**Prava deteta u Srbiji 1996-2002**

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# Prava deteta u Srbiji
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# *PREDGOVOR*

Izveštaj o stanju prava deteta u Srbiji 1996-2002, izrađen je u Centru za prava deteta, uz pomoć saradnika. Cilj ovog Izveštaja je da domaćoj i stranoj javnosti pruži informacije o tome kako se međunarodno zajamčena prava deteta ostvaruju u praksi u Srbiji. Da bismo dali odgovor na to pitanje, istražili smo domaće pravo, odnosno usklađenost prava sa Konvencijom o pravima deteta, najznačajnijim međunarodnim dokumentom u ovoj oblasti. Takođe, izneli smo naše ocene i komentare postojećeg stanja u odnosu na ostvarivanje pojedinačnih prava deteta u praksi.

Izveštaj je urađen po uzoru na Opšte smernice Komiteta za prava deteta, nadzornog tela ustanovljenog Konvencijom o pravima deteta s ciljem praćenja ostvarivanja ovog međunarodnog ugovora u državama ugovornicama (191 država je ratifikovala ovu Konvenciju). Pored Opštih smernica, za pojedina prava dodatno su sačinjeni indikatori specifični za određenu oblast i za naš pravni sistem.

Na osnovu takve metodologije, ovaj *Izveštaj sadrži* uvod i sedam poglavlja, a svako poglavlje pregled pojedinačnih prava. U *uvodu* je dat kratak pregled opštih političkih, ekonomskih i društvenih prilika u periodu koji obuhvata ovaj Izveštaj. Takođe, izneta je opšta ocena stanja prava deteta u SRJ kao i ocena institucionalnog okvira u Srbiji za ostvarivanje prava deteta. U okviru pregleda pojedinačnog prava citirana je, pre svega, *relevantna odredba Konvencije o pravima deteta*. Dalje, u podnaslovu *Propisi u SRJ i Republici Srbiji* analizirani su, u odnosu na Opšte smernice i naše indikatore, Ustav SRJ, Ustav Republike Srbije, odgovarajući zakoni i podzakonski akti u SRJ i Republici Srbiji. Najzad, u okviru podnaslova *Ocena stanja i komentari*, procenjuje se ostvarivanje prava u odnosu na propise, odsustvo pravne uređenosti i posledice po uživanje prava, konstatuju se kršenja prava i opšti i posebni nedostaci u sistemu koji treba da omogući ostvarivanje prava deteta. Kad god je bilo moguće, odnosno u slučaju da je Centar raspolagao rezultatima istraživanja, u okviru ocene stanja i komentara dat je pregled stavova i mišljenja relevantnih profesionalnih grupa (učitelji, nastavnici, lekari…), kao i same dece.

Opredeljujući se za ovakav način sačinjavanja izveštaja, želeli smo da obuhvatimo sve oblasti prava deteta i napravimo sveobuhvatan pregled ostvarivanja tih prava u Srbiji. Iako je Centar za prava deteta do sada sproveo brojna specifična istraživanja i sačinjavao izveštaje za pojedine oblasti, ovo je prvi sveobuhvatan izveštaj o pravima deteta.

I pored velikih napora uloženih u sastavljanje ovog Izveštaja, kao i pored najboljih želja i namera, nismo bili u mogućnosti da sastavimo ujednačen pregled stanja u oblasti prava deteta. Ovo je posledica nekoliko faktora. *Prvo,* smatrali smo da su neka prava deteta posebno ugrožena, odnosno da u nekim oblastima koje su vezane za život, opstanak i razvoj deteta postoje veliki problemi koji onemogućavaju ostvarivanje drugih prava deteta. Zato su prava na zdravlje, zloupotreba opojnih droga, zlostavljanje deteta, maloletnička delinkvencija, prava deteta u sistemu socijalne zaštite i pravo na obrazovanje, opširnije analizirana. *Drugo*, bili smo ograničeni podacima do kojih smo mogli da dođemo, što je posledica nesistematskog praćenja ove oblasti od strane relevantnih državnih organa. Na primer, oblasti dečjeg rada, porodičnog nasilja nad decom, torture, dece izbeglica i mnoge druge se posebno ne obrađuju u okviru nadležnih državnih službi, te su podaci dostupni jedino u fragmentima i uz pomoć drugih izvora, kao što su međunarodne organizacije ili nevladine organizacije. Zbog toga je mnogo praznina u oceni stanja uživanja pojedinih prava. *Najzad,* i pored odličnih stručnjaka koje smo identifikovali i angažovali kao saradnike na ovom projektu, nismo bili u mogućnosti da za sve oblasti identifikujemo stručnjake, jer ih u našoj zemlji nema. Naime, oblast prava deteta, posebno kada su u pitanju neka "inovativna" prava, uključujući građanska i politička prava, u holističkom je smislu nova u našoj sredini i vrlo je malo specijalizovanih stručnjaka.

I pored navedenih teskoća, sastavili smo Izveštaj kojim smo, kao prvim sveobuhvatnim, zadovoljni i koji će nam u metodološkom i sadržajnom smislu poslužiti kao osnova za sastavljanje godišnjih izveštaja o stanju prava deteta u Srbiji.

Centar zahvaljuje svim saradnicima na izradi Izveštaja. Njihova stručnost, nepristrasnost i zalaganje da dođu do podataka i obrade ih, od suštinskog je doprinosa u izradi ovog Izveštaja.

Centar se takođe zahvaljuje brojnim domaćim i stranim vladinim i nevladinim organizacijama koje su nam omogućile da koristimo i objavimo podatke njihovih istraživanja.

Za materijalnu pomoć u izradi indikatora, samog Izveštaja i baze podataka koju ćemo koristiti za naredne, godišnje izveštaje, zahvaljujemo se norveškoj organizaciji *Redd Barna*, koja je od početka rada Centra bila naš najverniji prijatelj i partner.

# Opšti kontekst i prava deteta u Srbiji

Radi lakšeg razumevanja opštih prilika u kojima prava deteta treba da se ostvaruju, biće dat pregled političke situacije u Saveznoj Republici Jugoslaviji. Kao dokaz u prilog činjenici da su okolnosti pod kojima deca treba da uživaju svoja prava vrlo dinamične prirode, služi nam novonastala situacija u kojoj umesto Savezne Republike Jugoslavije, imamo Srbiju i Crnu Goru. Sama promena imena nije poseban problem, ali će problem predstavljati koncentracija na politička pitanja, odnosno konstituisanje nove državne zajednice, novih organa, novih nadležnosti, novih ustava, novih definicija ljudskih prava i novih reorganizacija državnih ustanova. U svetlosti formiranja nove državne zajednice, postoji bojazan da će prava deteta opet, na neki način, "čekati" na red i da deci neće biti posvećeno dovoljno pažnje. Predstavljanje ovog Izveštaja je, između ostalog, pokušaj da se privuče pažnja domaće i međunarodne javnosti i političkih odlučilaca na stanje u kome se nalaze deca u Srbiji i da se predlozi da u novoj državi ne budu više prazna parola izjave ***deca pre svega***, već realnost relevantne politike.

**Razaranje društva i posledice za decu**

Početak krize u bivšoj Jugoslaviji koincidirao je sa usvajanjem Konvencije o pravima deteta (Konvencija), pod okriljem Ujedinjenih nacija (1989. godine). Tokom narednih godina, pogoršanje političkih, ekonomskih i društvenih prilika u Saveznoj Republici Jugoslaviji (Jugoslavija) imale su ogroman uticaj na uživanje prava deteta. Posle više od jedne decenije ratova, razaranja i izolacije započeo je period ekonomske konsolidacije, stabilnijih političkih prilika i društvenog oporavka.

I pored promena koje su već učinjene u Jugoslaviji postoje mnogi problemi. Kombinacija ekonomske i političke krize, velika nestabilnost i nesigurnost i u većem delu jugoistočne Evrope, ozbiljno su ugrozili delotvornu primenu Konvencije o pravima deteta. U nekim državama u tom regionu, a naročito u Jugoslaviji, kriza je uticala da ukupna situacija u kojoj se deca nalaze bude mnogo gora nego što je bila početkom devedesetih godina. Oružani sukobi, i s tim u vezi napetosti i traume, kao i masovno raseljavanje stanovništva, doneli su veliki problem našoj zemlji. S jedne strane, suočili smo se sa strukturalnim nejednakostima, promenama u porodičnoj sredini i uopšte, kao i nemogućnošću sistema socijalne zaštite da odgovori novonastalim potrebama.

## Političke promene u Jugoslaviji 2000. godine i prava deteta

Dramatični događaji od 5. oktobra 2000. godine okončali su deceniju diktature u Jugoslaviji. Više od toga, ti događaji su obeležili mogući kraj destabilizacije celog regiona, ratova i ekonomske propasti. Ali, preko noći se nije desilo ono što je većina stanovništva dugo čekala i želela, a to su brze promene u svim sferama društva.

Kao i sa svakom iznenadnom političkom promenom, napredak ne može brzo da se postigne. Posle više meseci političkog dogovora, uspostavljene su vlade u Jugoslaviji i Srbiji. Nasleđe koje je ostavljeno ovoj zemlji, više je nego očigledno. Ekonomski, Jugoslavija je u teškoj situaciji. Politički, još uvek ima nekoliko "neuralgičnih" tačaka, a to su jug Srbije, Kosovo i odnos Srbije i Crne Gore. Ovi problemi se rešavaju, i od brzine tog procesa će zavisiti i ekonomski oporavak zemlje. Nedostatak političke i ekonomske izvesnosti čine skoro nemogućim za vlasti u Jugoslaviji da se bave planiranjem dugoročne politike u posebnim oblastima prava deteta. Za početak, ohrabruju aktivnosti Ministarstva za socijalna pitanja Republike Srbije i Ministarstva prosvete i sporta Republike Srbije. Takođe, pozitivan signal predstavlja formiranje Saveta za prava deteta pri Vladi Srbije.

Danas, više od dve godine od političkih promena u Jugoslaviji, nema velikog pomaka u unapređenju situacije za decu. Ipak, mnoga vrata su otvorena. Ono što je učinjeno jeste to da je počeo proces demistifikacije. Prvi put je javnost u Jugoslaviji u prilici da sazna istinu o situaciji u kojoj se nalaze deca koja su smeštena u ustanovama socijalnog staranja. Takođe, može se videti u kakvom su stanju zdravstvene ustanove, škole i druga mesta u kojima deca borave tokom dana. Dramatična situacija u obrazovanju (u smislu profesionalizma zaposlenih, stavova, programa i plata) predmet je otvorenih debata, a relevantna administracija radi na reformi. Bezbednost dece je tema o kojoj se otvoreno razgovara, bilo da je u pitanju škola, kuća ili ulica.

Što se tiče ostvarivanja prava deteta, odnosno podataka o situaciji u kojoj se deca nalaze, mi smo u fazi utvrđivanja činjeničnog stanja. Informacije su dostupne ali rasute, ili saznanje zahteva ozbiljniji projekat istraživanja. Državni organi su suočeni sa hitnim humanitarnim potrebama, a s druge strane, sa potrebom da formulišu dugoročnu strategiju.

U svakom slučaju, bilo kakva značajnija promena u odnosu na situaciju u kojoj se deca nalaze zavisiće, između ostalog, od sposobnosti političkih odlučilaca u Jugoslaviji da strateški razmišljaju i sastavljaju planove za bližu i dalju budućnost.

Takođe, zavisiće i od njihove sposobnosti da decu "primete" i da ih smeste u centar svoje pažnje.

**Ekonomski, socijalni i politički kontekst i prava deteta u Jugoslaviji**

Politička i ekonomska kriza devedesetih godina proizvela je ogromnu društvenu krizu koja na neki način još uvek traje. Posledice se ispoljavaju ne samo kao generalni slom sistema vrednosti, već i kao ksenofobija i netolerancija. Mnoga deca su rođena i vaspitavana na kulturi mržnje i nacionalizma, što je bio slučaj u većem delu jugoistočne Evrope, pa i u Jugoslaviji. Deca su rasla na predrasudama podsticanim od medija koje je kontrolisala tadašnja vlast i sredina u kojoj žive i to može trajno da odredi njihove stavove u životu. Ukupna kriza izolovala je od sveta i Evrope čitavu zemlju, a posebno decu u Jugoslaviji. Pristup slobodnim medijima i drugim nezavisnim izvorima informacija bio je ograničen. Osnovana procena je da će dugo posle završetka krize, generacije i generacije osećati sindrom "propuštenih" godina u smislu informacija i znanja. Većina dece u Jugoslaviji nije nikada putovala izvan granica svoje zemlje i nikada nije srela vršnjake iz neke druge zemlje. Sada, zahvaljujući većoj otvorenosti medija, filmske industrije i pristupa Internetu, neka deca se upoznaju sa životom izvan granica Jugoslavije. Nažalost, nove informacije koje su deci dostupne su geografski ograničene na Zapadnu Evropu i Ameriku, dok su informacije iz regiona, kao i iz drugih delova sveta, još uvek manje dostupne.

Iako je situacija u kojoj se deca u Jugoslaviji nalaze direktno uslovljena političkim, ekonomskim i društvenim prilikama, ona je ipak, u velikoj meri uslovljena i stavovima o samoj deci i njihovim pravima. Jedna od osnovnih karakteristika odnosa prema deci je previše zaštitnički stav, bar u svom verbalnom predstavljanju, jer u Jugoslaviji još uvek preovladava tipična patrijarhalna porodična struktura u kojoj proširena porodica igra važnu ulogu - kako u smislu pružanja pomoći, tako i u smislu uticaja. Idući od severa ka jugu zemlje, odlike patrijarhalnosti sve su izraženije ili dominantnije. Ovakva struktura porodice, u kojoj izrazito dominira *pater familias,* direktno utiče na stavove prema deci i na njihovo pravo na participaciju, kao i na pravo na privatnost i izražavanje mišljenja. I stavovi prema ženi, a samim tim i ženskom detetu uglavnom su diskriminatorni, i opet, u izraženijoj formi idući od severa ka jugu zemlje.

Slični su i stavovi koji važe van porodice, što je vidljivo u obrazovnom sistemu, u zdravstvenim i institucijama socijalne zaštite, kao i u postupcima državnih i pravosudnih organa, a tradicionalni stavovi uočljivi su i kod većine onih koji donose političke odluke. Naravno, teško je očekivati različit odnos prema deci u

sredini u kojoj ni ljudska prava još uvek nisu priznata i prihvaćena u društvu. Sva je prilika da promenjena politička situacija u Jugoslaviji, uključujući i izglede za neki napredak u ekonomskoj sferi i reformi zakonodavstva, neće biti dovoljni ukoliko se ne razvijaju procesi za promenu stavova u odnosu na ljudska prava, pa time i na prava deteta. Politički, ekonomski i društveni napredak nisu mogući bez poštovanja ljudskih prava. Možda je još više od toga potrebno za poštovanje prava deteta – posebno kada su u pitanju politička i građanska prava deteta, koja pripadaju sferi privatnosti i ličnih sloboda.

