, in resolving which jointly take part members of the criminal police and the uniformed – police squad of police administrations (as subsidiary to the interior), with a view to indentifying and discovering the culprits and instituting legal measures against them. That also means that in every case a report is made by a citizen of the injured party, that is after receiving information of such event which the police obtained otherwise, police immediately come out to the scene of the crime and undertake operational-tactical measures to obtain relevant evidence on the offense committed or criminal offense, secure presence and hold conversation with the aggrieved party and witnesses and undertake all necessary measures and actions for the purpose of clarification of the case and determining the motive of commission.

Police officers of this Ministry carry out affairs from their scope of activities in the way which provides for every citizen equal protection and exercise of the rights and freedoms guaranteed by the Constitution, which excludes any discrimination in operation which would be based on race, religious persuasion or orientation of citizens. That is indicated by *the Code of Police Ethics* which envisages that members of the Ministry be guided by the principle of impartiality in law enforcement, regardless of national or ethnic descent, race, language and social status of the person on whom the law is to be enforced, his/her political, religious or philosophical beliefs, or his/age, marital status, gender or any physical or mental defect). Furthermore, the Code sets out that the police sets out that the police secure objective and fair police investigation, thoughtful and appropriate the special needs of specific persons, such as children and other minors, women and minority groups, including national minorities and sensitive persons.

In accordance with *the Manual for Handling Affairs in the Way which Contributes to Easier Exercise of the Rights of National Minorities* (March 2003), district police administrations as territorial administrative units of the Ministry, provide that members of national minorities in the procedure before this body use their language and in the course thereof learn the facts in their own language. Furthermore, they secure that in the work of organizational units in their area, in addition to Serbian language and script, the languages and scripts of national minorities are also used, which are established by the statute of the local administration unit as the languages and scripts in official use in addition to Serbian language and script. Citizens are also urged to communicate in their own language, which accounts for the need to hire speakers of the languages of the national minorities to work in jobs which entail communication with parties. To that end, boards on the MUP facilities, by way of example, are written in two languages in areas of mixed national population (in Serbian language in the language of the national minority which is in official use in the area of that municipality). Furthermore, the project of new identification documents has been completed whereby, for the first time, first and last name may be entered in the original form in the script of the national minority of a person to whom the personal documents are issued (identification card, travel documents, driver's license etc.).

Otherwise, the said Manual and the practical application thereof is at the same time a part of the measures undertaken by the state of Serbia and it contributed to the implementation of the obligations which our country assumed with the ratification of the European Charter on Regional or Minority Languages (in December 2005), which

came into force in June 2006. This Chapter is an attempt of the international community to secure protection of minority, i.e. regional languages in areas cohabited by members of different entities.

Starting from the fact that members of 26 different national minorities live in the Republic of Serbia, i.e. that Serbia is a very multinational country, it is clear that the government of the Republic of Serbia, for the sake of strengthening mutual respect and cooperation between the state and the national minorities, strives to provide even greater representation of the national minorities in the executive branch of the government and in turn in this Ministry. Objectively, for adoption citizens in the Ministry of Interior, there are no legal or other restrictions or conditions based on their national, religious or any other affiliation. In accordance with the Law on Labour Relations in State Authorities which set out equal access to the state service, as well as the Law on Police, when starting a labor relation with this Ministry the issue of national, ethnic or racial affiliation is not a condition, but rather the selection of candidates for work in the police is based on their fulfillment of general and specific conditions set out in the law. Concordant with this is Article 23 of *the Code of Police Ethics* by the Ministry of Interior of the Republic of Serbia which proclaims the policy of so called positive discrimination in the sense of national and other affiliation of candidates. More precisely, the procedure of entering into service is based on objective and non-discriminatory conditions for admittance, whereby there is a tendency for admitting men and women from different social groups, including ethnic minority groups.

For the purpose of arousing interest of members of national minorities to work in the police, many promotional activities have been undertaken since 2007 for the enrollment of recruits of I, II, III and IV class of the Center For basic Police Training, which are a part of the project “Work of the Police with Minority Groups“. The Promotional activities were carried out in all the languages of national minorities. The test of the job invitation, promotional poster, information leaflet and radio advertisement were made in Serbian Albanian, Bulgarian, Hungarian, Roma, Romanian, Ruthenian, Slovakian, Ukrainian and Croatian language. Moreover, in the regions with greater number of national minority members, forums were held with a view to informing candidates on police profession, the application terms, the conditions offered to the enrollees by the Center for basic Police Training, as well as the entrance exam itself.

In this context the introduction of multiethnic police in the area of the municipalities on the south of Serbia (Presevo, Bujanovac and Medvedja) should be viewed, which was completed with the assistance of OSCE and local self-government support in these three municipalities back in 2001. The program of the development of multiethnic police in Presevo, Bujanovac and Medvedja contributed to establishing trust between the citizens and the police in insuring stability in this area. In accordance with the Program candidates from local community (mostly members from Albanian community) were admitted into labor relation with the Ministry of Interior, who were, after taking relevant courses, assigned their jobs as policemen in the police stations of Presevo, Bujanovac and Medvedja.

Ministry of Interior completes the project “Police in the Community“, which includes the development of the multiethnic police model. The activities relating to the development of communication and trust between the police and citizens are being intensively carried out - communities, the education of the police, community members, citizens and special categories of citizens, establishment and development of the

partnership between police and community and development the problem oriented work in solving security problems.

Realization of this model – police in the community, is being conducted in phases and primarily in the so called pilot areas, and subsequently in the territory of the entire Republic. The undertaken activities in the pilot areas resulted in good practice, which was also concluded during evaluation and stated in the evaluation report, which was made in December 2004 by the representatives of the Ministry, DFID and the Police Academy in Belgrade. Subsequently, based on the gained experience and good practice, particular activities are being carried out in the territory of the entire Republic.

The development of the model Police in the Community was done with the cooperation of the OSCE mission to Serbia, Department of International Development of the British Government (DFID), National Police Directorate of the Kingdom of Norway and the Swiss Agency for Cooperation and Development. There were completed a series of courses, seminars, workshops, round tables and conferences in the field of contemporary standards in police work, human rights, police in the community, strategic management, analysis and problem oriented police work, with a view to raising the level of consciousness in police officers on the contemporary standards of police work and cooperation in all the subjects of the community for promotion of the state of security.

The activities are also being undertaken on the education of citizens and various subjects in the community on security in the society through organization and participation in forums, lectures and similar forms of dissemination and exchange of knowledge and experience which mostly relate to the safety of pupils in schools, domestic violence, juvenile delinquency, drug abuse and safety of participants in traffic. Consultative meeting are also being held in local communities on different levels (local community, settlement, street, building, different associations etc.) for the purpose of enhancing communication with citizens.

“Door-to-door” activities are also being carried out through which police officers directly communicate with citizens to ensure their personal protection and affirm the police work. Evidence of that are the visits to the Center for Basic Police Training by high school students of Roma nationality from different parts of the Republic of Serbia organized by the Ministry of Human and Minority Rights, Ministry of the Interior and the OSCE mission to Serbia. The aim of this visit was the inclusion of members of Roma national minority to apply for the enrollment in the Center. The representatives of preschool institution in Novi Sad preschool institution in Prokuplje familiarized the participants with the work of police officers. The plan of activities within the project Support to young Roma for 2010 was drafted approved.

Communication with the media has been advanced (round tables with media representatives, media support through promotion of the police work in the community, participation in well rated TV shows, and creation of audio and video press releases). Various forms of informing citizens are carried out: dissemination of brochures, flyers, informatories, posters etc. on the rights and obligations of citizens, manner of contacting and promotion of the police, method of filing complaints to the work of police servants, participants in traffic, safety of property etc.

Activities aimed at forming councils are also undertaken on the local community level with a view to including all relevant subjects of the community in settling security issues. In many local communities were formed security councils; traffic safety

councils; boards and councils for prevention of addiction diseases; councils for safety of school children, anti-corruption teams etc. These bodies, in addition to identifying the key security issues in the community, formed and completed a series of problems, programs and actions aimed at improving safety, especially in the field of medicine, juvenile delinquency; addiction diseases; domestic violence; traffic safety and in promotion of cooperation of police with citizens, media and other subjects of the community.

In some municipalities, the work of advisory groups of citizens was initiated, which operate on the level of local communities. The primary function of these groups is to support better communication among citizens, police and other subjects in the community.

Various activities are being undertaken aimed at promotion of work of the police with marginalized, minority and socially vulnerable groups. Many round tables were held in the Republic whose participants were representatives of the police representatives of the marginalized, minority and socially vulnerable groups. Training was also held on promoting communication and cooperation of the police with the said groups. The training included police officers who were interested in working on education of police officers in local police administrations and promotion of communication and cooperation representatives and members of these groups. Special attention was devoted to enhancing communication representatives and members of Roma community, as well as encouraging members of this community to apply for officers with the police.

Department for International Cooperation and Legal Assistance of the Republic Public Prosecution Office in the course of 2009 continued its participation in the work of **Intersectoral Working Group for Sistematic Processing of Individual Applications before the Contractual bodies of the UN**. There were actions according the Decisions of the UN Committee Against Torture from the standpoint of the application of the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** in relation to the acts of the domestic jurisdiction which announce that the judicial bodies of the Republic of Serbia as a member state breached fundamental human and civil rights of particular persons and so the final judgements and decisions already brought against these persons need to be rectified or new ones need to be brought.

In cooperation with the International Working Group and Service for Human and Minority Rights the decision was brought to act by giving extraordinary legal remedies with a view to making the Supreme Court of Serbia adopt the so called best practice of the European courts until the regulations on the procedure in cases where the decision of the contractual bodies of the UN are brought, as well as in case of future decisions of the Court of Justice in Strasbourg.

We will list concrete examples of the Public Prosecution offices' action in submitting the motion to the Constitutional Court for the prohibition of the extreme football supporters' groups:

Freedom of political, union and any other form of association as well as the right to stay out of any association is guaranteed by the Constitution. However, guaranteeing that right, the Constitution prohibits secret and paramilitary 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 (Art. 55, but there are other kinds of discrimination from Art 21 of the Constitution as well).

Regarding the application of the principles from Art. 11 from **the European Convention on Human Rights and Fundamental Freedoms** (freedom of gathering and association), and based on Art. 35 Par. 1 and art. 80 Par. 2 of the Law on Constitutional Court the motion was submitted for the ban of operation of 16 supporters subgroups founded as associations of citizens or founded outside associations and particularly: supporters subgroups as individual legal persons or organizations without the status of legal person within the associations entered into the Registry of Associations, Social Organizations and Political Organizations because of the activity which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting of racial, national and religious hatred. The decision is up to the Constitutional Court to decide on the application of principles on proportionality in the enforcement of the ban and how to define and treat the collectivities of supporters groups and supporters subgroups so that the ban does not include nonviolent supporters. The motion relates to the **extreme supporters subgroups**.

Cases involving the breach of human rights are very great in number in which the said extreme supporters groups took part, but by way of illustration we can mention one of the most serious incidents which was the mobile rally organized to look like a funeral procession and described in the „The Gazette of Supporters and Fans of the Black and White Team „Choose Partizan“ from October 2007 where the article entitled „The Supporters Reasons For the Boycott and Protest“ on page 15 featured a group of extreme supporters who in protest funeral procession of the extreme supporters associations „Grobari Jug“ (Grave Diggers – South) bear the funeral cross with the name of Zarko Zecevic written thereon, who is a living person! This example of the gazette was particularly submitted as evidence to the Constitutional Court in the proceedings concerning the motion to ban the operation. During 2008 and 2009, the said extreme groups treated in the same reckless manner all other citizens who have different beliefs by displaying rarely seen inhumane, unchristian, immoral and violent conduct.