Porodična situacija - tako bitna za zdrav razvoj deteta - drastično se promenila. Najveći broj porodica u Jugoslaviji se suočio sa rastućim siromaštvom i nemogućnošću održavanja domaćinstva. U isto vreme, država nije mogla da priskoči u pomoć na isti način kako je to činila u decenijama koje su prethodile krizi, ne samo zbog toga što je velikom broju porodica odjednom bila potrebna pomoć, već i zato što je država i sama osiromašila, a svoj, sve manji budžet, koristila prevashodno za plaćanje dugova, za vojne potrebe ili za izdržavanje sve brojnijih policijskih snaga.

Ukratko, posle svega, opšta situacija u kojoj se deca u Jugoslaviji nalaze je sledeća:

- *zdravlje* dece je pogoršano;
- *obrazovni sistem* je u poslednjoj deceniji pretrpeo generalno razaranje, iako je veliki broj dece bio obuhvaćen osnovnim obrazovanjem, što se odrazilo, pre svega, na kvalitet obrazovanja;
- *maloletnička delinkvencija* je porasla u poslednjoj deceniji prošlog veka, a maloletnici su postali počinioci i težih krivičnih dela;
- *korišćenje opojnih droga* i psihotropnih supstanci je u porastu;
- *seksualno iskorišćavanje dece takođe;*
- *iskorišćavanje dece u radu*, praktično nepostojeće pre devedesetih godina, sada je u Jugoslaviji realnost;
- *promet dece (trafficking)* radi seksualnog iskorišćavanja kao i radi iskorišćavanja u radu je problem s kojim smo suočeni;
- *deca pripadnici etničkih manjina*, a posebno deca Romi se nalaze u pogoršanoj situaciji;
- neki *rat* je doživelo, povrh svega, stotine hiljada dece koja sada žive u Jugoslaviji i sve posledice koje iz takve situacije proizilaze, i skoro isti broj dece morao je da napusti svoje domove i da se *preseli* na neko drugo mesto.

*De jure*, prava deteta su u potpunosti prihvaćena u Jugoslaviji: ova država je ratifikovala Konvenciju i zato je obavezna da poštuje i obezbedi ostvarivanje svih prava sadržanih u ovom međunarodnom dokumentu. Međutim, propisi SRJ i Republike Srbije nisu u potpunosti prilagođeni savremenim međunarodnim standardima u oblasti prava deteta. Što se prakse tiče, situacija je takođe nepovoljna i nažalost, u ovom trenutku ne možemo da se pohvalimo visokim i uravnoteženim nivoom ostvarivanja prava deteta.

Ovaj Izveštaj, kako je već rečeno, analizira stanje u oblasti zakonodavstva i prakse u oblasti prava deteta. Takođe, kad je moguće, analiziraju se i stavovi u vezi sa uživanjem pojedinih prava. Uz to, iznose se i predlozi za unapređenje relevantnog prava i prakse u ovoj oblasti. Radi lakšeg pregleda, ovde će biti ukratko prikazan *predlog relevantne politike*, koja se sastoji od preporuka vezanih za ostvarivanje prava deteta na nacionalnom i međunarodnom planu.

*Opšte preporuke na nacionalnom nivou:*

- Puna primena Konvencija o pravima deteta, uključujući široku promociju ovog međunarodnog dokumenta; The revision of national laws and practices;
- Izdvajanje posebnog budžeta za decu;
- Osnaživanje ingerencija i kapaciteta posebnog tela na nivou Vlade Srbije-Saveta za prava deteta i, po mogućstvu, formiranje sličnih tela i na nivou manjih administrativnih zajednica;
- Uvođenje nadzornih mehanizama, kao na primer, Ombudsmana za prava deteta;
- Razvijanje i primena nacionalnog plana akcije za decu, kako je inače planirano u toku 2003. godine (uz naglasak na osnovnim principima nediskriminacije, najboljeg interesa deteta, prava na život, opstanak i razvoj i prava na participaciju);
- Otvorenost za razgovor sa decom i mladima o pitanjima koja su u njihovom interesu;
- Podrška države i saradnja sa lokalnim, nacionalnim i međunarodnim organizacijama koje se bave pravima deteta.

*Opšte preporuke na međunarodnom nivou:**

- Komitet za prava deteta, u saradnji sa *UNICEF*, Svetskom bankom i drugim relevantnim organizacijama, trebalo bi da imaju poseban program u ovoj oblasti za naš region i zemlju, i da pomažu SRJ i nevladine organizacije u razvoju i

sprovođenju politike u oblasti prava deteta; U ovom slucaju, potrebna je sigurnost da će *UNICEF* i Svetska banka dugoročnije biti prisutni u našoj zemlji;
- Evropska unija i Pakt za stabilnost trebalo bi da nađu način da odgovore na zahteve civilnog društva u Srbiji i Crnoj Gori za posvećivanje veće pažnje problemima prava deteta i ostvarivanju tih prava;
- Međunarodne organizacije, koje su aktivne u, između ostalog, oblasti prava deteta, trebalo bi da sinhronizuju svoje planove i aktivnosti u vezi sa Konvencijom o pravima deteta, koristeći najbolje metode i radeći zajedno sa Vladom Jugoslavije, Vladama Republika, lokalnim administracijama i nevladinim organizacijama, uz puno uvažavanje lokalnih običaja i tradicije.

Pored ovih, opštih preporuka, a na osnovu procene stanja iz ovog Izveštaja, *Centar za prava deteta predlaže formulisanje i tamo gde je to već učinjeno, dosledno sprovođenje, posebne politike u oblasti prava deteta,* koja će biti vezana za tematske oblasti i kojom će biti obuhvaćeno:

- Uklanjanje siromaštva dece;
- Kao priotitet, obezbeđivanje odgovarajuće zdravstvene usluge i obezbeđivanje sigurnosti dece i roditelja u zdravstvenim ustanovama, posebno u porodilištima;
- Suštinska reforma obrazovanja koja uključuje obrazovanje za ljudska prava i demokratiju i posebno uvođenje novih metoda učenja;
- Posebni i zajednički napori Jugoslavije i drugih država jugoistočne Evrope u borbi protiv zloupotrebe opojnih sredstava i psihotropnih supstanci, kao i u borbi protiv prometa decom, i drugih zloupotreba koje uključuju prekogranične nelegalne aktivnosti (npr: ekonomske, seksualne i druge oblike iskorišćavanja deteta);
- Razvoj mera za rano otkrivanje i eliminaciju nasilja nad decom u porodici, školama, na ulici i u ustanovama socijalne zaštite;
- Uspostavljanje sistema maloletničkog pravosuđa uz uključivanje diverzionih mera i alternativa institucionalnim merama;
- Razvoj specifičnih programa za decu koja pripadaju manjinskim grupama, uključujući programe za razvoj njihove kulturne dobrobiti;
- Razvoj mehanizama nadzora nad uslovima života dece smeštene u okviru sistema socijane zaštite i nad praksom pravosudnih organa, uz poseban osvrt na reformu sistema usvojenja i postepenu eliminaciju institucionalizacije kao alternativnog smeštaja dece bez porodičnog staranja;
- Razvoj specifične metodologije za rehabilitaciju i reintegraciju u

društvo dece – žrtava oružanih sukoba ili nekog drugog oblika nasilja;
- Ukidanje dečjeg rada;
- Razvoj posebnih programa za "decu na ulici";
- Razvoj bezbednih i "prijateljskih" sredina za slobodno vreme dece.

Ova lista nije potpuna i konačna, već se zasniva na identifikovanim problemima sa kojima su suočena deca u Jugoslaviji. Detaljnije informacije o položaju dece i uživanju prava, na osnovu kojih smo identifikovali osnovne probleme i napravili listu prioriteta koje bi Srbija trebalo da usvoji kao strategiju u ovoj oblasti, nalaze se na stranicama koje slede.

** ove preporuke su već upućene Vladi SRJ radi aktivnog uključivanja u rad međunarodnih organizacija u ovoj oblasti, kao i radi korišćenja znanja i ugleda radi uticaja na odlučioce na međunarodnom nivou.*

# Posebna prava

# *I*

# Definicija deteta

# DEFINICIJA DETETA

## *Član 1. Konvencije o pravima deteta*

***Za potrebe ove Konvencije dete je svako ljudsko biće koje nije navršilo osamnaest godina života, ukoliko se, po zakonu koji se primenjuje na dete, punoletstvo ne stiče ranije.***

## Propisi u SRJ i Republici Srbiji

Prema jugoslovenskom pravu, *punoletstvo* se stiče sa 18 godina života. Zakon o braku i porodičnim odnosima Republike Srbije sadrži izričitu odredbu kojom se određuje granica sticanja punoletstva (član 15, st. 1 ZBPO RS). Ustavni propisi granicu punoletstva vezuju za sticanje aktivnog i pasivnog biračkog prava. Tako, prema članu 34 Ustava SRJ, jugoslovenski državljanin koji je napunio 18 godina života ima pravo da bira i da bude biran u državne organe. Na isti način sticanje biračkog prava regulisano je i u Ustavu RS (član 42, st. 1).

Prema propisima u oblasti *zdravstva*, da bi se nad detetom mogla izvršiti hirurška ili druga medicinska intervencija, neophodan je pristanak roditelja, usvojioca ili staraoca. Međutim, ako je život deteta u opasnosti, a usled hitnosti ovaj pristanak nije moguće pribaviti, medicinska intervencija se ipak može preduzeti na osnovu konzilijarnog pregleda (član 10 ZZZ RS). Abortus predstavlja izuzetak, pa je Zakonom o postupku prekida trudnoće u zdravstvenoj ustanovi RS (član 2) predviđeno da je devojčicama pristanak roditelja za abortus neophodan samo do 16. godine života.

Detetu koje je napunilo 15 godina prestaje *obaveza pohađanja škole* istekom te školske godine. Međutim, ako je dete napunilo 15 godina, a nije steklo osnovno obrazovanje, može mu se na njegov zahtev ili zahtev roditelja omogućiti da nastavi školovanje do navršenih 17 godina života (član 44, st. 1 i 2 ZOŠ RS). Dete izuzetnog znanja i sposobnosti, može da završi školu i u roku kraćem od osam, ali ne kraćem od šest godina (član 62, st. 1 ZOŠ RS).

Dete koje je napunilo 15 godina i ima opštu zdravstvenu sposobnost, može samostalno zasnovati *radni odnos* i raspolagati dohotkom i imovinom koju je steklo

svojim radom (član 7, st. 2 ZORO SRJ, član 122, st. 2 ZBPO RS). Istu odredbu sadrži i radno zakonodavstvo Republike Srbije (član 13, st. 1 ZOR RS), uz napomenu da radni odnos sa licem mlađim od 18 godina života može da se zasnuje uz pismenu saglasnost roditelja ili staraoca, ako takav rad ne ugrožava zdravlje, moral i obrazovanje, odnosno, ako takav rad nije zabranjen zakonom (član 13, st. 3 ZOR RS). Zabranjeno je da deca rade na radnom mestu na kome se pretežno obavljaju naročito teški fizički poslovi, poslovi pod zemljom ili vodom i poslovi koji bi, s obzirom na psihofizičke sposobnosti, mogli štetno i sa povećanim rizikom da utiču na njihovo zdravlje (član 35 ZORO SRJ, član 67 ZOR RS). Zaposlenoj osobi mlađoj od 18 godina, ne može se odrediti ni da radi duže od punog radnog vremena, niti da radi noću ako je zaposlen u oblasti industrije, građevinarstva ili saobraćaja (član 41 ZORO SRJ, član 67 ZOR RS). Deca starija od 15 godina, koja su članovi porodične zajednice i rade na poljoprivrednom imanju, ili zajednički vrše druge delatnosti, ili na drugi način zajednički privređuju, učestvuju u upravljanju i raspolaganju zajedničkom imovinom samostalno (član 340 i član 341, st. 2 ZBPO RS). Na ovaj način ona su izjednačena sa decom koja su zasnovala radni odnos.

Sud može dozvoliti *stupanje u brak* detetu starijem od 16 godina, na njegov zahtev, ako utvrdi da je ono dostiglo telesnu i duševnu zrelost potrebnu za vršenje prava i dužnosti u braku (član 49, st. 2 ZBPO RS). Dete koje zaključi brak uz dozvolu suda, istovremeno stiče i potpunu poslovnu sposobnost. Jednom stečena poslovna sposobnost ne može se izgubiti čak i kada bi brak prestao smrću, razvodom ili proglašavanjem braka nevažećim.

Zakoni izričito ne utvrđuju minimalni uzrast za *pristanak na seksualni odnos*. Međutim, odredbe krivičnih zakona predviđaju kažnjavanje vanbračnog života s detetom starijim od 14 godina (član 115 KZ RS), pa bi se moglo zaključiti da dete do punoletstva ne može dati pristanak na seksualni odnos, izuzev u slučaju kada je zaključen brak.

*Regrutna obaveza* nastaje početkom kalendarske godine u kojoj dete - jugoslovenski državljanin, navršava 17 godina života (u toj godini obavljaju se lekarski i drugi pregledi i ispitivanja). Samo regrutovanje se vrši u kalendarskoj godini u kojoj dete puni 18 godina, ali vojni obveznik može na sopstveni zahtev biti regrutovan i u kalendarskoj godini u kojoj puni 17 godina. Takođe, za vreme ratnog stanja, predsednik SR Jugoslavije može narediti da se regrutuju i vojni obveznici koji su napunili 17 godina (čl. 288-291 ZVJ).

Granica *krivične odgovornosti* u krivičnom pravu je 14 godina (član 72 KZ SRJ). Prema krivičnom zakonodavstvu Republike Srbije, deci od 14 do 16 godina

(mlađim maloletnicima), za izvršeno krivično delo/a, mogu se izreći samo vaspitne mere, a deci od 16 do 18 godina (starijim maloletnicima) može se, u izuzetnim slučajevima, izreći i kazna maloletničkog zatvora (član 73 KZ SRJ). Sudija za maloletnike može narediti da se u toku pripremnog postupka dete smesti u prihvatilište, vaspitnu ili sličnu ustanovu, da se stavi pod nadzor organa za starateljstvo ili da se preda drugoj porodici. Pod izuzetnim okolnostima, sudija za maloletnike može narediti da se dete stavi u pritvor (čl. 486 i 487 ZKP SRJ). Smrtna kazna nije predviđena ni u saveznom, ni u republičkom zakonodavstvu. Takođe, jugoslovensko zakonodavstvo ne poznaje kaznu doživotnog zatvora.

Kada je reč o pravu deteta da *samostalno istupa u sudu*, Zakon o parničnom postupku propisuje da dete ima parničnu sposobnost u granicama svoje poslovne sposobnosti (član 79, st. 3 ZPP SRJ). Prema Zakoniku o krivičnom postupku, dete koje je napunilo 16 godina može samo podneti privatnu krivičnu tužbu (član 55, st. 2 ZKP SRJ), a dete – oštećeni, koje je napunilo 16 godina, takođe je ovlašćeno da samo daje izjave i preduzima radnje u postupku (član 65, st. 2 ZKP SRJ).

Ako je dete starije od 14 godina, neophodna je njegova saglasnost za sticanje ili prestanak jugoslovenskog *državljanstva* (čl. 8–21 ZJD).