A proposal to prohibit the organization "Obraz" and "1389":

For the same reasons and under the same legal standards the proposal was put to the Constitutional Court to prohibit the organization "Obraz" and "SERBIAN NATIONAL MOVEMENT 1389", based on the proposal explained by the *Ministry of Human and Minority Rights* which pointed to a number of incidents and public calls for violence that poses a challenge to citizens and institutions in the entire society as well as violent behaviour and attitudes that call for violence against opponents. Incidents of human rights violations participated by members of these organizations are typical examples of intolerance motivated by homophobia, xenophobia, transphobia and other forms of hatred.

These organizations were founded with the aim of the systematic violation of the Constitution provided for freedom and rights of the Serbian citizens, the principles of civil democracy, human and minority rights, freedom and commitment to European principles and values, contrary to the provisions on the prohibition of discrimination prescribed by the Constitution under Article 21 and provisions on freedom of

association under Article 55 as well as provisions on the right of assembly provided for under Article 11 pursuant to the European Convention on Human Rights and Fundamental Freedoms.

In the explanation of the proposal there has been listed a great number of incidents of human rights violations, among which we give an example of evidence for prohibition of Association of Citizens' "Otacastveni Obraz "and" 1389 ".

Proposal to the Constitutional Court to prohibit secret political organization “Nacionalni stroj”:

In 2009 the Constitutional Court has continued to examine a proposal of the Republic Public Prosecutor's Office for the prohibition of secret political parties (political organizations) “Nacionalni stroj” ("National Order") which is aimed at inciting racial and national hatred, began with Act A. No. 292/08 of 14 October 2008, based on Articles 49, 55. and 167. Paragraph 2 of the Constitution of the Republic of Serbia and Articles 45. Paragraph, Point 8 and Article 80 pursuant to the Law on the Constitutional Court.

Proclamation for political action “Nacionalni stroj” indicates that it is a secret organization as well where its activists are ordered that they "must not talk on the phone about every story related to their activities and always bear in mind that if they possess a computer hard disk, it leaves indelible marks; so they must never keep compromising things in the house. Furthermore, no one needs to know about the plans and activities of the organization except the participants.

The proposal for a temporary prohibition of public assembly:

The proposal was put to the Directorate of Police under Article 46 pursuant to the CPC and Article 9 pursuant to the Law on Public Assembly, **for the temporary prohibition of mobile public assembly called. “Vidovdanski mars”** organised by the political organization of “Srpski narodni pokret 1389” (“The Serbian National Movement 1389”) in the period between 14th of May and 28th of June 2010, due to its actions aimed at forced overthrow of constitutional system, and violation of freedoms guaranteed guaranteed human or minority rights of a man and citizen inciting national, racial or religious hatred.

Incidents in the form of attack on members and premises of political parties:

Upon LDP's complaint on the work of state authorities of the Republic of Serbia, including the Public Prosecution Office, submitted in the form of an open letter on February 21st 2008 apropos cases related to the execution of a number of criminal acts with elements of violence after a protest rally in Belgrade, The reaction of Republic Public Prosecution was supervision over the treatment of Lower Public Prosecution Service as well as review of the situation in certain cases.

Attacks on members of the nonprofit organisation “Kvirija” (The Queeria”) and Boban Stojanovic, - President of the NGO to promote the culture of equality and non-violence:

Upon **threats** the organization “Kvirija” (Queeria”) LGBT population received in 2009 **from the members of the far-right Association "Nasi"presided by Ivan Ivanovic** as

requested by the Republic Public Prosecutor, Special Prosecutor's office for Cyber Crime has inspected allegations of threats set out in blogs on the Internet, and by the report that members of the "Our" organization from Arandjelovac, call for physical settlement either with homosexuals or any other same-sex oriented associations.

Republic Public Prosecution Service send an act to the Ministry of Human and Minority Rights to the jurisdiction of the Special Prosecutor for the High-Tech Crime at High Public Prosecution Service in Belgrade, as a prosecutor in charge of the entire territory of the Republic of Serbia, with a proposal to launch a pre-trial procedure by checking through the competent authority of the Ministry of Interior regarding Ivan Ivanovic, President of association "Nasi" who in an interview for the print media has allegedly dismissed these charges as follows: "The appropriate test was performed, but without results, so it will be repeated.

Anti-Semitic attacks on the Federation of Jewish Communities in Serbia:

Republic Public Prosecutor's Office received a letter from the Federation of Jewish Communities of Serbia which **contains reports on hate speech** and hate crime in society, especially in relation to their community in Serbia and provides examples of publishing anti-Semitic books and articles as well as severe violations of generally accepted international norms related to tolerance and inclusion of specific ethnic minorities and under-esteemed social groups of citizens. Also as an example of hate crime forms they have stated abuse of the literary gender in poetry by some authors, who used it as hate speech. This was in the case of Predrag Lucic who released a line with a note "From the songbook by Dejan Lucic" in the Serbian daily newspaper "Danas" on the 13th of January 2009, in the column "Time of death and fun" and subtitle "Lyrics of sanctuary" which was deemed offensive to the Jewish community.

With respect to these and similar publications Republic Public Prosecutor's Office gave instructions to the Higher Public Prosecution Service and criminal proceedings have been instituted in these cases.

Higher Public Prosecutor's Office in Belgrade conducts criminal proceedings in the KT case No. 49/01 at the Belgrade District Court in K documents Against No. 62/01 against Savic Zivojin and Djurdjevic Ratibor ordinary crimes such as criminal incitement of national, racial and religious hatred and intolerance of Article 317 pursuant to the Criminal Code (i.e. because of Article 134, Paragraph 1 contained in the Criminal Code.

A proposal to prohibit the distribution and sequestration of anti-Semitic book "The Myth of the Holocaust":

Republic Public Prosecutor's Office has also received a letter from the Federation of Jewish Communities in Serbia which contained **allegations of publishing and distributing anti-Semitic literature** as a manifestation of advocacy and incitement to racial, ethnic and religious hatred to the Jewish people through the publication of information contained in the book Jürgen Graf, "The Myth of Holocaust, "published by Unknown Publisher.

Upon becoming familiar with the contents of the publication, The Republic Public Prosecutor's Office under Article 18, Paragraph 1 pursuant to the Law on Public

Information, submitted a proposal to the Higher Court in Belgrade to prohibit distribution and dissemination of information through the printed media – the book by Jürgen Graf "The myth of the Holocaust" because of racial, ethnic or religious hatred that constitutes incitement to discrimination, hostility or violence, and publication of the information shall directly have serious, irrecoverable consequences whose other that cannot be prevented in another way, in terms of provisions under Article 17 pursuant to the Law on Public Information.

Namely, in early 2010 in Belgrade the unknown publisher printed and distributed the above mentioned publication at the printing house "Zuhra" thus publishing the book where the existence of the Holocaust as a crime, gas chambers and crematoria at Auschwitz as well as deliberate spreading hatred against the Jewish people have been denied.

The explanation of the proposal that the Court adopted and prohibited distribution of publication shows that according to the article titled - "Publisher's note," it may be assumed that this is the only publication that apparently aspires to have a historiographical character indicating that the author belongs to the "revisionist school." However, the intention of the unknown publisher is to spread the information contained in the book that give a different - a false perception of various historical events of the Second World War different from those showed in recorded history. The content of the publication itself refers to diminishing and conscious denial of the Holocaust as an historical fact, and this could serve as a substantive basis for criminal prosecution of the criminal act of inciting national, racial and religious hatred and intolerance under Article 317, Paragraph 1, pursuant to the Criminal Code in terms of prohibition and confiscation of editions of the publication as a means to carry out this crime.

Review of court procedures against journalists:

According to the complaint filed on the work of the justice system submitted by RDP B92 a.d. on 24th of February 2009 the attention is drawn to the case of B 92 journalists - Ivana Momcilovic, Jasmina Karanac Andonov and Antigona, who were charged with having violated the privacy and confidentiality of personal data in carrying out their work, Basic Public Prosecution Service in Belgrade **dropped the prosecution**, applying criteria by which *the European Convention on Human Rights and Fundamental Freedoms*, provides, for public figures, narrower application of the principles of personal data protection and privacy protection in comparison to the application of the same principle for other citizens at a time when journalists inform the public in their own interest. This is all part of the harmonization of legal practice in the procedure of Public Prosecution Office and courts, and the procedure is, inter alia, in relation to the justification issue of criminal prosecution of journalists in certain cases. Republic Public Prosecutor's Office responds to all other acts of domestic justice system where there is a suspicion that the judicial authorities have violated basic human and civil rights of certain persons and it deems necessary to either reach or correct the final judgments or decisions regarding these persons.

Attacks on the journalist Dejan Anastasijevic

It is well-known that Dejan Anastasijevic, a journalist of the weekly magazine "Vreme", was publishing research articles in various fields and featured prominent

media appearances. Almost right after the attack, the Republic Public Prosecutor's Office gave instructions to Third Municipal Prosecutor's Office in Belgrade, to whom the Ministry of Interior of the RS first passed charges of criminal offence of endangering security against unknown perpetrators to carry out emergency expert analyses and collection of evidence. Then the attack on the family of the journalist Dejan Anastasijevic, under instructions of the Republic Public Prosecution Services was qualified as **terrorism under Article 312 pursuant to the Criminal Code** and the jurisdiction has been transferred to the Higher Public Prosecutor's Office in Belgrade which, in this case, requested carrying out specific investigations against unknown perpetrators from the Investigative Judge of the High Court in Belgrade. In this case, the operation is underway.

Attack on the journalist Brankica Stankovic:

Regarding criminal proceedings conducted against persons who endangered safety of the journalist Brankica Stankovic and other journalists of TV B92, a number of measures within their statutory powers of the Public Prosecution have been undertaken in order to protect journalist to be able to do their job freely.

Republic Public Prosecutor's Office has announced that journalists will be provided with protection in order to do their job freely, and criminal proceedings in this case represents contribution to violence prevention and fight against hooliganism. This means that it will not tolerate threats to journalists, since now pursuant to the Criminal Code, they have **official person status** and enjoy greater criminal legal protection.

Special physical protection of the journalist Brankica Stankovic was provided at the Criminal Code according to the report of the Ministry of Interior of the Republic of Serbia – Main Police Office - Police Directorate for the City of Belgrade No. 214-32/10 from 13th of January 2010, in which the Prosecution Service was informed that the police officers of the Ministry of Interior of the RS from the 12th of October 2009, provide special protection of Brankica Stankovic, and other working journalists at B92, 64 Boulevard Zoran Djindjic Street

Investigation into the murder of the journalist Slavko Curuvija:

At the request of the Division for Promotion and Protection of Human Rights, at the Ministry of Human and Minority Rights, there has been a review of proceedings in case of the murder of journalist Slavko Curuvija from 2007 until now.

The investigations against unknown perpetrator have been launched in the District Public Prosecution Service in Belgrade KTN No. 556/99 on criminal charges of GSUP Belgrade Ku No. 6679/99 of 13th of April 1999. On the ground of the suspicion that this is a special organized crime the Special Public Prosecutor acted upon the case of the prosecution service since 2004 TOP confidential. S - 105/04 and asked that he be entrusted to the jurisdiction of the case, as the Republic Public Prosecutor's Office agreed and brought up the decision RJT KTR no. 1585/06, the 1st of December in 2006. During further investigation in 2007 and 2008 there have been new investigations in the case (examination of new witnesses, ballistic expertise, provision of crime-technical documentation, communication expertise etc.) carried out. It has been

expected that once the results by special investigative tactics, techniques and methods are gained, final evidence tend to identify perpetrators and orderers shall be obtained.