Dete koje je napunilo 16 godina može priznati *očinstvo i materinstvo* (član 93 ZBPO RS), a u ovom uzrastu potrebna je njegova saglasnost i ako neko lice želi da ga prizna kao svoje dete (član 95 ZBPO RS). Za usvojenje deteta starijeg od 10 godina potrebna je njegova/njena saglasnost (član 156, st. 3 ZBPO RS). Ako se detetu starijem od 10 godina određuje novo lično ime, ili se kod zasnivanja usvojenja menja ime usvojenika starijeg od 10 godina, takođe je potrebna njegova saglasnost (čl. 397, st. 2 i 399, st. 3 ZBPO RS).

U Srbiji je detetu, kada napuni 16 godina, dozvoljen uvid u zapisnik o usvojenju (član 173 ZBPO RS).

U građanskom pravu potpuna *poslovna sposobnost* se stiče sa 18 godina (član 15, st. 2 ZBPO RS). Dete koje je navršilo 14 godina života delimično je poslovno sposobno i može da zaključuje pravne poslove, ali je za punovažnost tih poslova, izuzev poslova manjeg značaja, potrebno odobrenje roditelja deteta, ukoliko zakonom nije drugačije određeno (član 122, st. 1 ZBPO RS). Dete poseduje i parničnu sposobnost u granicama svoje poslovne sposobnosti. U naslednom pravu, dete starije od 15 godina, koje je sposobno za rasuđivanje, može testamentom raspolagati svojom imovinom *mortis causa* (član 79 ZON RS).

Savezni propisi određuju da *udruženja* mogu osnivati samo punoletna lica (član 9 ZUGUO SRJ). Međutim, republičkim propisima je predviđena i mogućnost da deca budu članovi udruženja, ali u tom slučaju u njihovom osnivanju mora učestvovati i omladinska ili slična društvena organizacija (član 27 ZDOU RS). S tim u vezi, videti obrazloženje uz član 15.

Ne postoji izričita odredba o minimalnom uzrastu dece neophodnom da bi bila dozvoljena *konzumacija alkohola*. Međutim, krivično zakonodavstvo Republike Srbije zabranjuje služenje alkohola deci mlađoj od 16 godina (član 132 KZ RS). U praksi, po podacima Ministarstva unutrašnjih poslova Republike Srbije, prema pomenutom članu KZ RS, samo u dva slučaja (i to u 2002. godini) pokrenuti su postupci nadležnih organa i lica koja su prekršila zabranu služenja alkohola maloletnim licima su kažnjena.

## Ocena stanja i komentari

Imajući u vidu odredbe Zakona o radu Republike Srbije, bilo bi logično da dete koje zasnuje radni odnos sa 15 godina ima sva prava iz zasnovanog radnog odnosa. Međutim, prema postojećim propisima, dete, iako u radnom odnosu, ne može se udruživati u sindikate. Isto se odnosi i na pitanje osnivanja nevladinih organizacija. Smatramo da će takvu situaciju, na inicijativu Centra, promeniti Zakon o udruženjima Republike Srbije, koji se u formi predloga trenutno nalazi pred Skupštinom Republike Srbije. Prema Predlogu zakona o udruženjima, u članu 10 st. 3, predviđeno je da će lice od 14 godina, uz pismenu saglasnost zakonskog zastupnika, moći da bude osnivač udruženja.

Veoma važna su i pitanja koja se tiču granice krivične odgovornosti. Inače, u naučnoj teoriji i praksi granica krivične odgovornosti od 14 godina je stalno izložena pokušajima za snižavanjem. Argumenti kojima se služe zagovornici ove ideje, zasnovani su na pretpostavci da se dete u današnjim uslovima brže razvija te je ranije sposobno da snosi odgovornost za svoje postupke. Takođe, ovaj stav pravda se činjenicom da sve mlađa deca vrše teška krivična dela. Međutim, stav Centra je da nikako ne treba snižavati ovu granicu već preduzeti ukupne preventivne mere koje će uključiti i aktivan rad s decom kod koje se uoče smetnje u ponašanju i komunikaciji.

Veliki problem u praksi predstavlja i nepoštovanje odredaba koje se odnose na prodaju i služenje alkohola deci, odnosno određene pravne praznine koje postoje u ovoj oblasti i koje neminovno zahtevaju podrobniju zakonsku regulativu.

# *II*

# Osnovni principi

# PRAVO NA ŽIVOT, OPSTANAK I RAZVOJ

## *Član 6. Konvencije o pravima deteta*

***1. Države ugovornice priznaju da svako dete samim rođenjem ima pravo na život.***
***2. Države ugovornice će obezbediti u najvećoj mogućoj meri opstanak i razvoj deteta.***

## Propisi u SRJ i Republici Srbiji

*Pravo na život* garantovano je odredbama Saveznog i Republičkog ustava svim građanima (član 21, st. 1 Ustava SRJ, član 14, st. 1 Ustava RS). Pored toga, smrtna kazna nije predviđena ni saveznim niti republičkim propisima. Dalja zaštita prava na život obezbeđuje se kroz krivično zakonodavstvo, propisivanjem krivičnih dela ubistva i drugih krivičnih dela sa smrtnim posledicama i predviđanjem krivičnih sankcija za njihove izvršioce. U cilju zaštite dece naročito su predviđena delo ubistva deteta pri porođaju, kao i kvalifikovani oblici dela navođenja na samoubistvo i pomaganja u samoubistvu ako su učinjeni prema detetu mlađem od 14 godina, odnosno prema detetu između 14 i 18 godina (čl. 50 i 51 KZ RS).

Zakon predviđa da se *podaci o smrti* unose u matičnu knjigu rođenih i u matičnu knjigu umrlih. Činjenica smrti mora se prijaviti nadležnom matičaru u roku od 3 dana od dana smrti, odnosno od nalaženja leša umrlog. Smrt moraju prijaviti: članovi porodice sa kojima je umrli živeo, druga lica sa kojima je umrli živeo, drugi članovi porodice koji su saznali za smrt, odnosno lice u čijem stanu je smrt nastupila. Ako nema ovih lica, činjenicu smrti je dužno da prijavi lice koje je za smrt prvo saznalo. Ako je lice umrlo u zdravstvenoj ustanovi, kasarni, kaznenopopravnoj ustanovi, hotelu, internatu ili drugoj ustanovi ili organizaciji, smrt je dužna da prijavi ta organizacija (član 27 ZMK RS).

Kada je reč o *opstanku i razvoju deteta*, prema zakonu društvena zajednica je dužna da obezbedi uslove za slobodno i odgovorno roditeljstvo merama socijalne, zdravstvene i pravne zaštite roditelja i dece, kao i sistemom vaspitanja, obrazovanja i informisanja svih građana (član 3 ZBPO RS). Obaveza države, predviđena Konvencijom, da obezbedi u najvećoj mogućoj meri opstanak i razvoj deteta

konkretizuje se dalje odredbama o obavezama roditelja, kao i o obavezama države da obezbedi zbrinjavanje dece bez roditeljskog staranja, zdravstvenu i socijalnu zaštitu, vaspitanje i obrazovanje, odmor, rekreaciju i učešće u kulturnom i umetničkom životu. Takođe, republičko krivično zakonodavstvo predviđa niz dela protiv zdravlja ljudi i čovekove sredine. Tako, predviđena su dela koja se odnose na prenošenje zaraznih bolesti (čl. 122-125 KZ RS), kao i dela koja se odnose na proizvodnju i stavljanje u promet škodljivih životnih namirnica, zagađivanje vode za piće i životnih namirnica i zagađivanje životne sredine (čl. 129-131 i 133 KZ RS). Detaljnije kaznene odredbe za dela kojima se ugrožava životna sredina sadržane su u Zakonu o zaštiti životne sredine RS.

## Ocena stanja i komentari

U pogledu prakse, potrebno je ukazati na brojne manjkavosti, kako u pogledu važećih propisa tako i u pogledu njihovog sprovođenja.

Kao što je već rečeno, način vođenja matičnih knjiga rođenih, venčanih i umrlih uređen je Zakonom o matičnim knjigama RS. Odredbom člana 12 navedenog Zakona je propisano da matičar upisuje samo one činjenice i podatke koji su mu prijavljeni, odnosno koje sadrži akt nadležnog organa. Rođenje deteta upisuje se u matičnu knjigu rođenih matičnog područja na kome je mesto u kome se dete rodilo, a tom odredbom regulisani su i upisi rođenja deteta u saobraćajnom sredstvu, dece čiji su roditelji nepoznati, na osnovu rešenja nadležnog organa starateljstva (član 17 ZMK RS), dok je članom 18 istog Zakona regulisan upis usvojenog deteta. Članom 25 navedenog Zakona utvrđena je obaveza zdravstvene ustanove da prijavi rođenje deteta. Istim članom, stavom 2, naveden je krug lica koji je obavezan da prijavi rođenje deteta rođenog van zdravstvene ustanove. Saglasno toj odredbi rođenje deteta se prijavljuje u roku od 15 dana od dana rođenja.

Matični broj deteta upisuje se u postupku na osnovu Zakona o jedinstvenom matičnom broju građana kojim je propisano da se matični broj određuje po mestu prebivališta građana, a novorođenoj deci po mestu rođenja, te da matični broj određuje i evidenciju o datim matičnim brojevima koju vodi opštinski organ uprave nadležan za unutrašnje poslove (član 2 ZJMB RS). Članom 3 istog Zakona propisano je da deci rođenoj posle 31. decembra 1978. godine, matični broj određuje nadležni opštinski organ po mestu rođenja deteta, te da je nadležan organ uprave, koji vodi matičnu knjigu rođenih, dužan da po upisu u matičnu knjigu rođenih dostavi izvod iz matične knjige rođenih nadležnom opštinskom organu radi određivanja matičnog broja.

Činjenica smrti upisuje se u matičnu knjigu umrlih matičnog područja na kome je mesto gde je smrt nastupila, saglasno članu 20 Zakona o matičnim knjigama, kojom je propisan i način upisa smrti kada mesto gde je smrt nastupila nije poznato i u slučaju smrti u saobraćajnom sredstvu. Odredbom člana 25, st. 3 navedenog Zakona, propisano je da se mrtvorođeno dete mora prijaviti u roku od 24 časa od časa rođenja mrtvog deteta, dok je članom 27, st. 2 propisana obaveza zdravstvene ustanove da prijavi činjenicu smrti lica koje je umrlo u zdravstvenoj ustanovi, i to u roku od tri dana od dana smrti kako je regulisano stavom 3 navedene odredbe. Prijavljivanje činjenice smrti vrši se na osnovu potvrde o smrti koju izdaje zdravstvena ustanova, ako je lice umrlo u zdravstvenoj ustanovi, a ako je lice umrlo van zdravstvene ustanove, na osnovu potvrde lekara koji je utvrdio smrt. Bez potvrde o smrti ne može se izvršiti upis činjenice smrti u matičnu knjigu (član 29 ZMK RS).

Imajući u vidu da je navedenim Zakonom obaveza prijave činjenice smrti 3 dana, a činjenice rođenja 15 dana, u slučajevima kada se na osnovu izveštaja zdravstvenih ustanova o smrti, upiše smrt deteta u matičnu knjigu umrlih, a potom naknadno činjenica rođenja u matičnu knjigu rođenih, u praksi dolazi do propusta uparivanja (poređenja) matičnih knjiga, pa dolazi do izostavljanja upisa činjenice smrti u matične knjige rođenih.

I ranije važeći Zakon o matičnim knjigama na isti način je regulisao navedene činjenice smrti i rođenja, krug lica koja to prijavljuju.

Zakonom o zdravstvenoj zaštiti propisano je da se uzrok smrti utvrđuje za svako umrlo lice (član 85 ZZZ RS), dok je postupak obdukcije predviđen kao posebna mera utvrđivanja uzroka smrti (član 86 ZZZ RS).

Na osnovu navedenog Zakona je donet Pravilnik o načinu i postupku za utvrđivanje vremena i uzroka smrti, za obdukciju leša, kao i za postupanje sa odstranjenim delovima tela. Navedenim Pravilnikom propisano je: da se vreme i uzrok smrti utvrđuju lekarskim pregledom i drugim medicinskim metodama, koristeći se pri tome dostignućima savremene medicinske nauke i na osnovu medicinske dokumentacije, kojom prilikom se utvrđuje i identitet umrlog (član 2), da se o vremenu i uzroku smrti umrlih u zdravstvenoj ustanovi, odmah, a najkasnije u roku od šest časova od utvrđene smrti, obaveštava porodica, te da se ako je umrlo lice novorođenče čija je majka smeštena u zdravstvenoj ustanovi, majka novorođenčeta obaveštava odmah i neposredno (član 4), kao i da se prilikom preuzimanja za sahranu lica umrlih u zdravstvenoj ustanovi, obavezno vrši provera identiteta (član 7).

Zakon o sahranjivanju i grobljima propisao je da se sahranjivanje vrši u skladu sa odgovarajućim sanitarnim propisima, te da se sahranjivanje može izvršiti posle utvrđivanja smrti na način određen posebnim propisima, a najranije po isteku roka od 24 časa od momenta nastupanja smrti (član 9). Posebni propisi o utvrđivanju smrti već su pomenuti, a odredbom člana 30 Zakona o matičnim knjigama, propisano je da se sahrana umrlog lica može izvršiti pre prijavljivanja smrti matičaru, na osnovu dozvole Republičkog sekretarijata za unutrašnje poslove – organizacione jedinice u opštini na čijoj teritoriji će se umrlo lice sahraniti, ako iz opravdanih razloga nije bilo moguće prijaviti činjenicu smrti matičaru.

Iz svega navedenog zaključuje se da je prema važećim propisima izostavljeno pravno regulisanje sahranjivanja mrtvorođenih ili naknadno umrlih novorođenčadi u zdravstvenim ustanovama, iz čega proizilazi da leševi novorođenčadi i mrtvorođenih ostaju u zdravstvenim ustanovama, što je u praksi i gotovo redovan slučaj. Pored toga, u našoj zemlji je prestao stari običaj da se vrši sahranjivanje mrtvorođenih i novorođenih beba, a sve zahvaljujući volji bolničkog osoblja, a ne roditelja čija su deca umrla.

Takođe, zakonom nije propisana obaveza sahranjivanja, niti je propisana obaveza identifikacije naknadno umrlih novorođenčadi, već samo obaveštavanje majki o tome. Kako se sahranjivanje vrši posle identifikacije, nema zakonske obaveze zdravstvenih ustanova da se majci omogući identifikacija, koja jedino praktično i može da to učini. Rođenja se, osim toga, često vrše pod anestezijom prilikom carskog reza ili kada se u rizičnim trudnoćama porodilje spasavaju i obično bivaju u stanju šoka i bez svesti, tako da je identifikacija koju ima u vidu napred navedeni propis i nemoguća.

Imajući u vidu navedene manjkavosti važećih propisa i veliku uznemirenost u javnosti zbog ozbiljnih indicija da je dolazilo do zloupotreba u smislu oduzimanja novorođenčadi roditeljima proglašavanjem istih mrtvorođenom decom, potrebno je preduzeti inicijativu u pravcu izmene i dopune navedenih propisa.

U pogledu primene relevantnih odredaba KZ RS, podaci o broju izvršenih krivičnih dela na štetu maloletnika, u periodu od 1. januara 1998. do 31. oktobra 2002. godine, su sledeći:

| **Po članu KZ RS** | **1998.** | **1999.** | **2000.** | **2001.** | **2002.** | **Ukupno** |
|---|---|---|---|---|---|---|
| **50** | 22 | 19 | 12 | 13 | 8 | 74 |
| **130** | | 6 | | | | 6 |
| **131** | 1 | | | | | 1 |

# NAJBOLJI INTERESI DETETA

## *Član 3. Konvencije o pravima deteta*

***1. U svim aktivnostima koje se tiču dece, bez obzira da li ih preduzimaju javne ili privatne institucije socijalnog staranja, sudovi, administrativni organi ili zakonodavna tela, najbolji interesi deteta biće od prvenstvenog značaja.***
***2. Države ugovornice se obavezuju da detetu obezbede takvu zaštitu i brigu koja je neophodna za njegovu dobrobit, uzimajući u obzir prava i obaveze njegovih roditelja, zakonskih staratelja ili drugih pojedinaca koji su pravno odgovorni za dete i u tom cilju će preduzeti sve odgovarajuće zakonodavne i administrativne mere.***
***3. Države ugovornice će obezbediti da se institucije, službe i ustanove odgovorne za brigu ili zaštitu dece prilagode standardima koje su utvrdili nadležni organi, posebno u oblasti sigurnosti, zdravlja, u pogledu broja i podobnosti osoblja, kao i stručnog nadzora.***

## Propisi u SRJ i Republici Srbiji

Ni savezni niti republički ustav ne proklamuju izričito princip da će najbolji interesi deteta biti od prvenstvenog značaja u svim aktivnostima koje se tiču dece. Umesto toga, Ustav SRJ proklamuje kao obavezu države posebnu zaštitu i brigu koja je neophodna za dobrobit deteta odredbom člana 61, st. 1, prema kojoj porodica i majka i dete uživaju posebnu zaštitu. *Načelo posebne zaštite deteta* predviđeno je i Republičkim ustavom (član 28, st. 1 i član 29, st. 1 Ustava RS). Deca starija od 15 godina uživaju i posebnu zaštitu na radu (član 56, st. 3 Ustava SRJ, član 38, st. 3 Ustava RS), dok je država dužna da obezbedi materijalnu sigurnost građaninu koji je nesposoban za rad i nema sredstava za život (član 58, st. 2 Ustava SRJ, član 39, st. 2 Ustava RS). Deca takođe imaju pravo na zdravstvenu zaštitu iz javnih prihoda, ako to pravo ne ostvaruju po nekom drugom osnovu (član 60, st. 2 Ustava SRJ, član 30, st. 2 Ustava RS).

Opštim odredbama Zakona o braku i porodičnim odnosima Republike Srbije predviđena je obaveza društvene zajednice da pruži zaštitu deci uvek kada to njihovi interesi zahtevaju (član 7, st. 3 ZBPO RS), a deca o kojoj se roditelji ne staraju uživaju posebnu društvenu zaštitu (član 13, st. 2 ZBPO RS).

Zakon o braku i porodičnim odnosima RS reguliše *obaveze državnih organa i javnih institucija u skladu sa ovim opštim načelima*. Tako je organ starateljstva, koji vrši opšti nadzor nad vršenjem roditeljskog prava, dužan da preduzme potrebne mere radi zaštite ličnih i imovinskih prava i interesa deteta (član 133, st. 1 ZBPO RS). Mere koje organ starateljstva može preduzeti su upozoravanje roditelja na nedostatke u vaspitavanju i podizanju deteta i pružanje neophodne pomoći (član 134 ZBPO RS), određivanje stalnog nadzora nad vršenjem roditeljskog prava (član 135 ZBPO RS), oduzimanje deteta od roditelja (član 136 ZBPO RS) i upućivanje deteta u ustanovu za vaspitavanje (član 137 ZBPO RS). U izuzetnim slučajevima, roditelj može biti lišen roditeljskog prava odlukom suda u vanparničnom postupku (član 139 ZBPO RS).

*Osnovni vidovi zaštite dece bez roditeljskog staranja* su usvojenje, organizovan smeštaj u drugu porodicu i drugi oblici porodičnog smeštaja, a odluka o njihovoj primeni donosi se na osnovu svestranog razmatranja svakog pojedinačnog slučaja i mogućnosti izbora onog oblika porodične zaštite deteta koji u najvećoj mogućoj meri odgovara njegovim potrebama (čl. 148 i 149 ZBPO RS). Zakon predviđa da je usvojenje dopušteno ako je korisno za usvojenika (član 152 ZBPO RS). Nepotpuno usvojenje može prestati rešenjem organa starateljstva ako se utvrdi da opravdani interesi maloletnog usvojenika to zahtevaju (član 177 ZBPO RS), dok kod potpunog usvojenja usvojilac može biti ograničen u vršenju roditeljskog prava ili lišen roditeljskog prava pod uslovima predviđenim zakonom (član 197 ZBPO RS). Porodični smeštaj se obezbeđuje u porodici koja sa uspehom može da vrši roditeljske dužnosti, naročito u pogledu pravilnog negovanja, vaspitanja, obrazovanja i osposobljavanja deteta za samostalan život (član 202 ZBPO RS), a organ starateljstva može doneti odluku o raskidu ugovora ako porodica prestane da ispunjava ove uslove (član 211, st. 1 ZBPO RS). Organ starateljstva stavlja dete koje nije pod roditeljskim staranjem pod starateljstvo. Svrha starateljstva nad decom je da se zbrinjavanjem, vaspitavanjem i obrazovanjem što potpunije razvije njihova ličnost i da se osposobe za samostalan život (član 219 ZBPO RS), a staralac će biti razrešen dužnosti bez odlaganja ukoliko organ starateljstva utvrdi da zloupotrebljava svoja ovlašćenja ili da se njegovim radom ugrožavaju interesi deteta – štićenika (član 250, st. 1 ZBPO RS).

Posebne mere zaštite interesa deteta predviđene su i u oblasti *maloletničkog pravosuđa*. Kada je reč o krivičnom postupku prema deci, organi koji učestvuju u postupku dužni su da postupaju obazrivo, vodeći računa o duševnoj razvijenosti, osetljivosti i ličnim svojstvima deteta, kako vođenje krivičnog postupka ne bi uticalo na njegov/njen razvoj (član 466 ZKP SRJ). Bez dozvole suda ne sme se objaviti tok krivičnog postupka prema detetu, niti odluka donesena u tom postupku, a u slučaju da sud dâ odobrenje za objavljivanje dela postupka ili dela odluke, ne smeju se navesti ime deteta niti drugi podaci na osnovu kojih bi se moglo zaključiti o kojem je maloletniku reč (član 473 ZKP SRJ). Kada se sudi detetu, uvek će se isključiti javnost (član 494, st. 1 ZKP SRJ). Organi koji učestvuju u postupku, kao i drugi organi i ustanove od kojih se traže obaveštenja, izveštaji i mišljenja, dužni su da najhitnije postupe kako bi se postupak što pre završio (član 474 ZKP SRJ). U postupku u bračnim sporovima takođe postoje odredbe čiji je cilj zaštita interesa deteta. Tako, ako bračni drugovi imaju jedno ili više zajedničke dece, postupak mirenja sprovodi organ starateljstva koji utvrđuje u kakvim uslovima za život i razvoj se ova deca nalaze i preduzima ono što je potrebno da se obezbedi njihovo vaspitavanje, zbrinjavanje i izdržavanje (čl. 353 i 355 ZBPO RS). U postupku u sporovima iz odnosa roditelja i dece, organ starateljstva može detetu postaviti posebnog staraoca ako između roditelja i deteta postoje u toj parnici suprotni interesi (član 372 ZBPO RS). U postupku u sporovima radi utvrđivanja ili osporavanja očinstva, kao i u sporovima radi poveravanja maloletne dece na čuvanje i vaspitavanje, isključena je javnost (član 373 ZBPO RS). Organ starateljstva ima pravo da učestvuje u sporovima iz porodičnih odnosa između roditelja i dece uvek kada oceni da to zahtevaju opravdani interesi deteta (član 375 ZBPO RS). Zakon takođe predviđa da drugostepeni sud u postupku po žalbi po službenoj dužnosti vodi računa o interesima deteta, a prilikom sprovođenja prinudnog izvršenja sud treba da vodi računa o hitnosti i o potrebi da se u najvećoj meri zaštiti ličnost deteta (čl. 377 i 391 ZBPO RS).
Rat na području bivše SFRJ i veliki broj izbeglica uslovili su donošenje posebnih zakona i drugih propisa koji se odnose na ta lica. Pored ostalih prava, *deci izbeglicama* posebno se garantuje pravo na školovanje i stručnu pomoć u pripremi ispita da bi se uključili u redovno školovanje, kao i mogućnost dobijanja finansijske pomoći (Uredba o zbrinjavanju izbeglica RS).

## Ocena stanja i komentari

Kao što ni savezni niti republički ustav ne proklamuju izričito princip da će najbolji interesi deteta biti od prvenstvenog značaja u svim aktivnostima koje se tiču deteta, tako ni u praksi ne postoje posebni mehanizmi za praćenje primene ovog principa.

Istovremeno, pošto je ovde reč o principu koji leži u osnovi ostvarenja svih ostalih prava, njegovo poštovanje je moguće indirektno pratiti kroz prikaz ocene stanja u drugim oblastima (videti – usvojenje, dete lišeno porodične sredine, pravo na obrazovanje, zdravlje i zdravstvena zaštita, maloletničko pravosuđe, itd.).

*Ako, na primer, raspolažemo podatkom da je za samo oko 40% dece obezbeđen neki od oblika porodičnog smeštaja, dok se oko 60% njih nalazi u ustanovama socijalne zaštite (ovaj podatak obuhvata decu bez roditeljskog staranja, decu sa smetnjama u razvoju i decu u sukobu sa zakonom), možemo argumentovano tvrditi da postojeća praksa u navedenoj oblasti nije rukovođena najboljim interesom deteta.*

Polazeći od stava da je jedan od mehanizama za obezbeđivanje poštovanja ovog principa upravo stvaranje uslova da se mišljenje deteta uzme u obzir u svim stvarima i postupcima koja ga se tiču, kroz uvid u propise i ocenu stanja vezanog za član 12 Konvencije, može posredno da se stekne uvid u tretiranje ovog principa, kao i mere koje su preduzete za njegovo ostvarenje i unapređenje.

*Kao pozitivan primer iz prakse koji polazi od značaja uvažavanja mišljenja deteta, a time implicitno i uvažavanja njegovog najboljeg interesa, navodimo sveobuhvatne reformske procese u oblasti obrazovanja. Zajedno sa reformom kurikuluma, nastavnih metoda i naporima na demokratizaciji celokupnog obrazovnog sistema, beležimo i plansko uključivanje samih učenika u ocenu stanja u školstvu, kao i prikupljanje njihovih preporuka za "školu primerenu njihovim interesovanjima".*

Sistemsko obrazovanje profesionalnog kadra koji se bavi pravima deteta ne postoji, pa u tom svetlu ne može da se govori o načinu na koji je uključen princip najboljeg interesa. Međutim, uvođenjem fakultativnog predmeta *građansko vaspitanje,* značajan broj nastavnika (a to se posebno odnosi na srednje škole) prošao je posebnu obuku iz oblasti prava deteta koja podrazumeva i tretiranje principa njegovog najboljeg interesa.

S obzirom na to da je reč o pravu, odnosno principu, koje je sa istraživačko-metodološkog stanovišta vrlo teško operacionalizovati, ni postojeća istraživanja stavova dece i odraslih ne pružaju direktan uvid u njegovo poštovanje.

*Kao ilustraciju navodimo rezultate istraživanja objavljenog u publikaciji Centra za prava deteta 'Agenda za budućnost' iz 2001. godine. Dajući svoju*

*ocenu o stanju u oblasti zdravstvene zaštite, 66% ispitanih kaže da školski lekari rade površno, težeći da pacijenta pregledaju u što kraćem vremenskom roku, 75% tvrdi da lekari nedovoljno pažnje posvećuju objašnjenju prirode bolesti i načinima njihove prevencije. Ovakvi podaci indirektno mogu da se tumače kao pokazatelj neuvažavanja principa najboljeg interesa deteta u oblasti prava na zdravlje i zdravstvenu zaštitu.*

Centar ne raspolaže podacima o uzimanju u obzir najboljeg interesa deteta u sudskim i administrativnim postupcima. Pretpostavka je da je najbolji interes deteta polazna osnova za donošenje svake odluke, međutim, pitanje je da li postoji stvarno izdvojena, specifična, svest tj. saznanje odlučilaca o najboljem interesu deteta. Trebalo bi ovaj princip podići na viši nivo, tako što bi se precizirao njegov sadržaj u posebnim oblastima koje se tiču dece.

# PRAVO NA NEDISKRIMINACIJU

## *Član 2. Konvencije o pravima deteta*

***1. Države ugovornice ove Konvencije će poštovati i obezbeđivati prava utvrđena ovom Konvencijom svakom detetu koje se nalazi pod njihovom jurisdikcijom bez ikakve diskriminacije i bez obzira na rasu, boju kože, pol, jezik, veroispovest, političko ili drugo uverenje, nacionalno, etničko ili socijalno poreklo, imovinsko stanje, onesposobljenost, rođenje ili drugi status deteta, njegovog roditelja ili zakonskog staratelja.***
***2. Države ugovornice će preduzeti sve odgovarajuće mere kako bi se obezbedila zaštita deteta od svih oblika diskriminacije ili kažnjavanja, zasnovanog na statusu, aktivnostima, izraženom mišljenju ili uverenju detetovih roditelja, zakonskih staratelja ili članova porodice.***

## Propisi u SRJ i Republici Srbiji

Načelo nediskriminacije u jugoslovenskom pravu izraženo je kroz ustavne odredbe koje se odnose na sve građane. Članom 20 Ustava SRJ predviđeno je da su građani jednaki bez obzira na nacionalnu pripadnost, rasu, pol, jezik, veru, političko ili drugo uverenje, obrazovanje, socijalno poreklo, imovno stanje i drugo lično svojstvo; da su svi pred zakonom jednaki i da je svako dužan da poštuje slobode i prava drugih i da je za to odgovoran. Pored toga, članom 61, st. 2 Ustava SRJ izričito je propisano da deca rođena van braka imaju ista prava i dužnosti kao deca rođena u braku. Odgovarajuće odredbe sadrži i Ustav Republike Srbije (član 13 i član 29, st. 4).

Ni savezni ni republički ustav ne pominju izričito *zabranu diskriminacije po osnovu smetnji u razvoju*. Iako bi se pod zabranom diskriminacije po osnovu "drugog ličnog svojstva" mogla podrazumevati i zabrana diskriminacije po osnovu smetnji u razvoju, bolja usklađenost zakonodavstva sa Konvencijom postigla bi se ako bi ovaj osnov bio izričito naveden u klauzuli o zabrani diskriminacije. Uklanjanje diskriminacije po osnovu smetnji u razvoju neophodan je preduslov za uživanje

većine prava garantovanih Konvencijom, pa važnost ovog osnova nalaže da bude posebno pomenut u odredbi o zabrani diskriminacije.