Instructions for dealing with the criminal offense of trafficking:

In 2009 the Republic Public Prosecutor's Office has given instruction that upon request for necessary information from the competent authority special attention should be paid to the results of the identification of foreign citizens as victims of human trafficking provided by the methodology of the UN Organization for Migration (IOM) and conducted by non-governmental organizations, as well as from the result process of The Agency for the Coordination of Protection of Victims of Trafficking. The statements of foreign citizens given in civil or criminal proceedings should be inspected by the competent authorities so that details set out by the victims could contribute to the identification of potential suspects for trafficking.

Explanation of treatment:

Substantive legal basis for criminal prosecution and seeking prohibition are found not only in criminal code and other domestic regulations, but also in the documents of the institutions of the European Union. In formulating these proposals, we used the concepts of **incidents of human rights violations, hate speech and hate crime**, apart from the concepts of crime or another narrow definition, to describe and prove unconstitutional actions of these groups and organizations. Methodology regarding documents from the Office for Democratic Institutions and Human Rights - Office of Democratic Institutions and Human Rights - **ODIHR**, have been implemented in accordance with the official documents of the OSCE Ministerial Council meeting in Maastricht in 2003, using the concept adopted by EU member states at the meeting devoted to the humanitarian dimensions of security in Geneva from 19th of July in 1991 (Report of the OSCE Meeting of Experts on National Minorities).

Public expression of hatred towards homosexuals cannot be tolerated to the extent that it turns into an organized and institutionalised violence, since it is contrary to the provisions under Article 21 pursuant to **the Law Against Discrimination**, because of propagation of the idea of deviance of homosexuality and alleged unnatural phenomena in the human race, and use these claims openly as a means of political disqualification.

Public Prosecution is aware of the need to respond to the challenges posed by **homophobia and transphobia**, and other phenomena of overt or covert expression of hatred towards certain sections of society, especially fraction of the population which could be called lesbian, gay, bisexual or transsexual (Lesbian, Gay, Bisexual and Transgender - LGBT). Substantive grounds to prohibition organizations that incite discrimination could be also found in the documents that testify to the change of society towards LGBT population, by voting at expert level first. On 4th of May 2005 group for Lesbian Rights "Labris" sent the request to the Serbian Medical Society to provide an official document, which will prove that homosexuality is not a disease. The official position of the World Health Organization (WHO) is such that it has removed homosexuality from the list of mental illnesses.

Public Prosecution acting is in concordance with the notion that hate crime is recognized in the above mentioned negative forms in terms of working definitions of the Office for Democratic Institutions and Human Rights - ODIHR, which is based on two elements:

a) **Any criminal offense**, including crimes against persons or property, where the **victims**, preconditions and targets of crime offence are chosen due to their actual or perceived (imaginary) connection, connection, kinship, support, or membership in a discriminated group and

b) **A group which is discriminated may be** based on common characteristics inherent in its members, which are real or imaginary, essentially belonging to a race, group of nations, nationality or ethnic origin and language, colour, religion, sex, age, physical or mental disability, sexual orientation, political or any other opinion.

In practice, we **have extended this definition** for specific events in our region and to all violations of constitutional right to property as guaranteed under Article 58. pursuant to the Constitution, **all for the protection of cultural property**, since punishable offences against property do not imply the ownership of material goods only , but ownership of the goods of civilization of a people (intellectual property, cultural heritage, etc.). The circumstances in which the product of hate crime is cultural genocide, a crime that is practiced by members of the violent wing organizations that were established to conduct sectarian violence against the company that enjoys a wealth of different civilization values (eg, Oriental or Byzantine, etc.) and cultural values (eg, language, writing, literature, the relationship to the sacred values, etc.) may have very serious consequences for the society..

In the proposals made to the Constitutional Court the term incidents of human rights violations used. It differs from the term "criminal offence" and "minor offence", because it covers only acts of commission of potentially committed criminal acts or minor offence (during the incident) by members of any organization or individual, and it means any event which can be described by the victims or other citizens as homophobic or transphobic. We have presented a unique selection from the many incidents performed by members of the organization "1389" and connected these incidents with the public appearance of leading figures of this organization and its members. The notion of the incident as a manifestation of homophobia and transphobia is introduced and any other person apart from the injured party (citizen) that categorizes the particular event as homophobia or transphobia.

132. Are there any specific policies, programmes, strategies, etc. tackling racism and xenophobia?

There are no specific policies, programmes or strategies, but the prescribed measures and activities of the already adopted policies, programmes and strategies pertaining to the protection and promotion of human rights encompass also the combat against racism and xenophobia.

133. Are there any official bodies with a specific task and powers to combat racism and xenophobia?

There are no official bodies with specific task and powers to combat racism and xenophobia, but there are bodies which, within their competences, address also issues pertaining to combating racism and xenophobia.

Ministry of Human and Minority Rights, founded in mid-2008, performs tasks of public administration addressing the protection and promotion of human and minority rights and anti-discrimination policy.

Provincial Secretariat for Regulations, Administration and National Communities, founded in 2002 within the Executive Council of AP Vojvodina performs tasks regarding the exercise of collective and individual rights of national minorities in AP Vojvodina.

The Ombudsperson of the Republic of Serbia was introduced in the legal order of the Republic of Serbia in 2005, as an independent state authority which protects the rights of citizens and monitors the performance of public administration bodies, as well as other bodies and institutions endowed with public powers. The Ombudsperson of the Republic of Serbia has four deputies specializing in the fields of protection of rights of persons deprived of liberty, gender equality, children's rights, rights of members of national minorities and rights of persons with disabilities. The Provincial Ombudsperson was established in 2002 for the territory of AP Vojvodina. Protectors of citizens exist also at the local level, and they have been established in 11 towns so far.

National Minorities Council of the Government of the Republic of Serbia was formed in 2004, authorised, inter alia, to monitor and discuss the situation regarding the exercise of the rights of national minorities and the situation regarding intra-national relations in the Republic of Serbia and to proposes measures for the promotion of full and efficient equality of members of national minorities.

Gender Equality Council of the Government of the Republic of Serbia was set up in 2004, as well as the Council for Combating Human Trafficking. Children's Rights Council was established in 2002.

In March 2008, the Government of the Republic of Serbia established the Council for the Promotion of the Status of the Roma, which has 22 members, including the representatives of the Ministries of Finance, Health, Education, State Administration and Local Self-Government, as well as other departments which could influence the improvement of the situation of the Roma national minority. Office for the Inclusion of Roma was formed by the Decision of the Assembly of AP Vojvodina in 2006, for the purpose of implementing the action plans for Roma integration, as well as for the development and implementation of programmes for improving the situation of Roma in the fields of education, health, employment, housing, human and other rights. The Council for Roma Integration in AP Vojvodina was founded in 2005.

The Law on the Prohibition of Discrimination (*Official Gazette of RS*, No. 22/2009; Articles 28-40) establishes the Commissioner for the Protection of Equality elected by the National Assembly for five years. The Commissioner for the Protection of Equality

shall receive and review complaints pertaining to the violation of the Law and provide opinions and recommendations in specific cases and pass measures of caution (in case the person fails to redress the violation in question within 30 days of having been cautioned, the Commissioner may inform the public about it); shall provide information to the person lodging the complaint concerning his/her rights and the possibility of initiating court proceedings or some other proceedings for the purpose of protection; shall propose a reconciliation procedure; shall file charges pertaining to violations of rights guaranteed by this Law, in his/her own name and with the agreement and on behalf of the person discriminated against, unless proceedings before a court of law have already been initiated or concluded by passing an enforceable decision; shall submit misdemeanour notices on account of violations of rights guaranteed by this Law; shall submit an annual report and special reports to the National Assembly about the situation concerning the protection of equality; shall warn the public of the most frequent, typical and severe cases of discrimination; shall monitor the implementation of laws and other regulations, initiate the passing of or amending regulations for the purpose of implementing and developing protection against discrimination, and provide opinions concerning the provisions of draft laws and other regulations pertaining to the prohibition of discrimination; shall establish and maintain cooperation with bodies authorised to ensure equality and the protection of human rights on the territory of the autonomous province or a local self-government; shall recommend measures to public administration bodies and other persons aimed at ensuring equality. The National Assembly elected the Commissioner for the Protection of Equality in May 2010.

134. Please provide statistics on hate, racist and xenophobic crimes as regards both victims and perpetrators, if available.

Having in mind that in the Republic of Serbia there is no unified system of gathering statistical data for crimes out of hatred and crimes motivated by racism and xenophobia, and also what with different ways of gathering statistical data, we hereby separately submit the data of the Ministry of Interior and the data of the Republic Prosecutor's Office on the said criminal offences.

Data of the Ministry of Interior:

In the territory of the Republic of Serbia in the period from January 2007 to November 2010, the total of 173 criminal offences in relation to hatred, racism and xenophobia were committed. The total of 100 of these crimes was cleared up. Criminal offence reports were brought for:

a) **167** criminal offences **instigating national, racial and religious hatred and intolerance** from Article 317 of the Criminal Code. In 2007 – 48; in 2008 – 47; in 2009 – 45; and in the period from January to November 27 in 2007, **98** of these criminal offences were cleared up; In 2008 – 28; in 2009 – 23; In 2009 – 25 and in the period from January to November 2010 – 22. Criminal offence reports were brought against 190 persons (166 persons of Serbian nationality, 9 persons of Muslim nationality, 5 persons of Hungarian nationality, persons of Croatian nationality, persons of Albanian nationality and one of German, Wallachian, Macedonian, and Romanian nationality respectively) for:

- **16** physical attacks, 14 of which were cleared up. 9 attacks were committed against persons of Roma nationality; 2 against Hungarian, 1 against Serbian and Albanian nationality respectively, a citizen of the Republic of Croatia and in 2 cases against members of other nationalities. Criminal offence reports were brought against 27 persons of Serbian nationality and against one of Muslim and German nationality respectively. 6 of these criminal offences were committed in 2007 (5 of which were cleared up); 5 in 2008 (all of which were cleared up); 2 in 2009 (both of which were cleared up) and 3 in the period from January to November in 2010 (2 of which were cleared up);
- **3** brawls, all at the expense of persons of Roma nationality, which were also cleared up (one in 2008, 2009. and 2010 respectively). Criminal offence reports were brought against 9 persons of Serbian and one person of Muslim nationality;
- **79** cases of writing slogans and graffiti directed to all nationalities in the Republic of Serbia. 25 cases were cleared up. In 2007 – 24; in 2008 – 23 (9 of which were cleared up in 2007 and 3 in 2008); in 2009 – 21 (6 of which were cleared up) and in the period from January to November 2010– 11 (7 of which were cleared up). Criminal offence reports were brought against 29 persons of Serbian and one against Croatian and Muslim nationality respectively;
- **42** of so called verbal threats, 40 of which were cleared up. In 2007 - 12 (11 of which were cleared up); in 2008 - 9 (all of which were cleared up); in 2009; - 15 (14 of which were cleared up) and in the period from January to November 2010 – 6 (all of which were cleared up). Verbal threats issued against persons of Roma nationality – 14; Serbian – 10; Hungarian – 5; Croatian – 3; Albanian – 3; Muslim – 2; and one at the expense of Ruthenian, Croatian and Yugoslavian nationality, as well as at the expense of a citizen of the Republic of Nigeria. Criminal offence reports were brought against 60 person of Serbian nationality; 6 against Muslim; 3 against Hungarian; 2 against Croatian and one against persons of Romanian and Wallachian nationality ;
- **7** anonymous threats (5 of which were cleared up), of which 2 in 2008 and 3 in 2009 and 3 in 2010. Anonymous threats were issued in three cases to persons of Hungarian nationality; in 2 cases against persons of Serbian nationality; and on against a person of Roma and Croatian nationality respectively. Criminal offence reports were brought against 3 persons of Serbian and one person of Croatian nationality;
- **7** cases of defiling religious facilities (4 of which were cleared up), of which in 2007; 2 in 2008 and one in 2009 and in the period January - November 2010 respectively. In two respective cases Roman Catholic and Serbian Orthodox churches were defiled, in one case Christian-Adventistic Church, and in one case Islamic religious community was defiled. Criminal offence reports were brought against 4 persons of Serbian nationality; 2 persons of Hungarian and one person of Albanian nationality;
- **1** case of defiling the monument bust dedicated to the founder of the Protestant Church (unknown offender) in 2009;