Konvencija propisuje da se *prava moraju garantovati svoj deci pod nadležnošću dotične države*, pa i deci koja nisu njeni državljani. Zakonom o kretanju i boravku stranaca SRJ predviđena su prava stranaca kojima je priznat status izbeglice – nužni smeštaj, sredstva nužna za izdržavanje i zdravstvena zaštita (član 55). Deca stranaca kojima je priznat ovaj status uživaju ista prava kao i njihovi roditelji (član 52). Status izbeglica sa teritorije bivše SFRJ zasebno je regulisan, u Srbiji Zakonom o izbeglicama RS i Uredbom o zbrinjavanju izbeglica RS. Ovim propisima deci se obezbeđuje pravo na smeštaj i ishranu, materijalnu pomoć, zdravstvenu zaštitu i pravo na obrazovanje i zapošljavanje (član 2 Zakona o izbeglicama RS).

*Saveznim krivičnim zakonodavstvom* zabranjeno je izazivanje, raspirivanje i propagiranje rasne i druge diskriminacije i kršenje osnovnih ljudskih prava i sloboda na osnovu razlike u rasi, boji kože, nacionalnosti ili etničkom poreklu (čl. 134 i 154 KZ SRJ). Takođe, *republičko zakonodavstvo* kažnjava delo povrede ravnopravnosti građana, koje se sastoji u uskraćivanju ili ograničavanju prava građana utvrđenih ustavom, zakonom ili drugim propisom, ili opštim aktom ili ratifikovanim međunarodnim ugovorom, ili davanju povlastica i pogodnosti na osnovu razlike u nacionalnosti, rasi, veroispovesti, političkom ili drugom ubeđenju, etničkoj pripadnosti, polu, jeziku, obrazovanju ili društvenom položaju (član 60 KZ RS).

## Ocena stanja i komentari

Iako naše zakonodavstvo sadrži propise kojima se ne dozvoljava diskriminacija, ono, pre svega, nije sveobuhvatno jer je mnogo oblasti u okviru kojih dolazi do diskriminacije, pravno neuređeno. Potrebno je preciznije pravno uređenje pitanja vezanih za zabranu diskriminacije u odnosu na uzrast, smetnje u razvoju i zdravstvene probleme.

Ovo se posebno odnosi na decu sa smetnjama u razvoju. Zbog nedostatka prilaznih rampi za pristup invalidskim kolicima u skoro svim školama i većini zdravstvenih ustanova onemogućeno je ili, u najmanju ruku, otežano ovoj deci ostvarivanje prava na obrazovanje i prava na zdravlje. Time su stavljeni u položaj koji se može okarakterisati kao diskriminacija u odnosu na ostalu decu.

Nedovoljna razvijenost mreže ustanova za vaspitanje i obrazovanje dece sa smetnjama u razvoju, kao i njihova neravnomerna teritorijalna raspoređenost je

dobrim delom uzrok da većina dece sa posebnim potrebama koja žive sa roditeljima, ne pohađa školu, što je direktno osujećenje ove dece u ostvarivanju prava na obrazovanje. U analizi člana 28 naveden je nedostatak inkluzivnih programa za decu sa posebnim potrebama i nedovoljna spremnost države da stimuliše rad na ovim programima, što je, takođe, vid indirektne diskriminacije.

S druge strane, insistiranje na programima koji jačaju potencijale marginalizovanih grupa (bilo da je reč o deci sa smetnjama u razvoju ili manjinskim zajednicama), dobro je do izvesne granice. Naime, izolovano i nedovoljno koordinisano razvijanje posebnih programa za ove grupacije u jednom trenutku može kao efekat imati neku vrstu getoizacije umesto socijalne integracije (npr. otvaranje posebnih odeljenja za romsku decu pri osnovnim školama). Jedna od posledica nedostatka inkluzivnih programa za decu romske populacije je i podatak da je preko 70% dece u centrima za obrazovanje odraslih (od kojih neke funkcionišu kao osnovne škole sa redukovanim programom) romskog porekla.

Pored toga, kod dece sa posebnim potrebama često se obavlja usvojenje sa stranim državljanima, što zakon omogućava, ali ovu decu lišava prava da žive u svom kulturnom okruženju (vidi član 21). Iako je ovakvo usvojenje najčešće u najboljem interesu deteta, mislimo da ova kontradikcija ostaje i dalje prisutna.

U javnosti se uočava prikriven otpor prema deci koja su HIV pozitivna. I pored činjenice da jedan broj ove dece pohađa redovnu osnovnu školu, u praksi je bilo nekoliko slučajeva drastičnih kršenja prava ove dece, čak i od strane samih profesionalaca.

U oblasti krivičnog zakonodavstva, odnosno pravosudne prakse, potrebno je reagovati u slučajevima krivičnih dela s elementom diskriminacije (posebno zabrinjavaju česti slučajevi napada na romsku decu i njihovog povređivanja).

Generalno, potrebno je ozbiljnije suočavanje s društvenim rasizmom i ksenofobijom. Iako kod nas preovlađuje stereotip da smo »mi ljudi koji nemaju ništa protiv drugačijih«, svedoci smo velike netrpeljivosti u svim sferama društva prema drugačijima, a posebno prema Romima. Koliko su predrasude i stereotipi snažni, a kao takvi često oblikuju i naše ponašanje, govore i podaci istraživanja Centra za prava deteta[1] u kome sama deca (adolescenti) daju svoju ocenu o tome.

[1] Istraživanje realizovano tokom februara i marta 2001. godine sa 746 dece uzrasta od 14 - 18 godina sa teritorije Srbije i Crne Gore. U istraživanje su bila uključena i deca iz posebno osetljivih grupa (deca bez roditeljskog staranja, deca u sukobu sa zakonom, deca sa smetnjama u razvoju, izbegla i raseljena deca, kao i deca pripadnici nacionalnih manjina). Rezultati istraživanja predstavljeni su u publikaciji 'Agenda za budućnost' iste godine.

*Ono u čemu se učesnici ovog istraživanja gotovo jednoglasno slažu jeste da su devojčice i dečaci, odnosno devojke i mladići, u našem društvu ravnopravni. Naznake sklonosti ka tradicionalnijim ponašanjima koja favorizuju ulogu muških članova porodice nalaze se kod romske dece i dece raseljene s Kosova i Metohije.*

*Diskriminacija po drugim osnovama izgleda da je realnost velikog broja dece, a njeni izvori se beleže u socijalnom statusu, nacionalnom poreklu, telesnoj i mentalnoj invalidnosti.*

*Deca iz posebno osetljivih grupa izložena su ponašanju i ocenama koja doživljavaju kao diskriminaciju ne samo od strane šire sredine, nego i od svojih vršnjaka.*

*Zbog svog porekla, odnosno, socijalnog statusa, doživljaj "obeleženosti" imaju:*

- *deca bez roditeljskog staranja u hraniteljskim porodicama (44%) i domovima (66%),*
- *90% dece u vaspitnopopravnim zavodima,*
- *3/4 izbegle i raseljene dece,*
- *sva ispitana romska deca.*

*Deca sa smetnjama u razvoju svoju obeleženost najčešće vezuju uz "oštećenje", pri čemu ona koja su smeštena u institucije nose još i dodatnu stigmu.*

*Da nije reč samo o subjektivnom doživljaju obeleženosti i diskriminisanosti (što je i samo po sebi već značajan indikator), govore i sledeći nalazi. Opisujući svoje ponašanje, pokazalo se da deca iz opšte populacije izbegavaju druženje:*

- *sa vršnjacima koji imaju neku telesnu manu (povremeno – 38% i često 12%),*
- *sa Romima (povremeno – 35% i često 13%),*
- *sa izbeglicama (povremeno – 25% i često 4%).*

# UVAŽAVANJE MIŠLJENJA DETETA – PRAVO DETETA NA PARTICIPACIJU

## *Član 12. Konvencije o pravima deteta*

***1. Države ugovornice će obezbediti detetu koje je sposobno da formira svoje sopstveno mišljenje, pravo slobodnog izražavanja tog mišljenja o svim pitanjima koja se tiču deteta, s tim što se mišljenju deteta posvećuje dužna pažnja u skladu sa godinama života i zrelošću deteta.***
***2. U tom cilju, detetu će posebno biti pružena mogućnost da bude saslušano u svim sudskim i administrativnim postupcima koji se tiču deteta, bilo neposredno ili preko zastupnika ili odgovarajućeg organa, na način koji je u skladu sa procesnim pravilima nacionalnog zakona.***

## Propisi u SRJ i Republici Srbiji

Sloboda javnog izražavanja mišljenja zajemčena je članom 35 Ustava SRJ, kao i odgovarajućim odredbama republičkog ustava (član 45 Ustava RS). Pravo na slobodno izražavanje mišljenja garantuje se svakom licu i ne postoji neko posebno ograničenje te slobode u odnosu na decu.

Detetu je pružena mogućnost da izrazi svoje mišljenje u nekim oblastima porodičnog života. Tako, dete sposobno za rasuđivanje, koje ima 16 godina, može priznati očinstvo (član 93 ZBPO RS), a ako je starije od 16 godina potrebna je i njegova saglasnost sa priznanjem očinstva (član 95, st. 1 ZBPO RS). Dete spada u krug lica koja mogu podneti tužbu za utvrđivanje očinstva, kao i tužbu za osporavanje očinstva ili materinstva. Ove tužbe u ime deteta može podneti majka, odnosno, staralac sa odobrenjem organa starateljstva (čl. 98, st. 1 i 2, 104, st. 1 i 2 i 109, st. 1 i 2 ZBPO RS). Dalje, kada donosi odluku o poveravanju deteta na čuvanje i vaspitavanje sud, odnosno organ starateljstva, posebno uzima u obzir emocionalne potrebe i želje deteta o čemu pribavlja mišljenje odgovarajućih

stručnjaka uvek kada to okolnosti slučaja zahtevaju (član 130 ZBPO RS). Dete daje svoju saglasnost i za usvojenje ako je starije od 10 godina (član 156, st. 3 ZBPO RS), a usvojenje može prestati i na osnovu njegovog zahteva kada za to postoje opravdani razlozi, što utvrđuje organ starateljstva (član 178, st. 1 ZBPO RS). Pri postavljanju staraoca organ starateljstva će uzeti u obzir i želje deteta – štićenika, ako je ono u stanju da ih izrazi (član 230 ZBPO RS). Štićenik koji je u stanju da to učini može stavljati prigovor na rad staraoca, koji će organ starateljstva ispitati i odlučiti da li je potrebno preduzeti određene mere (čl. 253 i 254 ZBPO RS). Ukoliko ne dobije potrebno odobrenje, dete ima pravo žalbe protiv ovakve odluke staraoca, odnosno, organa starateljstva. (čl. 267, st. 1 i 268 ZBPO RS). Deca starija od 15 godina koja žive kao članovi porodične zajednice, učestvuju u upravljanju i raspolaganju zajedničkom imovinom samostalno (čl. 340, 341, st. 2 ZBPO RS).

*U oblasti školovanja* detetu je pružena mogućnost da interveniše u određenim situacijama. Tako, dete – učenik u osnovnoj školi ima pravo da direktoru škole pod određenim uslovima podnese prigovor na ocenu i na postupak ocenjivanja (član 63 ZOŠ RS). Dete, takođe, može podneti prigovor i na vaspitnu meru koja mu je izrečena zbog povrede obaveza (član 66 ZOŠ RS). Slična prava uživaju i deca – učenici srednjih škola (čl. 63-66 ZSŠ RS). Poslednjim izmenama i dopunama Zakona o srednjoj školi predviđeno je da predstavnik organizacije učenika škole prisustvuje i učestvuje u radu sednice školskog odbora, ali bez prava odlučivanja (član 90 ZSŠ RS).

Zakon o parničnom postupku propisuje da dete ima *parničnu sposobnost* u granicama svoje poslovne sposobnosti (član 79, st. 3 ZPP SRJ). Prema Zakoniku o krivičnom postupku, dete koje je napunilo 16 godina, sâmo može podneti *privatnu krivičnu tužbu* (član 55, st. 2 ZKP SRJ), a dete – oštećeni koje je napunilo 16 godina ovlašćeno je da sâmo daje izjave i preduzima radnje u postupku (član 65 ZKP SRJ).

Ako je dete starije od 14 godina, neophodna je njegova saglasnost za *sticanje ili prestanak jugoslovenskog državljanstva* (čl. 8–21 ZJD).

## Ocena stanja i komentari

U dostupnim zvaničnim izveštajima ne nalaze se podaci koji govore o sistematskom praćenju i analiziranju učešća dece u donošenju odluka u okviru institucija ili na lokalnom nivou.

Postojeći sistem obrazovanja predviđa postojanje časova odeljenjske zajednice koji

su prvenstveno zamišljeni kao okvir za izražavanje i razmenu mišljenja sa razrednim starešinom. Takođe, svako odeljenje bira svog predsednika čija je uloga najčešće samo dekorativnog karaktera, s obzirom na to da ne postoje jasni mehanizmi koji omogućavaju zastupanje mišljenja učenika niti izbora predstavnika svih učenika pojedinačne škole koji može da prisustvuje sednicama nastavničkog veća – ali bez prava glasa.

*Iz rezultata istraživanja 'Agenda za budućnost' može da se vidi da 37% anketiranih učenika smatra da časovi odeljenjske zajednice predstavljaju 'izgubljeno vreme', 58% učenika, takođe smatra da u školi ne postoji niti jedan mehanizam za izražavanje žalbi učenika, a posebno kada je reč o ponašanju nastavnika.*

*Rezultati istraživanja Centra za prava deteta iz 1999. godine predstavljeni u publikaciji 'Participacija pod lupom',[2] pokazuju da mladi smatraju da je stepen ostvarenosti njihovih participativnih prava u školi nizak i to čak i u sferama koje ne zadiru dublje u organizaciju i prirodu škole. U samo 3 od 20 ponuđenih školskih situacija, mladi izražavaju zadovoljstvo stepenom učešća u odlučivanju (raspored sedenja u učionici, način odevanja i izbor učenika koji će ići na takmičenje!). Važno je naglasiti da gotovo sve od preostalih 17 situacija ne spadaju u domen zakona, već propisa i pravilnika, pa čak i nepisanih pravila.*

*Sami nastavnici u celini, izražavaju umereno pozitivan stav prema participaciji učenika pri čemu najviši status ima pravo na privatnost, zatim pravo na pristup informacijama vezanim za školu, i konačno pravo na sopstveno mišljenje i izražavanje tog mišljenja. Iako postoji slaganje između deklarativnih stavova nastavnika i njihovog stvarnog ponašanja (nastavnici koji imaju liberalnije stavove postupaju liberalnije u svojoj praksi), ne može da se ne spomene podatak da tek jedna četvrtina nastavnika, u okviru datih mogućnosti koje naša škola pruža, omogućava značajniju participaciju svojim učenicima (traži i uzima u obzir mišljenja učenika o različitim aspektima nastave, učenja i ponašanja u školi).*

[2] Istraživačka studija koja se bavila ostvarenošću prava mladih na participaciju (sedamnaestogodišnjaci) u porodici i školi, kao i stavovima o mogućnostima i pravu deteta na participaciju. Istraživanjem je obuhvaćeno 555 srednjoškolaca iz Srbije i Crne Gore, 247 roditelja i 314 nastavnika.

Deca bez roditeljskog staranja smeštena u institucijama imaju formalnu mogućnost izražavanja mišljenja u okviru tzv. domskih zajednica koje su zamišljene kao mesto rešavanja tekućih pitanja organizacije dnevnog života. Podaci iz prakse ukazuju da u najvećem broju domova ova forma razmene mišljenja uopšte nije ustanovljena, a kada i jeste, zadržava dekorativnu ulogu.

*Anketa koju je tokom 1998. godine realizovao Centar za prava deteta u okviru projekta 'Dečja participacija u domovima za decu bez roditeljskog staranja', pokazala je da deca imaju malu i/ili nikakvu mogućnost uticaja na promenu postojećih pravila ponašanja. Kao vrlo ilustrativan primer navodi se situacija u jednom od domova kada su odlukom direktora zabranjene sve posete deci u domu od strane njihovih drugova iz škole s obrazloženjem da 'stvaraju buku i prave nered'. Odluka je ostala na snazi sve do postavljanja novog direktora.*

*Podaci iz 'Agende za budućnost' ukazuju da deca u sistemu socijalne zaštite, u 30 do 76% slučajeva (u zavisnosti od vida zaštite i konkretne ustanove) nemaju mogućnost uticaja na učestalost kontakata s roditeljima. Takođe, od 30% do 70% dece iznose da nisu bila čak ni dovoljno informisana, a kamoli konsultovana prilikom odlučivanja o smeštaju u određenu ustanovu.*

Pravo na izražavanje i uvažavanje mišljenja u oblasti prakse ustanova zdravstvene zaštite trebalo bi da bude ugrađeno u samu proceduru ambulantnog, odnosno, bolničkog lečenja. Od skora je Ministarstvo zdravlja RS uvelo instituciju Ombudsmana - žalbenog tela u okviru svake pojedinačne ustanove zdravstvene zaštite. Za sada nema povratnih informacija o načinu njihovog funkcionisanja, uključujući i podatak o tome koliko je i kakvih pritužbi upućeno koje se odnose i na samu decu.

Iz podataka postojećeg istraživanja iskustava i mišljenja dece o sistemu zdravstvene zaštite,[3] izdvajamo samo podatak koji se direktno odnosi na izražavanje i uvažavanje mišljenja.

*Više od polovine srednjoškolaca (a koji su svakako sposobni da formiraju svoje sopstveno mišljenje o većini zdravstvenih pitanja) ima iskustvo da ih 'školski lekari ne shvataju ozbiljno kada se na nešto žale'.*

[3]Istraživanje obavljeno krajem 1999. i početkom 2000. godine na uzorku od 476 adolescenata za potrebe Centra za prava deteta, a u saradnji sa UNICEF-om.

Za ovaj deo ocene stanja u praksi interesantni su i rezultati ispitivanja samih zdravstvenih radnika,[4] čiji su stavovi načelno veoma pozitivni u odnosu na uključivanje deteta u proces odlučivanja u vezi sa sopstvenim zdravljem. Kada se, međutim, dođe do tvrdnji koje su bliže samoj svakodnevnoj praksi, onda je stanje mnogo manje optimistično. Kao interesantna ilustracija navodi se podatak da čak 42% lekara i 65% medicinskih sestara nema pozitivan stav prema postojećem zakonskom rešenju koje omogućava maloletnici starijoj od 16 godina da samostalno odlučuje o eventualnom prekidu trudnoće.

Porodica se u navedenim istraživanjima pokazala kao nešto bolji okvir za izražavanje mišljenja nego ustanove ili institucije. Deca u porodicama imaju više slobode u izboru škole, raspolaganju džeparcem, izboru prijatelja. Današnje porodice u našoj kulturi pokazuju nešto veći stepen savremenog shvatanja kada je reč o nivou komunikacije, *tabu tema* gotovo da više i nema, o većini sadržaja je moguće razgovarati s roditeljima, mada domen donošenja 'važnih porodičnih odluka' i dalje ostaje nedodirljiv za većinu dece. Interesantno je i zapažanje dece u ustanovama da se spremnost odraslih da čuju i uvaže njihova mišljenja vrlo često nudi kao nagrada i stimulans za one koji su 'dobri' i 'poslušni'. Naša kultura, dakle, pravo na izražavanje mišljenja tretira kao nešto što treba da se zasluži, a ne kao pripadajuće pravo.

Opšti zaključak vezan za stavove i ostvarenost participativnih prava u našoj kulturi, ukazuje na još uvek preovlađujući patrijarhalni model koji podrazumeva neprikosnovenost autoriteta odraslih u odnosu na decu, odnosno muškaraca u odnosu na žene. Odnos prema deci zasniva se na zaštitničkim obrascima ponašanja, a osporavanje prava na učešće u odlučivanju (i samostalno donošenje odluka i izbora) proizilazi iz nemogućnosti prihvatanja socioemocionalnog sazrevanja deteta (što je naročito vidljivo u otporima roditelja ka samostalnom izboru partnera, davanju dozvole za samostalno letovanje, ograničavanju izlazaka i izbora prijatelja, itd.). Istovremeno, zapažaju se i određene pravilnosti koje potvrđuju da je stepen savremenosti i uvažavanja deteta kao ravnopravnog partnera viši u severnijim delovima zemlje, kao i u urbanim sredinama. Analiza stavova nastavnika ukazala je

[4]Anketa realizovana sa 112 zdravstvenih radnika i saradnika, koji su inače bili učesnici seminara 'Prava deteta i zdravlje' u organizaciji Centra za prava deteta krajem 1999. i početkom 2000. godine u Srbiji.

na još neke značajne faktore koji nas vode ka zaključku da neki individualni faktori, vrednosna opredeljenja i životni (a delom i profesionalni) stavovi, utiču na praksu i odnos prema detetu. Profesionalci (nastavnici) tehničkih usmerenja pokazuju značajno viši stepen konzervativnosti u odnosu na one koji se bave društvenim oblastima.

Lokalna zajednica kao sistem ne predviđa mehanizam za izražavanje mišljenja dece. Ne postoje pouzdani podaci o tačnom broju projektnih okupljanja dece i mladih (u okviru aktivnosti civilnog sektora) koja su bila direktno usmerena na akcije u lokalnoj zajednici, a što podrazumeva i saradnju sa lokalnom upravom.

Kao primer promocije prava deteta na izražavanje mišljenja i učešća u odlučivanju kada je reč o kreiranju politike u oblasti prava deteta, navodi se projekat nacionalnih konsultacija dece u sklopu priprema za Specijalno zasedanje Generalne skupštine UN (koje je sprovela britanska oranizacija *Spasimo decu*) i istraživački projekat Centra za prava deteta 'Deca danas za decu sutra' (rezultirao publikacijom 'Agenda za budućnost' koja je distribuirana svim relevantnim političkim odlučiocima). (Oba projekta realizovana 2001. godine).

Dobar primer neposrednog uključivanja dece i mladih u sistemske promene nalazimo u slučaju izrade nacrta Porodičnog zakona u delu koji se odnosi na decu bez roditeljskog staranja (NVO Familia organizuje konsultacije sa decom bez roditeljskog staranja i njihovi stavovi se prezentuju ekspertskoj grupi koja radi na izradi nacrta Zakona). Sledeći ohrabrujući slučaj su i *Razgovori o reformi* u organizaciji Ministarstva prosvete RS (vidi član 3).

Nema preciznih podataka o svim preduzetim merama na podizanju svesti porodice i javnosti uopšte o potrebi podsticanja dece na izražavanje mišljenja i o obuci profesionalaca koji rade s decom, mada je njihov broj značajan i najčešće se vezuju uz delovanje nevladinih organizacija. Jedan deo takvih aktivnosti odnosio se na medijske kampanje, koje su uglavnom bile kratke, nedovoljno dobro osmišljene i predstavljene u medijima ograničenog dometa (B92, npr. 'Imam prava na svoja prava' i 'I ja se pitam'). Najveći deo aktivnosti bio je u formi obrazovnih projekata koji su bili usmereni na oblast prava deteta uopšte. Tu nalazimo na desetine treninga za trenere u oblasti prava deteta (Centar za prava deteta), seminare za nastavnike osnovnih škola (*Dečja prava – čija odgovornost* u organizaciji Prijatelja dece Srbije), radionice o pravima deteta za adolescente (u organizaciji većeg broja nevladinih organizacija u zemlji), seminare za profesionalce u sistemu socijalne zaštite, zdravstva, sudstva, policije i tužilaštva (Centar za prava deteta), itd. Svi ovi,

i brojni drugi seminari koji izmiču evidenciji, u okviru su opšte problematike prava deteta, obrađivali i temu participacije. Manji broj obrazovnih aktivnosti civilnog sektora bio je isključivo i ciljano usmeren samo na izražavanje mišljenja kao takvog. Mnogo češći su projekti koji se osposobljavanjem za konstruktivno izražavanje mišljenja i pokretanje akcija bave u okviru nekog specifičnog konteksta (kao što je npr. ekologija, kultura, mediji, itd.). Značajan broj kurseva o ljudskim pravima (Beogradski centar za ljudska prava) sadržavao je i poseban kurs o pravima deteta.

U okviru formalnog sistema obrazovanja sa uvođenjem izbornog predmeta *građansko vaspitanje* (od školske godine 2001/2002), problematika prava deteta i akcionog planiranja postala je dostupna značajnom broju učenika 2. razreda srednjih škola u Srbiji. Ni na jednom od fakulteta ne postoji predmet koji se posebno odnosi na oblast prava deteta. Na Filozofskom fakultetu, Odsek za pedagogiju i sociologiju, prava deteta se obrađuju samo kao jedna od nastavnih jedinica na dve katedre. Trenutno je u toku razmatranje mogućnosti za ustanovljavanjem izbornog predmeta u okviru postdiplomskog programa Učiteljskog fakulteta Univerziteta u Beogradu počev od školske 2003/2004. godine. Okvirni program ovog predmeta podrazumeva sticanje elementarnih znanja o razvojnim specifičnostima i potrebama dece kao osnovama njihovih prava, upoznavanje sa Konvencijom o pravima deteta i njenim implikacijama za profesionalni rad sa decom.

# *III*

# Građanska i politička prava

# PRAVO NA IME I DRŽAVLJANSTVO

## *Član 7. Konvencije o pravima deteta*

***1. Dete će biti registrovano odmah posle rođenja i imaće od rođenja pravo na ime, pravo na sticanje državljanstva i koliko je to moguće, pravo da zna ko su mu roditelji i pravo na njihovo staranje.***
***2. Države ugovornice će obezbediti primenu ovih prava u skladu sa svojim nacionalnim zakonom i svojim obavezama u skladu s odgovarajućim međunarodnim instrumentima iz ove oblasti, posebno u slučajevima u kojima bi dete u suprotnom bilo apatrid.***

## Propisi u SRJ i Republici Srbiji

Prema jugoslovenskim propisima, *rođenje* se prijavljuje (usmeno ili pismeno) matičaru matičnog područja u mestu u kome se dete rodilo. Rođenje deteta u saobraćajnom sredstvu prijavljuje se matičaru matičnog područja gde se putovanje majke završilo (član 17 ZMK RS). Zdravstvena ustanova u kojoj je dete rođeno dužna je da ga prijavi. Kada je dete rođeno van zdravstvene ustanove, njegovo rođenje dužni su da prijave: otac deteta, a ako on nije u mogućnosti, drugi član domaćinstva, ili majka čim je za to sposobna; zatim lice u čijem stanu je dete rođeno i službena lica koja su prisustvovala i/ili pomagala pri porođaju (babica ili lekar), a ako ovih lica nema ili nisu u mogućnosti da rođenje prijave, lice koje je saznalo za rođenje deteta. Rođenje deteta prijavljuje se u roku od 15 dana od dana rođenja. Ako je dete mrtvo rođeno, rođenje se mora prijaviti u roku od 24 časa od dana rođenja (član 25 ZMK RS). Ako su roditelji deteta nepoznati, njegovo rođenje upisuje se u matičnu knjigu rođenih mesta gde je dete nađeno. Upis se vrši na osnovu rešenja nadležnog organa starateljstva (član 17 ZMK RS).

Podaci o rođenju koji se upisuju u *matičnu knjigu rođenih* obuhvataju dve vrste činjenica. Prva grupa činjenica odnosi se na rođeno dete: ime i prezime, pol, dan, mesec, godina, čas i mesto rođenja i državljanstvo deteta. Drugu grupu predstavljaju podaci o roditeljima deteta: ime i prezime, državljanstvo, prebivalište, adresa stana, kao i datum i mesto rođenja roditelja deteta (član 2 ZOPMK SRJ). Ako su roditelji

deteta nepoznati, upisuju se samo podaci o detetu: vreme rođenja (član 17 ZMK RS). Ako ovo dete kasnije bude usvojeno, kao lično ime roditelja nađenog deteta upisaće se lično ime usvojioca. Za ovo je potreban zahtev budućeg usvojioca i odluka organa starateljstva (član 18 ZMK RS).

Prema jugoslovenskim propisima, *lično ime* (koje se sastoji od imena i prezimena) je lično pravo građana. Lično ime stiče se upisom u matičnu knjigu rođenih, a određuju ga roditelji sporazumno, u roku od dva meseca od dana rođenja deteta. Ako se roditelji u ovom roku ne sporazumeju o imenu deteta, lično ime određuje organ starateljstva. Dete dobija prezime jednog ili oba roditelja, s tim što se u Republici Srbiji ne mogu zajedničkoj deci odrediti različita prezimena. Ako jedan roditelj nije u životu, ili je nepoznat, ili je u nemogućnosti da vrši roditeljsko pravo, lično ime detetu određuje drugi roditelj. Ako oba roditelja nisu u životu, ili su nepoznati, ili su u nemogućnosti da vrše roditeljsko pravo, lično ime deteta određuje organ starateljstva (čl. 393-396 ZBPO RS). Zakon zabranjuje određivanje detetu imena koje je pogrdno, kojim se vređa moral ili je u suprotnosti sa običajima i shvatanjima sredine (član 398 ZBPO RS).

Za obezbeđivanje *prava deteta na državljanstvo* od rođenja i izbegavanje slučajeva da dete postane apatrid, od bitnog su značaja odredbe Zakona o jugoslovenskom državljanstvu. Jugoslovensko državljanstvo stiče poreklom: 1) dete čija su oba roditelja u trenutku njegovog rođenja jugoslovenski državljani; 2) dete rođeno u Jugoslaviji, čiji je jedan roditelj u trenutku njegovog rođenja bio jugoslovenski državljanin; 3) dete rođeno u inostranstvu, čiji je jedan od roditelja u trenutku rođenja deteta jugoslovenski državljanin, a drugi je nepoznat ili nepoznatog državljanstva ili bez državljanstva. Jugoslovensko državljanstvo stiče poreklom i dete rođeno u inostranstvu, čiji je jedan roditelj u trenutku njegovog rođenja bio jugoslovenski državljanin, a drugi strani državljanin, ako do navršene 18 godine života bude prijavljeno kao jugoslovenski državljanin kod nadležnog diplomatskog ili konzularnog predstavništva Jugoslavije i ako podnese zahtev za upis u matičnu knjigu jugoslovenskih državljana. Zahtev za upis deteta u matičnu knjigu jugoslovenskih državljana može podneti roditelj koji je jugoslovenski državljanin. U slučaju da je dete pod starateljstvom, prijavu može podneti staralac, a ako je dete starije od 14 godina, potrebna je i njegova saglasnost. Kada dete rođeno u inostranstvu, čiji je jedan od roditelja u trenutku njegovog rođenja bio jugoslovenski državljanin, ostane bez državljanstva, ono stiče jugoslovensko državljanstvo iako nije prijavljeno kao jugoslovenski državljanin, odnosno upisano u matičnu knjigu jugoslovenskih državljana na napred navedeni način (čl. 7 i 8 ZJD).