- **3** cases of defiling buildings belonging to persons of Albanian nationality (all of which were cleared up; the offenders were 18 persons of Serbian and person of Macedonian nationality);
- **2** cases of defiling buildings belonging to persons of Albanian nationality (both of which were cleared up, and the offenders were 3 persons of Serbian nationality);
- **3** cases of defiling other buildings (all were cleared up, and the offenders were 3 persons of Serbian nationality));
- **1** case of exhibiting nazzist insignia at a concert (the offenders were 3 persons of Serbian nationality) and
- **3** other cases (2 which were cleared up; the offenders were 3 persons of Serbian nationality).

b) **1** criminal offence **racial and other discrimination** from Article 387 of the Criminal Code committed by an unknown person at the expense of the Roma in 2007.

c) **2** criminal offences **ruining the reputation of a nation, national and ethnic groups** from Article 1740 of the Criminal Code. Writing slogans by an unknown person at the expense of Roma in 2007, and also writing slogans by an unknown person at the expense of Serbs in 2009.

d) **2** criminal offences **violation of the freedom of religion and performing Religious Service** from Article 131 of the Criminal Code. An unknown person broke a wooden cross at a Serbian Orthodox church in 2007 and 9 persons of Serbian nationality hurled stones at a facility of the religious community "Jehovah's Witnesses" (2008).

e) **1** criminal offence **attempted murder** from Article 113 in relation to Article 30 of the Criminal Code in 2008. Criminal Offense Report was filed against one person of Serbian nationality. The offense was committed at the expense of a person of Hungarian nationality.

Sector of the Interior Control of the Police brought one criminal offence for the criminal offence with the elements of hatred, racism and xenophobia in 2007 against one police servant of PI Vrbas of Police Administration of Novi Sad because of the existence of founded suspicion to have committed the criminal offence **instigating national, racial and religious hatred and intolerance** from Article 317, Paragraph 2 of the Criminal Code of the RS at the expense of persons of Roma nationality. On the same day the said police officer was deprived of liberty and with a criminal offence report brought before the investigative judge of the District Court in Novi Sad. The Sector was subsequently informed that the District Public Prosecutor in Novi Sad prequalified the criminal offence in the criminal offence violent conduct and remanded the case to the Municipal Public Prosecutor for further jurisdiction.

Data of the Republic Public Prosecutor's Office:

According to the statistical data of the Public Prosecutor's Office the criminal offence instigating national, racial and religious hatred and intolerance from Article 317 ("*Official Gazette of the RS*", No. 85/2005, 88/2005 - corrected, 107/2005 - corrected, 72/2009 и 111/2009) (hereinafter CC), in **2006** the total of 107 were reported. There

were also 8 unsolved reports from the earlier period, and thus there was the total of reports against 115 persons. The reports against 20 were dropped. The total of 71 persons was indicted. 6 persons were sentenced to imprisonment, and 15 persons received suspended sentence. One person received acquitting sentence and two persons dismissing sentence. Public prosecutors filed the total of 5 appeals, 4 of which due to the decision of punishment. In **2007** the total of 58 persons were reported for this criminal offence, and there were also 4 unsolved reports from the previous period, and thus there was the total of укупно 62 reports. Against 15 persons the reports were dropped. The total of 29 persons were indicted. 7 persons were sentenced to imprisonment; 6 persons were received suspended sentence and 7 persons were acquitted. The public prosecutors made the total of 7 appeals of which 5 where due to sentence. In **2008**, 81 persons were reported for this criminal offence. There were also 11 unsolved reports from the previous periods, and thus there were reports against 92 persons. The reports were dropped against 17 persons. 69 persons were indicted. 15 persons were sentenced to jail, one person was fined, 9 persons were received suspended sentence. Safety measure was ordered to one person. 4 were acquitted. Public Prosecution Service made the total of 19 complaints of which 8 were made to the sentence. In **2009** 82 persons were reported for this criminal offence. There were also 13 unresolved reports from the previous period, and so the reports were made against the total of 95 persons against 18 of which the reports were dropped. 16 persons were indicted. 9 persons were sentenced to prison, one person was fined, and 28 persons received suspended sentence. One person was acquitted. Public prosecutors made 8 appeals of which 7 were due to the sentence.

According to the statistical data of the Public Prosecution the criminal offence racial and other discrimination from Art. 387 of the CC, 7 persons were reported in 2006. There was also one report against one person from the previous period, and thus there were the total reports against 8 persons. The reports were dropped against 4. 2 persons were indicted. 3 persons were sentenced to imprisonment. In 2007, 5 were reported for this criminal offence. Reports were dropped against 3 persons. 2 persons received suspended sentence. Public prosecutors made two appeals both due to the sentence. Both appeals were accepted. In 2008, 10 persons were reported for this criminal offence report. The reports were dropped against 2 persons. 2 persons received suspended sentence. Public prosecutors made 2 appeals against the sentences and they were accepted. In 2009, 5 persons were reported for this criminal offence. 3 persons were acquitted and 1 was convicted. Public Prosecution made the total of 4 appeals, of which 1 was due to the sentence. All appeals were dismissed. In this period there were 5 reported persons, and the reports against 4 persons were solved otherwise.

- The EU Fundamental Rights Agency

135. What steps (legislative, institutional and other) is Serbia undertaking/planning to take in order to be able to participate as an observer in the Agency's work?

The Republic of Serbia is planning to join as an observer the work of the European Union Agency for Fundamental Rights in the forthcoming period, after fulfilling the required conditions.

- Protection of personal data

136. Personal data protection: Provide information on any legislation or other rules governing this area, and the coherence of such rules to relevant international conventions. What is done in order to ensure efficient protection of personal data?

- Legislation and other rules governing this area:

The principal law governing the protection of personal data in the Republic of Serbia is the Law on Personal Data Protection ("Official Gazette of RS", No. 97/2008 and 104/2009 – other law, hereinafter: LPDP) of 27th October 2008, which entered into force on 4th November 2008 and has been applicable from 1st January 2009. Article 1 Paragraph 3 of the LPDP prescribes that the affairs related to the personal data protection are performed by the Commissioner for the Information of Public Importance and Personal Data Protection (hereinafter: the Commissioner) as an autonomous state authority, independent in the performance of their duty.

On 6th September 2005, the Republic of Serbia signed and ratified the Council of Europe Convention number 108 on the protection of persons with regard to the automatic processing of personal data. This convention came into effect in Serbia on 1st January 2006 ("Off. Journal of FRY – International Treaties", and "Official Journal of Serbia and Montenegro – International Treaties" no. 11/2005 – other law) of 27th April 1992.

On 2nd July 2008 the Republic of Serbia signed an Additional Protocol to the Convention No. 108 with regard to the supervisory bodies and transborder flow of data and ratified it on 8th December 2008 ("Official Gazette of RS – International Treaties", No. 92/2008 of 27th October 2008, the Protocol entering into force in Serbia on 1st April 2009.

For the purpose of LPDP enforcement, the following by-laws were adopted:

1. The Strategy on the Personal Data Protection ("Official Gazette of RS" No. (58/2010) adopted by the Government of Serbia on 16th August 2010, pursuant to the Article 45 Paragraph 1 of the Law on Government ("Official Gazette of RS", No. 55/05, 71/05 – corrigendum, 101/07 and 65/08) of 20th August 2010.
2. The Rulebook on the method concerning previous checks of personal data processing actions ("Official Gazette of RS", No. 35/2009) of 12th May 2009, passed by the Commissioner pursuant to the Article 50 Paragraph 2 of the LPDP. This Rulebook entered into force on 20th May 2009.
3. The Rulebook on the identification papers of the person authorised to perform supervision under the Law on Personal Data Protection ("Official Gazette of RS" No. 35/2009) of 12th May 2009, passed by the Commissioner pursuant to the Article 54 Paragraph 5 of the LPDP. This Rulebook entered into force on 20th May 2009.
4. The Regulation on the record sheet and the method of keeping record of personal data processing ("Official Gazette of RS", No. 50/2009) of 10th July 2009, passed by the Government of Serbia pursuant to the Article 48 Paragraph 5 of the LPDP. This Regulation entered into force on 18th July 2009.

Legislation that needs to be adopted

1. The government shall adopt the action plan for the implementation of the Strategy, with defined activities, expected effects, the performers of concrete tasks and deadlines for task completion within 90 days following the date of the publication of the Strategy in the “Official Gazette of RS”. As the Strategy on the Personal Data Protection was published in the “Official Gazette of RS” No. 58/2010 on 20th August 2010, this means that the 90-day period following the publication of the Strategy in the Official Gazette of RS expired on 20th November 2010; however the Government has yet to adopt the Action Plan.

2. The act on the methods of archiving and the measures of protection of particularly sensitive data was supposed to be adopted by the Government, pursuant to the Article 16 Paragraph 5 of the LPDP, six months from the date of this Law coming into effect, that is to say on 4th May 2009, but the Government has not done so yet.

Rules that need changing due to their incoherence to the relevant international conventions

1. The Law on Personal Data Protection. Reason – a number of provisions of the LPDP are not harmonised with the relevant international documents, especially the Directive of the European Council 95/46 and the European Council Convention number 108 on the Protection of Individuals with regard to the Automatic Processing of Personal Data. In addition, certain provisions of the LPDP are not in harmony with the Constitution of Serbia, especially with the Article 42 Paragraph 2 which prescribes that the collection, keeping, processing and the use of personal data is regulated exclusively by law, while LPDP states in several of its provisions (Articles 12, 13 and 14) that data processing (common term for all actions taken with regard to data) can be regulated by by-laws, other regulation or a contract. Bearing this in mind, on 25th January 2010 the Commissioner initiated the proceedings before the Constitutional Court for the assessment of the constitutionality of the LPDP provisions in question.

Besides being incoherent to the relevant international documents, a number of provisions of the LPDP are inadequate, that is to say, incomplete. Furthermore, certain issues are not even regulated by the LPDP. For instance, there are not even basic provisions on direct marketing, biometrics, video surveillance, medical data, etc. In addition, there are inadequate, i.e. incomplete definitions of certain basic notions (authorities, user of data); provisions on the transfer of data out of Serbia are incomplete; “historic, statistical and scientific and research purposes” are not defined; there is no clear distinction between absolute and conditional exceptions from the application of the LPDP; the provisions on territorial validity of the LPDP are unclear; solutions concerning the authority of the Commissioner with regard to supervision are inadequate; there is no distinction between small data controllers (with two or three employees and small databases) and big data controllers (having hundreds or thousands of employees and large databases); there is no distinction regarding the duties of controllers in private and public sectors, etc.

All of these, as well as a number of other issues have been pointed out and elaborated on in the comprehensive Report of the EU Delegation Expert Team in the project “Support to the Commissioner for the Information of Public Importance and Personal Data Protection”. This report shall serve as the basis for activities concerning the amendments to the LPDP. (The report enclosed in the attachment).

2. It is necessary to change/amend numerous special, sector laws, which do not elaborate on the principles of the LPDP, that is to say, those which incompletely, i.e. inadequately regulate personal data processing in that particular sector. According to the Article 8 Point 1 of the LPDP the legal grounds for data processing may be either the law or freely given individual's consent. The largest number of laws, especially those adopted prior to the adoption of the LPDP, do not contain provisions that precisely regulate the collection, keeping, processing and the use of personal data, i.e. they do not prescribe which data can be subject to processing, what is the purpose of processing, the manner and the length of data keeping, who can be the users of these data, etc.