Dete rođeno ili nađeno na teritoriji Jugoslavije (nahoče) stiče jugoslovensko državljanstvo rođenjem ako su mu oba roditelja nepoznata, ili nepoznatog državljanstva, ili bez državljanstva. Jugoslovensko državljanstvo stečeno na ovaj način može prestati ako se do navršene 18. godine života utvrdi da su mu oba roditelja strani državljani. Na zahtev roditelja, državljanstvo mu prestaje danom dostavljanja rešenja. Ako je dete starije od 14 godina, za prestanak jugoslovenskog državljanstva potrebna je i njegova saglasnost (član 11 ZJD).

Ovako utvrđeni osnovi za sticanje državljanstva u velikoj meri usklađeni su sa odredbama Konvencije o pravima deteta na državljanstvo, posebno u odnosu na decu rođenu na jugoslovenskoj teritoriji, uključujući i decu nepoznatih roditelja (nahočad). Time se u velikoj meri isključuje mogućnost da dete ostane apatrid. Ipak, ta mogućnost postoji za dete rođeno u Jugoslaviji, čija su oba roditelja strani državljani, ako propisi države/država čiji su oni državljani ne omogućavaju, za decu rođenu u inostranstvu, sticanje državljanstva prema državljanstvu jednog roditelja, ili ga uslovljavaju nekim dodatnim kriterijumima koji pojedinu decu lišavaju mogućnosti da od rođenja imaju pravo na državljanstvo.

Za pravo deteta da, koliko je to moguće, zna ko su mu roditelji, od značaja su *propisi o utvrđivanju roditeljstva* (očinstva i materinstva), kao i, u određenoj meri, propisi o usvojenju.

Jugoslovenskim porodičnim zakonodavstvom predviđeno je da se, pod uslovima određenim zakonom, mogu utvrditi ili osporavati materinstvo ili očinstvo deteta. Materinstvo nije posebno definisano zakonom, a bračno očinstvo se utvrđuje na osnovu pretpostavke da je bračni drug majke otac deteta (član 86 ZBPO RS). Vanbračno očinstvo se utvrđuje priznanjem ili na osnovu sudske odluke, a pravo na pokretanje sudskog postupka imaju majka, dete, prirodni otac deteta, a pod određenim uslovima i organ starateljstva. Do 18. godine deteta, tužbu za utvrđivanje očinstva u njegovo ime može podneti majka, staralac sa odobrenjem organa starateljstva, a pod određenim uslovima i organ starateljstva po službenoj dužnosti (čl. 88, 98 i 99 ZBPO RS). Pravo na pokretanje postupka za osporavanje očinstva ili materinstva, pored pravnih i prirodnih roditelja, ima i dete. Do 18. godine deteta, tužbu u njegovo ime može podneti majka, odnosno staralac, sa odobrenjem organa starateljstva (čl. 104 i 109 ZBPO RS).

Kada je reč o *medicinski asistiranim metodama reprodukcije*, zakon izričito određuje da nije dopušteno istraživanje očinstva deteta koje je začeto veštačkom oplodnjom majke (član 101 ZBPO RS). Ako se ima u vidu da je u Konvenciji

utvrđeno da dete ima ovo pravo "koliko je to moguće", navedeno zakonsko rešenje ne bi se moglo smatrati suprotnim ovoj odredbi Konvencije.

Jugoslovenskim zakonima nije propisana obaveza usvojioca da usvojenika obavesti o tome da je usvojeno dete, čime je *ostvarivanje prava na saznanje biološkog porekla* prepušteno volji usvojioca. Pravo deteta da zna svoje poreklo ograničeno je i odredbama o potpunom usvojenju kada se u zapisnik o zasnovanom potpunom usvojenju ne unose podaci o roditelju deteta koji je dao saglasnost za usvajanje, i usvojioci se upisuju kao roditelji usvojenog deteta u matičnu knjigu rođenih (čl. 193 i 194 ZBPO RS). Zakonodavstvom Republike Srbije predviđena je mogućnost uvida u relevantnu dokumentaciju o potpunom usvojenju za usvojioce i usvojenika sa navršenih 16 godina, dok tu mogućnost nemaju prirodni roditelji koji su dali saglasnost za usvojenje (član 173 ZBPO RS). U ovim odredbama postoji očigledna neusaglašenost sa odredbama Konvencije, koju bi trebalo imati u vidu prilikom izmena porodičnog zakonodavstva.

Društvena zajednica obezbeđuje uslove za slobodno i odgovorno roditeljstvo merama socijalne, zdravstvene i pravne zaštite roditelja i dece, kao i sistemom vaspitanja, obrazovanja i informisanja svih građana (član 3 ZBPO RS). Osnovni princip proklamovan porodičnim zakonodavstvom je da se *odnosi roditelja i dece zasnivaju na obostranim pravima i dužnostima*, koja su jednaka bez obzira da li su deca rođena u braku ili van braka (član 34 ZBPO RS). Roditelji imaju dužnost i pravo da čuvaju svoju decu i da se staraju o njihovom životu i zdravlju. Deca imaju pravo da žive sa svojim roditeljima, a mogu živeti odvojeno od roditelja samo kada to zahtevaju njihovi opravdani interesi ili zajednički interesi dece i roditelja. Roditelji takođe imaju dužnost i pravo da svojim ličnim doprinosom i koristeći usluge odgovarajućih društvenih institucija stvaraju uslove za pravilno vaspitavanje i obrazovanje svoje dece i njihovo osposobljavanje za aktivan, stvaralački život (čl. 113 - 116 ZBPO RS).

## Ocene stanja i komentari

U odnosu na pitanje upisa rođene dece u matične knjige, potrebno je izvršiti izvesne korekcije u zakonu i u praksi bolničkih odeljenja – porodilišta. To je posebno došlo do izražaja prilikom skorašnjih polemika u javnosti u vezi sa sumnjama roditelja da su njihova deca, koja su u porodilištima širom Srbije umrla, zaista mrtva. Zakonom nije izričito propisana obaveza identifikacije naknadno umrlih novorođenčadi, već samo obaveštavanje majki o tome. Kako se sahranjivanje vrši posle identifikacije, nema zakonske obaveze zdravstvenih ustanova da se majci omogući identifikacija,

koja jedino praktično i može da to učini, pa je s obzirom na takvu praksu zdravstvenih ustanova u kojima se događaju smrti novorođenčadi, jasno da je postupanje zdravstvenih ustanova u koliziji sa Pravilnikom o načinu i postupanju za utvrđivanje vremena i uzroka smrti, za obdukciju leša, kao i za postupanje sa odstranjenim delovima tela, kojim je, članom 7, propisano da se prilikom preuzimanja za sahranu lica umrlih u zdravstvenoj ustanovi obavezno vrši provera identiteta. Prema pozitivnim propisima, izostavljeno je pravno regulisanje obaveze sahranjivanja mrtvorođenih ili naknadno umrlih novorođenčadi u zdravstvenim ustanovama, tako da proizilazi da leševi novorođenčadi i mrtvorođenih ostaju u zdravstvenim ustanovama, što je u praksi i gotovo redovan slučaj.

Takve dileme mogu da razreše samo istražni i sudski organi, ali sama situacija bi bila drugačija kada bi se rođenja i smrti drukčije evidentirali i kada ne bi bilo praznog prostora u zakonskom uređenju.

Što se tiče sticanja državljanstva, iako je postupak dosta olakšan, kao posledica političkih promena u zemlji 2000. godine, i dalje veliki broj dece, posebno dece izbeglica, nema jugoslovensko državljanstvo, a neka su, što Centar smatra neprihvatljivim, još uvek u statusu apatridije. Zbog toga bi trebalo ubrzati postupak za sticanje državljanstva, posebno imajući u vidu negativne posledice koje trpe deca koja nemaju odgovarajući status. Centar ne raspolaže podacima o broju dece bez državljanstva na teritoriji Srbije.

# OČUVANJE IDENTITETA

## *Član 8. Konvencije o pravima deteta*

***1. Države ugovornice se obavezuju da poštuju pravo deteta na očuvanje identiteta, uključujući državljanstvo, ime i porodične odnose u skladu sa zakonom, bez nezakonitog mešanja.***
***2. U slučajevima kada je dete nezakonito lišeno nekih ili svih elemenata svog identiteta, države ugovornice će obezbediti odgovarajuću pomoć i zaštitu kako bi mu što pre bio vraćen identitet.***

## Propisi u SRJ i Republici Srbiji

Prema jugoslovenskim propisima, detetu se *lično ime* može promeniti na zahtev oba roditelja ili usvojioca, kao i na zahtev staraoca uz saglasnost organa starateljstva. Ako jedan roditelj nije u životu, ili je nepoznat, ili je u nemogućnosti da vrši roditeljska prava, lično ime može se promeniti na zahtev drugog roditelja. Ako se roditelji ne sporazumeju o promeni ličnog imena, o zahtevu odlučuje nadležni organ starateljstva pošto prethodno sasluša oba roditelja. Za promenu imena deteta starijeg od 10 godina potreban je i njegov pristanak (čl. 404 i 405 ZBPO RS). Posle izmene porodičnog statusa priznanjem očinstva, zaključivanjem braka između roditelja, utvrđivanjem očinstva ili materinstva, odnosno osporavanjem očinstva ili materinstva, može se detetu odrediti novo lično ime u roku od dva meseca od izmene statusa za šta je, takođe, potrebna saglasnot deteta ako je starije od 10 godina (član 397 ZBPO RS). Prilikom zasnivanja usvojenja, detetu se, takođe, može odrediti novo ime. Ako je dete - usvojenik starije od 10 godina, za promenu imena (i prezimena) potreban je i njegov pristanak (čl. 399 i 400 ZBPO RS).

Kada je reč *o promeni državljanstva deteta*, zakon propisuje da roditelj koji je podneo zahtev za otpust iz jugoslovenskog državljanstva može istim zahtevom tražiti otpust iz jugoslovenskog državljanstva i za svoju decu. Uz ovaj zahtev podnosi se saglasnost drugog roditelja i mišljenje nadležnog organa starateljstva. Ako je dete starije od 14 godina potrebna je i njegova saglasnost. Ako su roditelji razvedeni, zahtev za otpust iz državljanstva deteta može podneti samo roditelj kome

je dete pravosnažnom sudskom odlukom povereno na čuvanje i vaspitanje. Ako drugi roditelj ne dâ saglasnost za otpust deteta iz državljanstva, ili je nepoznatog prebivališta, ili je lišen poslovne sposobnosti, ili roditeljskog prava, zahtev za otpust deteta iz jugoslovenskog državljanstva će se prihvatiti ako je to po mišljenju organa starateljstva u interesu deteta (član 21 ZJD). U slučaju potpunog usvojenja, usvojeniku do 18. godine života može prestati jugoslovensko državljanstvo otpustom, ako je zahtev podneo usvojilac koji je stranac, ili usvojilac koji je podneo zahtev za otpust iz jugoslovenskog državljanstva, ako su ispunjeni uslovi iz člana 21 Zakona o jugoslovenskom državljanstvu (neophodna je saglasnost usvojenika ako je stariji od 14 godina). Međutim, detetu neće prestati jugoslovensko državljanstvo potpunim usvojenjem ako bi time ostalo bez državljanstva (član 22 ZJD).

Ako lice koje je dobilo otpust iz jugoslovenskog državljanstva ne stekne strano državljanstvo u roku od godinu dana od dana dostavljanja rešenja o otpustu, organ koji je doneo ovo rešenje može ga poništiti na zahtev tog lica (član 23 ZJD).

## Ocena stanja i komentari

Zakonske odredbe koje se odnose na identitet i pitanja državljanstva se uglavnom poštuju i Centar ne raspolaže nekim podacima koji bi predstavljali kršenje ovog prava.

Jedina zamerka bi se mogla uputiti na račun neefikasnosti službi i dugog trajanja procedura, kao i na činjenicu da se za pojedine postupke ostvarivanja ovog prava ne obezbeđuju sredstva iz budžeta, već ih stranka sama mora snositi iz sopstvenih izvora.

O očuvanju identiteta usvojene dece pogledati član 21 o usvojenju, kao i član 7 koji se odnosi na ime i državljanstvo.

# SLOBODA IZRAŽAVANJA

## *Član 13. Konvencije o pravima deteta*

***1. Dete ima pravo na slobodu izražavanja; pravo obuhvata slobodu da traži, prima i daje informacije i ideje svih vrsta bez obzira na granice, bilo usmeno, pismeno ili štampano, u umetničkoj formi ili preko bilo kog drugog sredstva informisanja po izboru deteta.***
***2. Primena ovog prava može biti predmet određenih ograničenja, ali samo takvih koja su određena zakonom i neophodna:***
***a) radi poštovanja prava ili ugleda drugih; ili***
***b) radi zaštite nacionalne bezbednosti ili javnog poretka (ordre public), ili javnog zdravlja ili morala.***

## Propisi u SRJ i Republici Srbiji

Sloboda javnog izražavanja mišljenja zagarantovana je članom 35 Ustava SRJ, kao i članom 45 Ustava RS. Ustavi takođe garantuju i slobodu štampe i drugih vidova javnog obaveštavanja i pravo građana da u sredstvima javnog obaveštavanja izražavaju i objavljuju svoja mišljenja (član 36, st. 1 i 2 Ustava SRJ, član 46, st. 1 i 2 Ustava RS). Rasturanje štampe i drugih obaveštenja se može sprečiti samo ako se odlukom suda utvrdi da se njima poziva na nasilno rušenje ustavnog poretka, narušavanje teritorijalne celokupnosti SRJ, kršenje zajemčenih sloboda i prava čoveka i građanina, ili se izaziva nacionalna, rasna i verska netrpeljivost i mržnja. Ustavom je takođe zagarantovana i sloboda stvaranja i objavljivanja umetničkih dela (član 53, st. 1 Ustava SRJ, član 33 Ustava RS).

Savezni i republički propisi o javnom informisanju (Zakon o osnovama sistema javnog informisanja SRJ, Zakon o javnom informisanju RS) detaljnije uređuju pravo na slobodu izražavanja.