- What is done to ensure efficient protection of personal data:

Regardless of the aforementioned faults of the LPDP, its numerous provisions can and shall be unhinderedly applied. In the course of his work, the Commissioner has learned that a number of state authorities and other personal data controllers, fail to fully apply the LPDP for various reasons, hence he has taken adequate measures as follows:

1. The organization of a number of educational meetings, training sessions, etc. for the employees of state bodies and other controllers of personal data;
2. The production and publication of the instructive Guide through the Law on Personal Data Protection and distribution of its 2,000 copies to state bodies and other controllers of personal data;
3. Appearances of the Commissioner and his deputies at numerous meetings and gatherings with the personal data controllers, where they stressed the necessity of the full and adequate application of the LPDP.
4. Supervision of a number of personal data controller and drawing attention to irregularities in their work;
5. Giving opinion on the texts of laws and by-laws within the purview of the Commissioner's competence;
6. Informing the public through media and the Commissioner's website on all the significant and current issues in the area of personal data protection;
7. Organization of the international regional meeting on the topic of "Personal data protection", attended by the commissioners or directors of Agencies for personal data protection from the majority of former Yugoslav republics, a great number of state representatives and business entities.
8. Filing the request for initiating misdemeanour proceedings due to the violation of the LPDP's provisions, i.e. criminal charges on the account of violations of the Criminal Code provisions.

137. Does existing legislation foresee sanctions in case of infringement of its provisions? If so, please provide details.

- Misdemeanour liability:

The Law on Personal Data Protection ("Official Gazette of RS" No. 97/2008 and 104/2009 – other law, hereinafter: 33PL) contains system of penalties for minor offences.

Article 57 33PL reads as follows: “The fine for a minor offence in the amount of RSD 50,000 to RSD 1,000,000 shall be imposed on an operator, a processor or a user who is in the capacity of a legal person, in case of:

- 1) Processing of data without consent, which is not in accordance with Article 12 of the Law;
- 2) Processing of data, which is not in accordance with Article 13 of the Law;
- 3) Gathering of data from another person, which is not in accordance with conditions from Article 14(2) of the Law;
- 4) Not informing the person concerning data, i.e. another person, of conditions from Article 15(1) of the Law, before gathering the data;
- 5) The processing of special categories of data, which is not in accordance with Articles 16-18 of the Law;
- 6) Not making all data accessible in a current state, which is not in accordance with Article 27(2) of the Law;
- 7) Not issuing a copy of datum, in the form of information, which is not in accordance with Article 28(1) of the Law;
- 8) Not deleting data from a data set, which is not in accordance with Article 36 of the Law;
- 9) Not acting upon the decision of Commissioner in request of an appeal (Article 41(1) of the Law);
- 10) Not following the procedure on obligation of secrecy from Article 46(1) and (2) of the Law;
- 11) Not following the procedure on obligation of taking measures from Article 47(2) of the Law;
- 12) Not keeping records, i.e. not updating records, which is not in accordance with Article 48 (1) and (3) of the Law;
- 13) Not informing Commissioner of the intention to establish a data set within a time limit to be determined in the act of question, which is not in accordance with Article 49(1) of the Law;
- 14) Not submitting the records, i.e. changes in the data set to Commissioner within a time limit determined in the act in question (Article 51(1) of the Law);
- 15) Disclosing the data from the Republic of Serbia, which is not in accordance with Article 53 of the Law;
- 16) Not enabling an authorized person to perform smooth supervision, as well as not making the necessary documents available to the person (Article 55 of the Law);
- 17) Not following the instructions of Commissioner (Article 56(2) of the Law);

The fine in the amount of RSD 20,000 to RSD 500,000 shall be imposed on an entrepreneur for the above mentioned minor offences. The fine in the amount of RSD 5,000 to RSD 50,000, for the above mentioned minor offences, shall be imposed on a natural person, i.e. the responsible officer in a legal entity, in state authority, i.e. authority of territorial autonomy, as well as units of local self-government”

- Criminal liability

The Criminal Code (“Official Gazette of the RS” No 85/05, 88/05, 107/05, 72/09 and 111/09, hereinafter: CC) prescribes criminal offences against freedoms and rights of man and citizen. Criminal offences related to effective protection of personal data are also placed within the frame of these criminal offences, namely:

a) Unauthorized disclosure of a secret (Article 141 of CC). This criminal offence is related only to disclosure of the data discovered by a perpetrator, while performing his duties, and the data represent the secret of a certain person. The prescribed punishment is a fine or imprisonment up to one year;

b) Violation of secrecy of letters and other consignments (Article 142 of CC). Secrecy of somebody else's letters, telegram or another closed letter or consignment, including e-mails and other means of telecommunications, is protected by this criminal offence. The offence consists of unauthorized opening of consignments or other kind of violation of secrecy, as well as unauthorized keeping, destroying and giving the consignments to others, and more serious form is disclosure of letter content or another consignment. The prescribed punishment is a fine or imprisonment up to two, i.e. three years;

c) Unauthorized listening in and recording (Article 143 of CC). The offence consists of unauthorized listening in and recording, and perpetrator can be every person who, by means of special devices, listens in on conversations, statements or notifications not intended for him, or records them. The prescribed punishment is a fine or imprisonment up to two, i.e. five years;

d) Unauthorized photographing (Article 144 of CC). Unauthorized photographing is photographing without the consent of a person who is being photographed, by which one significantly invades personal and intimate life of a person photographed. The offence consists not only of recording, but also of making photographic, video or another kind of footage. The prescribed punishment is a fine or imprisonment up to one, i.e. three years;

e) Unauthorized publishing and representing of someone else's text, portrait or footage (Article 145 of CC). Unauthorized publishing and representing of someone else's text, portrait or footage are criminal offences only if some of these alternatively prescribed acts are performed without authorization, and when there is the significant invasion of personal life of a person whose portrait or footage are shown. The prescribed punishment is a fine or imprisonment up to one, i.e. three years;

f) Unauthorized gathering of personal data (Article 146 CC) is an offence that has recently been added to CC in accordance with Article 10 of the Council of Europe Convention No 108 on Protection of Individuals with Regard to Automatic Processing of Personal Data. This criminal offence consists of unauthorized obtaining, disclosure or using for an unauthorized purpose (paragraph (1)), as well as illegal gathering of personal data or their using (paragraph (2)). Criminal offence from paragraphs (1) and (2) shall be prosecuted by a private lawsuit, and an offence from paragraph (3) shall be a subject to public prosecution.

Main search before a court of law is public, but the public can be excluded ex officio or on a proposal from a party, if that is required by interests of public morality, protection of minors or private life protection. This protection is prescribed by the criminal offence Violation of Confidentiality Proceeding (Article 337 of CC). This criminal offence protects everything that is declared to be a secret in legal, offence, administrative and other proceedings prescribed by the law. In the light of the subject matter of the criminal offence and manner of secrecy violation, the offence may have three forms:

violation of secrecy in legal, offence, administrative or other proceedings; violation of secrecy in proceedings concerning minors and personal data disclosure concerning a person protected by criminal proceedings or a special protection programme.

There are provisions on responsibility for offence and discipline in other separate laws, which prescribe processing of data in certain sectors, i.e. fields.

138. Does existing legislation include the following data protection principles:

a) Purpose limitation principle: Data should be processed for a specific purpose and subsequently used or further communicated only insofar as this is not incompatible with the purpose of the transfer.

Article 8 of the Law on Personal Data Protection (“Official Gazette of RS” No. 97/2008 and 104/2009 – other law, hereinafter: LPDP) prescribes conditions under which processing of personal data is not allowed, inter alia, it prescribes that the processing is not allowed if performed for a purpose other than specified, no matter whether it is performed on the basis of person’s consent or statutory power to process without consent. Also, the same article prescribes that processing is not allowed if the processing purpose is not clearly specified, if it is changed, illegal or already accomplished, i.e. if the data processed is unnecessary or unsuitable for the purpose of processing.

b) Data quality and proportionality principle: Data should be accurate and, where necessary, kept up to date. The data should be adequate, relevant and not excessive in relation to the purposes for which they are transferred or further processed.

Article 8 LPDP prescribes that processing is not allowed if the number or the type of data processed is incompatible with the purpose of processing. Also, processing is not allowed if the data is untrue or incomplete, i.e. if it is not based on credible source or it is out of date.

c) Transparency principle: Individuals should be provided with information as to the purpose of the processing and the identity of the data controller in the third country, and other information insofar as this is necessary to ensure fairness.

Article 15 LPDP prescribes that operator, who gathers data from persons to whom the data relates, i.e. another person, before gathering shall inform the person to whom the data relates, i.e. another person, of:

- 1) His identity, i.e. his name, address or company, i.e. identity of another person responsible for processing of the data in accordance with law;
- 2) The purpose of gathering and further processing of the data,
- 3) The manner of using the data;
- 4) Identity of a person or a type of person who use the data;
- 5) Responsibility and legal basis, i.e. consent to giving the data and to processing;
- 6) The right to revoke consent, as well as of legal effects in case of revoking;
- 7) The rights of a person in question in case of unauthorized processing;

8) Other circumstances, whose suppression would represent dishonest conduct towards a person to whom the data relates.

The above mentioned responsibilities of the controller shall not exist if such informing, regarding the circumstances of the case, is not possible or it is obviously unnecessary, i.e. inappropriate, particularly if the person to whom the data relates, i.e. another person has already been informed of it or if the person to whom the data relates is not available. When the responsibility exists, an operator shall inform the person to whom the data relates, as well as a user, of modifications or deleting of the data without delay, not later than 15 days from the date of the modifications.

d) Security principle: Technical and organisational security measures should be taken by the data controller that are appropriate to the risks presented by the processing. Any person acting under the authority of the data controller, including a processor, must not process data except on instructions from the controller.

Article 47 of LPDP prescribes that the data must be properly protected from abuse, destruction, losses, unauthorized modifications or access. Data controller and processor shall take technical, personnel and organizational data protection measures necessary to protect the data from loss, destruction, unauthorized access, modification, publishing and every other abuse, in accordance with the procedure and standards laid down, as well as to establish responsibility of persons employed in processing to keep the data confidential.

The data processor, who can be a natural or legal person, i.e. state authority, and to whom particular tasks related to the data processing have been entrusted by an operator, on the basis of a law or a contract, shall comply with the provisions of the law, i.e. the contract concluded with the operator.

139. Does existing data protection legislation provide for the possibility of limitations or exceptions to certain data protection principles and data subject's rights for important public interest grounds? If yes, please specify.

Derogation from the principle that data processing shall be done only on the basis of a law or freely given personal consent is provided for in Articles 12 and 13 of the Law on Personal Data Protection ("Official Gazette of RS" No. 97/2008 and 104/2009 – other law, hereinafter: LPDP). In addition to the fact that the provisions of the above mentioned Articles, as well as Article 14 of LPDP, are not in accordance with Article 42 of the Constitution of RS, according to an opinion of the Commissioner, these provisions substantially expand possibilities of data processing without personal consent.

According to LPDP (Article 23), it is possible to limit the rights of persons to whom the datum relates, for example the right to be informed of the processing, insight and a copy, inter alia, if:

1) disclosure of notification seriously endangers interests of national and public safety, defence of a country, or actions of prevention, detection, investigation and prosecuting of criminal offences;

- 2) disclosure of notifications seriously endangers an important economic or financial state interest;
- 3) disclosure of notification makes data, which is provided to be confidential by a law, other regulations or acts based on the law, available, and whose disclosure may have serious consequences for interest protected by the law.
- 4) notification seriously endangers privacy or important interest of a person, particularly life, health and physical integrity;
- 5) the data about him are being used only for scientific research and statistical purposes, while the usage takes place.

Also, under Article 14 of The Law on Free Access to Information of Public Importance (“Official Gazette of RS” No. 120/2004, 54/2007, 104/2009 и 36/2010), a state authority, the Commissioner in procedure in respect of appeal, i.e. a court of law in procedure in respect of the claim against the decision of the Commissioner, whose free access to information is restricted, for every particular case, evaluates relation of public interest for access to information to interest of an individual for his own privacy protection and personal data protection.

140. Does existing legislation contain provisions concerning:

a) Special categories of data (sensitive data)?

Article 16 of the Law on Personal Data Protection (“Official Gazette of RS” No. 97/2008 and 104/2009 – other law, hereinafter: LPDP) prescribes that special categories of data (sensitive data), the data concerning nationality, race, sex, language, religion, political party affiliation, trade union membership, health, social assistance, victim of violence, conviction for a criminal offence and sexual life, may be processed on the basis of freely given personal consent, unless the data processing is not allowed by the law even with personal consent.

Processing of particularly sensitive data must be notably identified and shielded by protective measures, and assent to processing of data must be exclusively in written form, along with identification of data, the purpose of processing and the manner of data usage.

b) direct marketing?

LPDP does not contain provisions on direct marketing. Certain sectorial laws contain these provisions, for example: The Law on Electronic Commerce (“Official Gazette of RS” No. 41/09 from 2 June 2009, Law on Consumer Protection (“Official Gazette of RS” No. 73/10 from 12 October 2010, and it shall apply from 1 January 2011, and Law on Advertising (“Official Gazette of RS” No. 73/10) from 12 October 2010.

Under Article 8 of The Law on Electronic Commerce, usage of emails for the purpose of sending unrequested commercial message shall be allowed only with previous consent of the person for whom the message is intended, in accordance with the law.

Under Article 28 of Law on Consumer Protection, supply of products and services to a consumer outside business premises of a seller and a service supplier, by means of catalogue, sample or model presentation, displaying products with the intention to inform of its characteristics, offering products and services by electronic means and by

other means of offering products and services at the consumer's address, shall be allowed only if there is previous consent of the consumer.

One of the basic principles of Law on Advertising is the principle of prohibition of individual advertising by means of personal contact. Article 9 of the Law prescribes that advertisement cannot be sent individually to a certain person, if the person clearly expressed unwillingness to receive the advertisement. Advertising by means of sending unwanted goods, as well as direct addressing a person in public if the person clearly expressed unwillingness to be addressed, and if such addressing is not in accordance with imposed conditions and means of advertising, shall not be allowed. Advertising by means of sending advertisements via means of communications with or without human interference, via telefax devices or emails, shall not be allowed without consent of a recipient.

c) Automated individual decisions?

Article 9 of LPDP prescribes that a decision which produces legal effects concerning a person or which deteriorates person's position, cannot be exclusively based on the automated data which serves as an evaluation of one of his characteristics (working ability, reliability, solvency, etc.). This decision can be issued if that is prescribed by the law, i.e. in case of adopting personal request concerning the conclusion or fulfilment of a contract, along with suitable protective measures. In such a case, the person must be informed of the procedure of automated processing and the manner of issuing the decision.

141. How does existing legislation cover cross-border transfers of personal data? Please provide information on the application of the principle that trans-border data flows may only take place if the country of destination has a certain standard of data protection (adequacy)?

Pursuant to the provision of Article 53 of the Law on Personal Data Protection ("Official Gazette of RS" No. 97/2008 and 104/2009 – other law, hereinafter: LPDP), the data can be transferred from The Republic of Serbia to Member States of Council of Europe Convention concerning personal protection in respect of automated processing of personal data. Data may be transferred to other countries and international organizations if there is data protection in accordance with the above mentioned Convention in the countries, as well as after obtaining a permission of the Commissioner who determines fulfilment of conditions and taking measures of data protection during the transfer.

142. Please provide information on the supervisory authority responsible for monitoring the application of data protection provisions, in particular on the legal and practical measures taken to ensure its complete independence, and on the organisation of the supervisory authority, including the number of its staff, notably of inspectors.

- Commissioner - supervisory authority, independence:

By adopting The Law on Personal Data Protection ("Official Gazette of RS" No. 97/2008 and 104/2009 – other law, hereinafter: LPDP) the former Commissioner for the

information of public importance has also been empowered in the area of personal data protection, and the name of the authority has been renamed “Commissioner for information of public importance and personal data protection”.

The commissioner is supervisory authority in the field of data protection. Also, the Commissioner is second instance as well as authority in the field of data protection, because he issues decisions in respect of appeals, along with previous taking of actions necessary for issuing decisions in respect of appeals, in order to determine findings of fact.

The Commissioner an independent supervisory authority, who is independent in terms of exercising his power and who carries out personal data protection work. In the performance of these duties, the Commissioner shall neither seek nor take instructions from any government or from any other person. The commissioner shall be financed by the budget of The Republic of Serbia.

The commissioner shall be elected by National Assembly, for a period of 7 years, with the possibility of re-electing for another mandate. The Commissioner has 2 deputies - one for the field of free access to information of public importance and another one for the field of personal data protection. Their term of office shall be 7 years, with the possibility of re-election. The same conditions for election of the Commissioner shall be applied to the conditions for election, duration and expiry of term of office of a commissioner deputy, while the commissioner deputy shall be designated by the Commissioner, and proceedings for deputy removal can be initiated also by the Commissioner.

1.

2. The duty of the first Commissioner for information in The Republic of Serbia performs Rodoljub Sabic, a graduate jurist, who has been elected by the Decision of the National Assembly of the Republic of Serbia, RS No 91 from 22 December 2004, and who has been elected once again by the Decision of National Assembly of RS, No. 19 from 29 June 2007, before expiration of his/her term of office, after adopting the Constitution, but his term of office has begun from the first election.

3.

The commissioner deputy for the field of free access to information has been elected by the decision of the National Assembly RS No. 9 from 3 April 2006. The commissioner deputy for the field of personal data protection has been elected by the decision of the National Assembly No. 1 from 23 March 2010.

Duties of the Commissioner for the field of personal data protection are:

1. supervision of implementation and carrying out LPDP, i.e. supervision of data protection implementation;
2. issuing a decision in respect of an appeal in the case prescribed by the Law;
3. establishing and maintaining Central Register of data sets and disclosure of it by means of Internet.
4. supervision and giving permission for data transfer outside the Republic of Serbia;
5. indicating abuse observed while gathering data;
6. compiling a list which consists of states and international organizations which have properly prescribed data protection;

7. delivering his/her opinion concerning establishing new data sets, i.e. delivering his/her opinion in case of introducing new information technology to data processing;
8. delivering his/her opinion if it is not certain that a group of data is a data set within the meaning of the Law;
9. delivering his/her opinion to the Government in the process of adopting the act on the manner of maintaining archive, as well as on particularly sensitive data protective measures;
10. following the application of data protective measures and proposing improvement of the measures;
11. making proposals and giving recommendations for data protection improvement;
12. delivering previous opinion on a possibility that certain manner of processing constitutes a risk for the rights and freedoms of citizen;
13. following prescribed data protection in other countries;
14. cooperation with supervisory authorities for supervision of data protection in other countries;
15. establishing further data procedure when an operator does not exist any more, save as otherwise required.

- Organization and human resources of the Commissioner:

The Commissioner has the Office which provides help with exercise of power, in accordance with Article 34 of The Law on Free Access to Information of Public Importance ("Official Gazette of RS" No. 120/2004, 54/2007, 104/2009 and 36/2010) and Article 58 Of LPDP. (Organizational scheme of the Commissioner Office is attached to the answers.)

Pursuant to the Rulebook on internal organization and job classification in the Commissioner Office for information of public importance and personal data protection, which has been adopted by the Commissioner on 5 June 2010 (No. 110-00-3/2010-01), to which the Administrative Board of National Assembly has given its assent (Decision 28 No. 02-2532/10 form 12 October 2010), the Commissioner Office should have 69 employees in total.

The Commissioner has not been provided with proper working area, not even after six years of service, so, although there is an obvious need to employ more people, out of 69 posts, which are prescribed by the Rulebook on internal organization and job classification, at the moment there are 28 fulfilled posts, which is insufficient for thorough and prompt completion of tasks from Commissioner's operating scope.

On 30 November 2010, out of 28 employees of the Commissioner Office in total, 26 were civil servants and 2 general service employees. There are five employees who work as inspectors within the Supervision Department, which is insufficient in respect of real requirements.

143. Please provide information, including statistics, on the investigative powers of the supervisory authority, such as powers of access to data forming the subject of processing operations and powers to collect all the information necessary for the

performance of its supervisory duties? Does the supervisory authority hear claims by any person in regard to the processing of personal data?

Under Article 45 of the Law on Personal Data Protection (“Official Gazette of RS” No. 97/2008 and 104/2009 – other law, hereinafter: LPDP), Commissioner has the right to access and insight into all data and data set; into all the documentation related to gathering of data and other actions concerning processing, as well as the documents related to enforcing person’s rights from the Law; into general acts of an operator, and premises and equipment used by the operator. During supervision, the Commissioner shall access and supervise all data, data sets, documents, general acts, equipment used by an operator for processing of data, as well as premises where the equipment is stored.

Although LPDP has been applying from 1 January 2009, due to untimely provision of funds, as well as untimely provision of working premises to the Commissioner, there have been employees working as inspectors from the end of the year 2009, as well as during the year 2010, in the Commissioner Office, so that all so far accomplished supervisions were done during the year 2010. From 5 December 2010 until now, the Commissioner has supervised 37 operators, out of which 21 were on his own initiative and 16 on received notifications.

Pursuant to the Law on Secrecy of Data (“Official Gazette of RS” No. 104/2009) from 16 December 2009, the Commissioner has been authorized to access the data of all secrecy levels, and that he needs for completing jobs in his capacity, without safety check. Exceptionally, the Commissioner has the right to access secret data which are designated as the highest level of secrecy (“state secret” and “strictly confidential”) with previous safety check for special categories of data.

The Commissioner receives complaints concerning personal data processing by any person. LPDP (Article 1(2)) guarantees personal data protection to every natural person, regardless of his/her nationality and domicile, race, age, sex, language, religion, political or other conviction, national affiliation, social origin and status, property, birth, education, social status or any other characteristics.

144. Please provide information, including statistics, on the effective powers of intervention of the supervisory authority such as the following:

a) possibility for delivering opinions before data processing operations are carried out?

Under Article 44(1) points (7) and (8) of the Law on Personal Data Protection (“Official Gazette of RS” No. 97/2008 and 104/2009 – other law, hereinafter: LPDP), the Commissioner shall be competent to deliver his opinion on establishing new data sets, i.e. in case of introducing new information technology in data processing, as well as to deliver his opinion in case it is not certain whether a data set is considered to be data set. Under Article 44(1) point 12 of LPDP, the Commissioner shall deliver previous opinion on a possibility that certain manner of processing constitutes a risk for the rights and freedoms of citizen; Under Article 49 of LPDP an operator shall inform the Commissioner of the intention to establish data set before processing. The Commissioner shall check processing which may violate the rights of persons (Article 50 of LPDP).

At the request of public authorities, legal persons and natural persons, as well as on his own initiative, the Commissioner delivered 91 opinions, i.e. explanation concerning personal data processing until 5 December 2010. Also, in respect of two regulations, the Commissioner prepared and delivered more extensive reports, at the request of relevant state authorities.

b) possibility for ordering the blocking, erasure or destruction of data?

On the basis of the findings of authorized inspector, who determines that the provisions of the law prescribing data processing have been violated, Commissioner shall warn an operator of irregularities in processing (Article 56(1) LPDP).

Until 5 December 2010, the Commissioner gave 26 warnings to the data operators, whose personal data processing had irregularities. Out of 26 warnings, 22 cases acted in accordance with, and two cases partially acted in accordance with the Commissioner's warning, and two cases failed to comply with the Commissioner's warning.

The Commissioner may order the irregularities to be removed within a certain time limit, or may temporarily prohibit data processing which fail to comply with the provisions of LPDP, or may order the data gathered without legal basis to be deleted (Article 56(2) point (1) and (3) of LPDP). An appeal against these acts of the Commissioner is not allowed, but administrative dispute proceedings could be initiated.

Until 5 December 2010, the Commissioner adopted three decisions on deleting (destroying) the data gathered without legal basis, all of which were carried out.

The Commissioner shall adopt a decision, by which he orders an operator to act on the request of a person for enforcing the rights concerning processing, within a certain time limit, in procedure in request of appeal (Article 39 LPDP). The subject of an appeal may be even the request of a person to delete data, i.e. to terminate processing (Article 22 and 26(5) of LPDP).

Until 5 December 2010, the Commissioner submitted one appeal against the data operator, because the operator refused to delete data. Issuing the decision in respect of the appeal is pending.

c) possibility for imposing a temporary or definitive ban on processing?

On the basis of findings of authorized inspector, Commissioner may temporarily prohibit personal data processing which is not in accordance with LPDP (Article 56(2) point (2)). The Commissioner has not the power to permanently prohibit processing of the data.

Until 5 December 2010, the Commissioner adopted one decision on temporary prohibition of data processing. The decision was carried out.

d) possibility for imposing sanctions on controllers?

Article 56 of LPDP contains imperative provision, according to which Commissioner shall submit misdemeanour charge (application) in case of violation of the provisions of LPDP. The Commissioner has not the power to impose or implement sanctions.

Until 5 December 2010, the Commissioner submitted 19 applications for initiating misdemeanour proceedings to misdemeanour courts. The misdemeanour proceedings have not been terminated.

145. Please provide information, including statistics, on the powers of the supervisory authority to engage in legal proceedings in case of violation of data protection provisions.

Apart from the responsibility to submit misdemeanour charge (application) on infringements of the provisions of the Law on Personal Data Protection ("Official Gazette of RS" No. 97/2008 and 104/2009 – other law, hereinafter: LPDP), Commissioner may submit a criminal charge for infringements of the provisions of the Criminal Code ("Official Gazette of RS" No. 85/2005, 88/2005 - corrigendum, 107/2005 - corrigendum, 72/2009 and 111/2009). Also, pursuant to Article 222(1) of the Criminal Procedure Code ("Official Journal of the FRY" No. 70/2001 and 68/2002 and "OG of RS" No. 58/2004, 85/2009, 115/2005, 85/2005 - other law, 49/2007, 20/2009 - other law, 72/2009 and 76/2010), all state authorities, territorial autonomy authorities and local self-government authorities, public undertakings and institutions shall report criminal offences subject to public prosecution, criminal offences which they have been informed of or otherwise discover them.

Until 5 December 2010, the Commissioner submitted 18 criminal charges against unknown offenders to competent public prosecution services, for unauthorized gathering of personal data from Article 146 of the Criminal Code. Out of 18 criminal charges, 16 are related to abuse while entering national minorities in special polls (charges submitted for the criminal offence of unauthorized gathering of personal data from Article 146 of the Criminal Code and criminal offence of document counterfeit from Article 355 of the Criminal Code) to the detriment of several hundred citizens of RS. According to the findings of the Commissioner, until 5 December 2010, not only did the offenders of above mentioned criminal offences remain undiscovered, but criminal proceedings against the persons responsible were not initiated, and in this respect the Commissioner several times warned prosecutorial authorities and invited them to process the criminal charges as soon as possible.

146. Does the supervisory authority have powers to bring to the attention of judicial authorities the violations of data protection provisions? Can the decisions taken by the supervisory authority which give rise to complaints be appealed against through the courts? If yes, please specify and provide statistics.

In accordance with the Law Ratifying the Additional Protocol to the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data, in respect of supervisory authorities and cross-border flow of personal data ("Official Gazette of RS" – International Treaties, No 98/2008) from 27 October 2008, the Commissioner in capacity of supervisory authority has special power to intervene and involve himself/herself in legal proceedings, or to indicate the violation of the domestic

law provisions protecting principles of personal data protection to competent judicial authorities (Article 1(2) point (2)).

An administrative dispute against the decision of the Commissioner may be initiated before the Administrative Court of Serbia.

Until 5 December 2010, none of the data operators, to which the Commissioner's decision concerning irregular personal data processing relates, initiated administrative dispute before the Administrative Court.

147. Does data protection legislation provide for the notification of processing operations to the supervisory authority?

Yes. Under Article 52 of the Law on Personal Data Protection ("Official Gazette of RS" No. 97/2008 and 104/2009 – other law, hereinafter: LPDP), Commissioner shall establish and maintain Central Register. An operator shall submit to the Commissioner the notification on the intention to establish data set together with necessary data before initiation of processing, i.e. before establishing the data set, as well as the notification on every further intended processing, before initiation of processing, no later than 15 days before establishing of the data set, i.e. processing (Article 49 of LPDP). Also, the operator shall submit data set record, i.e. modification in data record to the Commissioner, not later than 15 days from the date of establishing, i.e. modification. The above mentioned notifications shall be entered into Central Register.

148. Please indicate whether the existing legislation provides for rights of the data subjects. Do the data subjects have the right to access their own data, to object to the processing of their own data, to ask for rectification or deletion of their own data and under which conditions?

Pursuant to Article 19 of the Law on Personal Data Protection ("Official Gazette of RS" No. 97/2008 and 104/2009 – other law, hereinafter: LPDP) a person has the right to be informed of processing, which means that the person can require to be accurately and completely informed by an operator of the following:

- 1) Whether an operator processes the data of that person and what kind of processing the operator does;
- 2) What data of the person the operator processes;
- 3) From whom the operator gathered the data of the person, i.e. of the data source;
- 4) What the purpose of data processing is;
- 5) Legal basis of processing of the person's data;
- 6) Data sets where the data of the person is located;
- 7) Who the users of person's data are;
- 8) What data, i.e. what kind of person's data is in use;
- 9) What the purpose of using person's data is;
- 10) Legal basis of using the person's data;
- 11) To whom the data is communicated;
- 12) Which data is communicated;
- 13) The purpose of the data communicating;
- 14) Legal basis of the data communicating;
- 15) Time period within which the data is processed;

The person has the right to require from the operator to make the person's data available to that person (Article 20 of LPDP). The right consists of the right to examine, read and listen to the data, as well as to make notes. The person has the right to require a copy of the data concerning him, and the operator shall issue the copy of the data (photocopy, audio copy, video copy, digital copy etc.) in form of the information, i.e. in other form if the person does not understand the form of information.

Also, the person has the right to require from the operator to correct, modify, update, delete the data, as well as termination or suspension of processing. The person has the right to deletion of data if:

- 1) The purpose of processing is not clearly determined;
- 2) The purpose of processing has been modified, and conditions of processing for the modified purpose have not been fulfilled;
- 3) The purpose of processing has been accomplished, i.e. the data are no longer needed for the purpose;
- 4) The manner of processing is not permitted;
- 5) The data belongs to a certain number and type of data whose processing is disproportionate to the purpose;
- 6) The data is not accurate, and cannot be replaced by the accurate data by means of correction;
- 7) The data is being processed without consent or authorization based on law, and in other cases when processing cannot be done in accordance with the provisions of the Law.

The person has the right to termination or suspension of processing, if the person has contested accuracy, completeness and promptness of the data, as well as the right to marking the data is marked as contested, until its accuracy, completeness and promptness are determined.

The right to notification, availability and a copy can be limited if:

- 1) The person asks for the notification from Article 19 points (2) and (7) of the Law, and the operator has entered person's data into a public register, or has made them available to the public in another manner;
- 2) The person abuses his right to notifications, availability and a copy;
- 3) An operator or other person, in accordance with Article 15 of the Law, has already informed the person of the matter of asked notifications, i.e. if the person has consulted the data or received a copy, and in the meantime the data has not been modified;
- 4) An operator has been prevented from performing his operating scope;
- 5) Disclosure of notifications seriously endangers interests of national and public safety, defence of country, or acts of prevention, detection, investigation and prosecuting of criminal offences;
- 6) Disclosure of notifications seriously endangers important economic and financial state interest;
- 7) The notification makes the data determined by the law, other regulations and acts based on the law to be secret, available, and whose disclosure may cause serious consequences for interest protected by the law;
- 8) Notification seriously endangers privacy or important interest of the person, particularly his life, health and physical integrity;

- 9) His data is used only for scientific research and statistical purposes, during such usage.

The person does not have the right to consult the data while termination of processing lasts if processing has been terminated on his request.

149. Please clarify whether the data subject exercises his/her rights directly or indirectly. Please indicate which is the relevant procedure and whether there are any exemptions or restrictions to the exercise of these rights.

All rights prescribed by the Law on Personal Data Protection ("Official Gazette of RS" No. 97/2008 and 104/2009 – other law, hereinafter: LPDP) may be exercised personally or through plenipotentiary, and authorization must be authenticated (Article 34 of LPDP).

Under Article 10 of LPDP, a person may exercise the rights accorded by LPDP (right to be informed on processing, rights to consult the data or obtain their copy, modification, update, deletion as well as termination or suspension of processing) directly or indirectly through a plenipotentiary. A person may consent to data processing through a plenipotentiary, and authorization must be authenticated, save as otherwise provided in the law. Consent on behalf of a person who is not capable of giving consent shall be given by a legal representative or a guardian.

The consent may be revoked. In case of revocation, the person who has given consent shall compensate an operator for justified costs and damage, in accordance with the regulations on liability for damage. Processing of data is not allowed after revocation of consent.

Also, a person who is not capable of consulting the data without a guard, may do it with the guard (Article 27(4) of LPDP).

150. What is done in order to ensure efficient protection of personal data by police and judicial authorities in criminal matters?

Protection of personal data by police in criminal matters

Pursuant to the Law on Police ("OG of RS" No. 101/05) from 14 November 2005, the police shall keep as secret any information the disclosure of which would endanger a person's physical integrity (Article 74). The police collect, process and use personal data, provide safeguard and keep records on personal and other data as authorised by this Law to prevent and detect criminal and minor offences and to locate offenders (Article 75). The Law on Police regulates personal data records maintained by the police (Article 76) and the way the data is used and provided (Article 77). Personal data may not be used contrary to the purposes set out in the Law on the Police and in other regulations governing the protection of personal data (Article 78).

The Ministry of Interior (hereinafter: MoI), Directorate for Administrative Issues, keeps records in proceedings run based on citizens requests. The data from the records are provided in a way preventing unauthorised data access and use. The data may be used and provided to other state authorities and organisations, i.e. legal entities, in

accordance with the Law on Personal Data Protection and all authorised users are provided with the data with a note that the data may be processed by users in accordance with the provisions of the Law on Personal Data Protection.

In the inspection that is currently being conducted by the Commissioner at MoI and that will probably take several months, the Commissioner wants to establish what measures are undertaken in MoI in the process of collecting, keeping, processing, using, protecting and safeguarding personal data, particularly in relation to especially sensitive data that MoI collects and generates on daily basis in performing jobs and tasks related to: safety of persons and assets, preserving public peace and order, security of road users, etc.

The inspection is being conducted by the Commissioner in all of the following internal organisational units of MoI: Office of the Minister, Secretariat, Police Directorate, Department of Analytics, Telecommunication and Information Technologies, Department of Police Internal Control, Department of Finance, Human Resources and General Issues, Emergency Department, and Internal Audit Service. The inspection is currently being conducted only at the Police Directorate for the City of Belgrade, however, in the future period it will also be conducted in one branch office in central and southern Serbia. MoI is fully assisting the Commissioner in conducting this inspection.

Protection of personal data by judicial authorities in criminal matters

Protection of personal data by the court in criminal matters is ensured by application of several legal institutes. One of them is exclusion of the public from the main trial in cases prescribed by the law. This is always the case in proceedings against minors, it is also forbidden to publicise the name of the minor against whom the proceedings was run or to publicise the data that may lead to revealing the identity of the minor. Furthermore, the public is excluded if the interests of protection of morality or protection of private life of participants in the proceedings require so (e.g. criminal offences against sexual liberty, such as rape, etc.), thus special attention is paid to the damaged party-victims of these criminal offences and their personal data are not publicised.

Special rules are prescribed and applied on protected witness when the life, body, freedom or any considerable assets of a witness or persons close to him/her would be seriously threatened due to his testimony especially in the criminal offences related to organised crime, corruption and other serious criminal offences, the court grants special protection measures as follows: excluding the public from the main trial, concealing appearance of the witness and testifying from a separate room through technical voice and image distortion devices for transmission of sound and images. The information about the identity of witness and persons close to him are sealed in a separate envelope, stamped and delivered to the Witness Protection Unit that keeps it. The sealed envelope can be opened only by the second instance panel which rules on appeal against the verdict.

Furthermore, special rules are prescribed and applied to undercover agent and cooperating witness in proceedings on criminal offences of organised crime, corruption and other severe criminal offences. Thus an undercover agent is appointed under an

alias or a code instead of personal data, whilst the public may be excluded during the interrogation of a cooperating witness.

In all the cases where the public is excluded, the presiding judge warns the participants in the proceedings that they are bound to keep information learned at the trial confidential, and that failure to do so is a criminal offense of violation of confidentiality of proceedings prescribed by Article 337 of the Criminal Code.

Special rules are prescribed and applied in relation to approving and applying measures for detection and proving criminal offences of organised crime, corruption and other severe criminal offences, such as surveillance measures and wiretapping phone and other conversations and communication that is approved by the court and that is during application and enforcement thereof considered an official secret. These measures are applied only exceptionally if the evidence for prosecution could not be collected otherwise or if the evidence collection would be significantly hampered.

151. Which legal procedures would be necessary to allow EU citizens to vote for and/or stand as a candidate in municipal elections in your country, or to benefit from other electoral rights?

To harmonise legislation of the Republic of Serbia with EU legislation so as to allow EU citizens to vote and stand as a candidate in municipal elections in the Republic of Serbia, the following regulations must be amended: Constitution of the Republic of Serbia (Official Gazette of RS, No. 98/2006), Law on Local Elections (Official Gazette of RS, Nos. 129/2007 and 34/2010 – decision of the Constitutional Court), Law on Local Self-Government (Official Gazette of RS, No. 129/2007), and Law on the Single Electoral Roll (Official Gazette of RS, No. 104/2009).

Changes in the above legislation should include:

Pursuant to Article 52 of the Constitution of the Republic of Serbia, each citizen of age and working ability has the right to vote and stand for elections. This article should be amended to guarantee the right to vote and stand for elections to EU citizens too, but under certain conditions (length of residency, limitation to local elections, etc.). The Constitution will be amended depending on the dynamics of negotiations for Serbia's accession to the EU and on the timeframe for the implementation of the National Programme for Integration (NPI).

The Law on Uniform Registers of Voters, adopted in December 2009, needs to be amended and supplemented to provide for record keeping of EU citizens residing in Serbia who are entitled to electoral right.

Pursuant to the Law on Local Elections, any citizen of age and working ability with residence in the territory of local government unit where the electoral right is exercised has an active or passive electoral right. This provision will be amended to enable implementation of EU regulations on active and passive suffrage in local elections of EU citizens residing in a member state of which they are not nationals. The Law on the Election of Delegates is expected to be adopted in 2011, bringing changes to the election system, i.e. election procedure as determined by the Law on Local Elections that is currently in force.

The current Law on Local Self-Government is fully aligned with the European Charter of Local Self-Government. Adjustments are possible for the purposes of approximating to the relevant EU regulations and ensuring suffrage for EU citizens.

In light of the above, the following activities should be taken in 2012:

Once the Constitution is amended as set out above, the following legislation should be enacted:

- Law on Amendments and Supplements to the Law on the Single Electoral Roll;
- Law on Amendments and Supplements to the Law on the Election of Delegates;
- Law on Amendments and Supplements to the Law on Local Self-Government.

The amending of the above legislation of the Republic of Serbia will ensure the implementation of the following EU regulations: Council Directive 94/80/EC, Council Directive 96/30/EC, and Council Directive 2006/106/EC.

As all of these activities, particularly amending the Constitution, imply a number of interrelated efforts over a relatively long period of time, their implementation should start no later than two years before the accession, in the final stage of accession talks, i.e. two years before the entry into force of the Treaty of Accession of the Republic of Serbia to the European Union.

152. What documents do EU citizens and members of their families need in order to enter Serbia?

To enter the Republic of Serbia any foreigner shall need a visa or valid travel document at the Criminal Code according to the visa requirements of The Republic of Serbia.

An international treaty or a Government decision may establish that citizens of particular countries may enter the Republic of Serbia without a visa.

A foreigner who does not need a visa or a travel document to enter the Republic of Serbia may stay in the country for a maximum period of 90 days, within a timeframe of six months starting from the day of the first entry.

A foreigner listed in the travel document of another person may enter into and exit from the Republic of Serbia only if at the Criminal Code accompanied by the person in whose travel document he/she is listed.

153. What documents do EU citizens not exercising an economic activity have to produce and which fee are they charged for a residence permit?

A foreigner who intends to stay in Serbia for more than 90 days may be granted temporary residence provided the following is enclosed along with the request:

- valid travel document,
- report on the residence,
- completed forms
- proof of payment in the amount of the submission fee, the tax residence and fee for a sticker (fee for a temporary stay for up to three months is 7840 RSD, a temporary

residence for over three months is 11,760 RSD, the submission fee is 210 RSD whereas the price of the sticker is 290 RSD) ,

- **proof** that he/she has sufficient funds to support the stay;
- ☐ **proof** that he/she has got health insurance and
- has sufficient evidence to support the application for the temporary residence permit requested based on:

1. Marriage to a citizen of the Republic of Serbia:

- a birth certificate, not older than six months
- certificate of employment or other proof of sufficient funds to support the stay ☐
- control of the citizenship status of our citizen

2. Extramarital relationship with a citizen of the Republic of Serbia: certificate of marriage status of both parties (for a Serbian citizen, certificate not older than six months is enough,) ☐

- Certified statement of two witnesses that they are in the extramarital community or if they have joint children birth certificates
- certificate of employment or other proof of substantial means of support ☐
- Control of the citizenship status of our citizen

3. Relationship with a citizen of the Republic of Serbia:

- proof of kinship with the Serbian citizen (birth certificate, marriage certificate.).
- Control of the citizenship status of our citizen

4. Private visits:

- Control of the citizenship status of our citizen
- Guarantee of the Serbian citizen and proof of substantial means of support
- evidence of the foreigner own substantial means if the guarantee is not provided by our nationality

5. Family member of the foreigner on a temporary stay is:

- proof of kinship with a foreigner at the residence (birth certificate, marriage certificate, with translations of the Court interpreter).

6. Education – studying learning languages:

- Confirmation of the faculty or the school the foreigner is attending

7. Training and practice:

- Decision on registration of companies where training or practice are carried out
- Certificate of institution that organizes training or practice, with exact start and end dates.
- Contract or certificate of carrying out training and practice

8. Highly professional specialisation:

- Confirmation of the competent institution or organization of these specialized studies with specified duration of specialization

9. Medical treatment:

- proof of funds for treatment and support if medical costs are not pre-paid;

- A certification from health care facilities with foreigners' personal data on the duration of treatment and methods of settling mutual financial obligations

10. Property on the residential or business facilities:

- proof of property possession

The procedure of temporary residence permit lasts up to one month and must be completed with a term of validity of a period which has not expired, or where the foreigner has the right to stay without a visa. The application for extension of the visa's term of validity shall be filed to the competent authority not later than 30 days prior to the expiration of a temporary residence.

154. What are the reasons to refuse entry or residence to EU citizens?

Under Article 11 pursuant to the Law on Foreigners („Official Gazette“, No. 97/2008) entry into the Republic of Serbia shall be denied to a foreigner if:

- 1) He/she does not have a valid travel document, or a visa if required;
- 2) He/she does not have sufficient financial means to sustain him/her during the stay in the Republic of Serbia, to return to his/her country of origin or transit into the third country, and if he/she is not provided with means of livelihood in any other way during his/her stay in the Republic of Serbia;
- 3) He/she is in transit, but does not meet the requirements to enter the third country;
- 4) The protective measure of removal or the security measure of banishment is in effect, or if his/her permission to stay is cancelled, and/or other measures recognised in the domestic or international law, which include the prohibition of crossing the state border, are effective; this prohibition shall apply during the period in which the respective measure, or the cancellation of the permission to stay, is in force;
- 5) He/she does not have the certificate of vaccination or other proof of good health, when arriving from areas affected by an epidemic of infectious diseases;
- 6) Required so by reasons related to protection of the public order or the safety of the Republic of Serbia and its citizens;
- 7) He/she is registered as an international felon in the relevant records;
- 8) There is reasonable doubt that he/she will take advantage of the stay for purposes other than those declared.

A foreigner may be granted the permission for temporary residence if he/she furnishes the proof that:

- 1) He/she has got sufficient financial means to sustain him/her;
- 2) He/she has got health insurance;
- 3) His/her reasons for temporary residence are justified and in compliance with the purpose of temporary residence

A foreigner shall be denied the permission for temporary residence if any

obstacles referred to in Article 11 of this Law exist.

Diplomatic and consular protection

155. Which measures (legal, institutional and others) would be necessary to allow EU citizens to benefit from protection of diplomatic and consular representations of Serbia, including the establishment of an emergency travel document?

a) Article 12 of the Law on Foreign Affairs (*Official Gazette of RS*, No. 116/2007, 126/2007 and 41/2009) provides for the protection of citizens of third countries through a network of diplomatic missions and consular offices of the Republic of Serbia. Under the aforementioned article, the Republic of Serbia may conclude an international treaty on the protection of interests of third countries and their citizens in a foreign country by its diplomatic missions and offices.

Consequently, in order to enable EU citizens to benefit from the "general protection" of diplomatic missions and consular offices of the Republic of Serbia, it is necessary to conclude an international treaty.

b) Articles 61 and 62 of the Law on Foreigners (*Official Gazette of RS*, No. 97/08) provides for the possibility of issuing a laissez-passer to foreigners.

Under Article 61(1), point (2) a foreigner who does not possess a valid travel document is issued a laissez-passer for foreigners if he/she lost his/her foreign travel document or was left without it in any other way, and the state of his/her citizenship neither has a diplomatic mission or consular office in the Republic of Serbia, nor are his/her interests represented by another state - for leaving the country.

Under Article 61(1), point (3) a foreigner who lost his/her foreigner's travel document issued by a diplomatic mission or consular office of the Republic of Serbia, while he was abroad, is issued a foreigner's travel document by the competent authority or the authority competent under special law - for return to the Republic of Serbia, with prior approval of the Ministry of Interior.

Under paragraph 2 of the same Article, a laissez passer for foreigners can also be issued to another foreigner on reasonable grounds.

Appearance of the form and contents of the laissez-passer for foreigners is prescribed by the Minister competent for internal affairs.

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