## Ocena stanja i komentari

Tradicionalno, sloboda izražavanja je pravo koje »pripada« odrasloj osobi. Međutim, počev od Konvencije o pravima deteta, pravo deteta na izražavanje

dobija pravni okvir. Pravo na izražavanje bitno je vezano za pravo na učešće u odlučivanju – participaciju, a ovo, kako u većem delu sveta, tako i u Srbiji, izaziva strah od narušavanja autoriteta odraslih. Dozvoliti detetu da učestvuje u odlukama, predstavlja, videli smo prethodno, pretnju moći i kontroli odraslih. Nije sporno da dete, u zavisnosti od svojih razvojnih mogućnosti, može da donosi odluke koje se njega tiču. Ovakve odluke ono može da donosi samo ili uz pomoć odraslih. Sporno je da li će i kada u Srbiji ovo pravo biti stvarno priznato, a njegovo uživanje obezbeđeno. Svesni smo toga da naša država treba da omogući da se što pre razrade mehanizmi za implementaciju i prava na participaciju, a samim tim i prava na izražavanje. Kod nas je veliki problem u stavovima u odnosu na sva participativna prava, pa i na pravo na izražavanje.

Kako pravo na participaciju iz člana 12 u velikoj meri podrazumeva pravo na izražavanje, ocene i komentari uz to pravo važe i za ovo pravo. Ono što je posebnost prava na izražavanje iz člana 13 sastoji se u činjenici da ono prevazilazi ličnu i porodičnu sferu (što ne znači da se pravo na participaciju odnosi samo na ličnu i porodičnu sferu), odnosno da se isključivo odnosi na omogućavanje dostupnosti informacija i ideja. U tom smislu, pravo deteta na izražavanje je blisko vezano za pravo na pristup odgovarajućim informacijama (član 17) i prava vezana za obrazovanje (član 28 i član 29), te će ostvarljivost biti delimično prikazana i u okviru tih prava.

# PRISTUP ODGOVARAJUĆIM INFORMACIJAMA

## *Član 17. Konvencije o pravima deteta*

***Države ugovornice uvažavaju značajnu ulogu sredstava javnog informisanja i obezbediće da dete ima pristup informacijama i materijalima iz različitih nacionalnih i međunarodnih izvora, posebno onih koji su usmereni na razvoj njegovog socijalnog, duhovnog i moralnog dobra i fizičkog i mentalnog zdravlja. U tom cilju, države ugovornice će:***
***a) podsticati sredstva javnog informisanja da šire informacije i materijal od društvenog i kulturnog interesa za dete u skladu sa duhom člana 29;***
***b) podsticati međunarodnu saradnju u izradi, razmeni i širenju takvih informacija i materijala iz različitih kulturnih, nacionalnih i međunarodnih izvora;***
***c) podsticati izdavanje i distribuciju dečjih knjiga;***
***d) podsticati sredstva javnog informisanja da posvete posebnu pažnju jezičkim potrebama deteta koje pripada manjinskoj grupi ili je domorodac;***
***e) podsticati razvoj odgovarajućih smernica za zaštitu deteta od informacija i materijala štetnih po njegovo dobro, imajući u vidu odredbe članova 13 i 18.***

## Propisi u SRJ i Republici Srbiji

Ustavom SRJ (čl. 35 i 36) garantuju se građanima *pravo na slobodu ubeđenja, savesti i javnog izražavanja mišljenja*, kao i sloboda štampe i drugih vidova javnog obaveštavanja. Na osnovu garancija za navedena prava, moglo bi se smatrati da je time obuhvaćeno i pravo deteta na pristup informacijama, mada se to izričito ne pominje. Ustav Republike Srbije (čl. 45 i 46) sadrži ista rešenja. Međutim, postoji mogućnost da građanin, na osnovu Ustava SRJ (član 44), kao i Ustava Republike

Srbije (član 48) traži i dobije odgovor od državnih organa i organizacija i funkcionera. Nijedna ustavna odredba ne ograničava ovo pravo u bilo kom pogledu, pa ni u pogledu uzrasta, što bi moglo da se tumači da je ono priznato i detetu. Zakonom o javnom informisanju Republike Srbije (član 1), takođe se priznaje sloboda javnog informisanja, ali se nalaže javnim glasilima da istinito, pravovremeno i potpuno informišu javnost (član 4). Istim Zakonom priznaje se pravo građana na obaveštenost o javnim stvarima (član 3).

Za uporedni pregled *usklađenosti* ostalih elemenata prava iz člana 17 Konvencije s domaćim zakonodavstvom, odgovore treba potražiti u okviru prava na izražavanje (član 13 Konvencije), ciljeva obrazovanja (član 29 Konvencije) i prava deteta pripadnika manjinske grupe (član 30 Konvencije). Inače, član 17 Konvencije uglavnom se odnosi na konkretne mere koje je država članica Konvencije dužna da donosi, odnosno na politiku koju vlada države i nadležni organi sprovode, a manje na zakonodavstvo

## Ocena stanja i komentari

U praksi, sistematizovani i pouzdani podaci o broju i vrsti glasila namenjenih deci i mladima ne postoje, uređivačke politike elektronskih medija stalno se menjaju te i u toj oblasti nismo bili u mogućnosti da dođemo do podataka o vrsti programa namenjenih deci i mladima, njihovoj gledanosti i pristupačnosti.[5]

U omogućavanju pristupa informacijama, do skoro su bile uglavnom aktivne međunarodne vladine (*UNICEF, UNHCR, UNHCHR*) i nevladine organizacije (*Save the Children, CARE, Handicap International*, itd.) i domaće nevladine organizacije (Centar za prava deteta, Prijatelji dece Srbije, Fond za humanitarno pravo, itd.). Država i njene institucije su i dalje uglavnom pasivne i polako kreću u proces otvaranja prema zahtevima za pružanje informacija deci. Ova situacije se poboljšala ulaskom države u proces širenja informacija, i to više na taj način što se omogućava nesmetan pristup insitucijama za druge organizacije, a manje time što je država pokrenula neke posebne programe. Kao najveće dostignuće u ovoj oblasti Centar smatra akciju Ministarstva prosvete i sporta Republike Srbije uvođenja

[5] Podaci o stavovima dece o ulozi medija i prevladavajućoj slici o detetu u medijima izloženi su u knjizi: Nada Korać, Jelena Vranješević, *Nevidljivo dete – slika deteta u medijima*, (Jugoslovenski) Centar za prava deteta,

predmeta građansko vaspitanje, koje pruža niz materijala od društvenog i kulturnog interesa za dete. Bilo bi potrebno da se u sam proces pružanja informacija deci više uključe i drugi resori, posebno zdravstva, socijalne zaštite i kulture.

Zbog važnosti ovog prava, Centar za unapređenje pravnih studija, nevladina organizacija iz Beograda, sačinila je, tokom 2002. godine, predlog Zakona o slobodnom pristupu informacijama od javnog značaja. Trenutno ulaže napore u lobiranju Vlade Republike Srbije i članova parlamenta da se ovaj predlog uzme u razmatranje.

# SLOBODA MIŠLJENJA, SAVESTI I VEROISPOVESTI

## *Član 14. Konvencije o pravima deteta*

***1. Države ugovornice će poštovati pravo deteta na slobodu mišljenja, savesti i veroispovesti.***
***2. Države ugovornice će poštovati prava i obaveze roditelja i, u određenim slučajevima zakonskih staratelja, radi usmeravanja deteta na ostvarivanje njegovog prava na način koji je u skladu sa razvojnim sposobnostima deteta.***
***3. Sloboda izražavanja veroispovesti ili uverenja može biti predmet samo takvih ograničenja koja su određena zakonom i potrebna da zaštite javnu sigurnost, poredak, zdravlje, ili moral i osnovna prava i slobode drugih.***

## Propisi u SRJ i Republici Srbiji

Članom 43 Ustava SRJ zajemčena je sloboda verovanja, javnog ili privatnog ispovedanja vere i vršenja verskih obreda, kao i to da niko nije dužan da se izjašnjava o svom verskom uverenju. Istovetne garancije sadrži i Republički ustav (član 41 Ustava RS). Ustav SRJ, u članu 18, takođe utvrđuje i da je crkva odvojena od države, i da su crkve ravnopravne i slobodne u vršenju verskih poslova i verskih obreda. Pod slobodom vršenja verskih poslova podrazumeva se i sloboda organizovanja, od strane i u okviru crkava, verske poduke namenjene deci, s tim što je za njeno posećivanje potrebna saglasnost roditelja i što se ona ne može organizovati tako da ometa redovno posećivanje nastave od strane dece na redovnom školovanju.

Prema porodičnopravnim propisima, roditelji imaju obavezu i pravo da usmeravaju decu na usvajanje porodičnih i društvenih vrednosti, kao i da svojim ličnim doprinosom i koristeći usluge raznih državnih institucija stvaraju uslove za pravilno vaspitanje i obrazovanje dece i njihovo osposobljavanje za aktivan, stvaralački život (čl. 115 i 116 ZBPO RS).

Kada je reč o deci pripadnicima manjinskih grupa, zakoni koji regulišu osnovno i srednjoškolsko obrazovanje predviđaju mogućnost organizovanja nastave na jeziku manjina, ili dvojezično, sa elementima nacionalne kulture. Detaljan prikaz ovih propisa dat je uz član 30 Konvencije.

## Ocena stanja i komentari

U praksi, nevladine organizacije izrazile su zabrinutost posle donošenja Uredbe Vlade Republike Srbije o organizovanju i ostvarivanju verske nastave i nastave alternativnog predmeta u osnovnoj i srednjoj školi, donete 2001. godine, zbog toga što se u raspravama oko uvođenja verske nastave u državne škole pogrešno tumačilo ljudsko pravo na slobodu savesti i veroispovesti. Pre svega, pogrešno je protumačeno da pravo na slobodu savesti i veroispovesti znači obavezu države da u javne škole uvodi versku nastavu, obaveznu ili fakultativnu. Glavne primedbe odnose se i na činjenicu da učenici koji su se opredelili za ovaj predmet nisu imali mogućnost da uče o najvažnijim religijama već samo o onoj kojoj pripadaju, što u jednom multinacionalnom i multikonfesionalnom društvu, kakvo je naše, ne doprinosi razvoju razumevanja među narodima. S druge strane, predmet koji je trebalo da kod učenika stvori odanost prema demokratiji, ljudskim pravima i toleranciji (građansko vaspitanje), predviđen je kao alternativni predmet za onu decu koja ne pohađaju versku nastavu. Takođe, nevladine organizacije istakle su primedbu da je ovakvim rešenjem Vlada Republike Srbije prekršila svoju međunarodnu obavezu preuzetu ratifikacijom Konvencije o pravima deteta koja u članovima 12, 13 i 14 obavezuje stranu ugovornicu da samom detetu na odgovarajući način obezbedi pravo na slobodu misli, savesti i veroispovesti, kao i slobodno izražavanje mišljenja. Naime, ovom Uredbom nije poštovano pravo dece da učestvuju u odlukama koje se najviše njih tiču.

Ova oblast regulisana je 2002. godine novim Zakonom o osnovnoj školi prema kojem su verska nastava i građansko vaspitanje predviđeni kao izborni, tj. obavezni predmeti, čime je uskraćeno pravo dece da se opredele za nastavu iz oba predmeta ili nijednog.

Kada je reč o slobodi savesti, propisi koji regulišu mogućnost upućivanja prigovora savesti radi služenja vojnog roka su, po našem mišljenju, neprimereni i ne omogućavaju korišćenje ovog prava u potpunosti. Naime, ovo pravo dete može iskoristiti samo prilikom regrutacije, odnosno sa 17 godina, kada se vrši prva regrutacija, a Zakon ne ostavlja mogućnost da ono to naknadno uradi. Mislimo da ova odluka ne treba da bude konačna i da treba ostaviti mogućnost da se to može

uraditi u svakom trenutku do upućivanja na služenje vojnog roka. Na ovakav stav nas i upućuju saznanja o razvojnim mogućnostima deteta za donošenje jedne ovakve odluke.

# SLOBODA UDRUŽIVANJA I MIRNOG OKUPLJANJA

## *Član 15. Konvencije o pravima deteta*

***1. Države ugovornice će priznati pravo deteta na slobodu udruživanja i slobodu mirnog okupljanja.***
***2. Ostvarivanju ovih prava ne mogu biti postavljena nikakva ograničenja, osim onih koja su u skladu sa zakonom i koja su neophodna u demokratskom društvu i u interesu su nacionalne sigurnosti ili javne bezbednosti, javnog poretka (ordre public), zaštite javnog zdravlja ili morala ili zaštite prava i sloboda drugih.***

## Propisi u SRJ i Republici Srbiji

Ustav SRJ u članu 41 garantuje *pravo na slobodu političkog, sindikalnog i drugog udruživanja i delovanja građana*, bez odobrenja, uz upis kod nadležnog organa. Ovo pravo je ograničeno utoliko što se zabranjuje delovanje koje je usmereno na nasilno rušenje ustavnog poretka, narušavanje teritorijalne celokupnosti Savezne Republike Jugoslavije, kršenje zajemčenih sloboda i prava čoveka i građanina ili izazivanje nacionalne, rasne, verske i druge netrpeljivosti i mržnje. Istovetna rešenja predviđena su i odgovarajućim odredbama Republičkog ustava (član 44 Ustava RS).

Pravo na slobodu mirnog okupljanja i mogućnost njegovog *ograničenja* takođe su propisani ustavnim odredbama. Prema članu 40 Ustava SRJ, građanima se jamči sloboda zbora i drugog mirnog okupljanja, bez odobrenja, uz prethodnu prijavu nadležnom organu. Ovo pravo se može privremeno ograničiti odlukom nadležnog organa radi sprečavanja ugrožavanja zdravlja i morala, ili radi bezbednosti ljudi i imovine. Istovetne garancije predviđene su i Republičkim ustavom (član 43 Ustava RS), s tim što se prema Ustavu RS ovo pravo može ograničiti i radi sprečavanja ometanja javnog saobraćaja.

Ostvarivanje prava na udruživanje, tj. osnivanje udruženja, njihov upis u registar i brisanje iz registra regulisani su zakonom. S aspekta primene Konvencije značajno

je napomenuti da, kao i kod većine drugih osnovnih prava i sloboda, oba Ustava ovo pravo garantuju u odnosu na sve građane, i ne sadrže niti posebne garancije, niti zabrane u odnosu na decu. Međutim, Zakon o udruživanju građana u udruženja, društvene organizacije i političke organizacije koje se osnivaju, za teritoriju SRJ, u članu 9, predviđa da osnivači udruženja mogu biti samo građani koji imaju biračko pravo, tj. oni stariji od 18 godina. Od statuta svakog udruženja pak zavisi da li deca mogu da budu članovi ovih udruženja, a zakon u tom pogledu ne predviđa nikakve zabrane. S druge strane, Zakon o društvenim organizacijama i udruženjima građana Republike Srbije, u članu 27, omogućava da osnivači udruženja budu i deca, ali u tom slučaju u osnivanju udruženja moraju učestvovati i Savez socijalističke omladine ili samoupravna organizacija i zajednica!

Ovakva zakonska rešenja otvaraju pitanje da li se, time što osnivači udruženja za teritoriju cele SR Jugoslavije mogu da budu samo punoletni građani, ograničava pravo deteta predviđeno članom 15 Konvencije. Iako je moguće i takvo tumačenje, treba imati u vidu da se pravo na udruživanje ne ostvaruje samo kroz pravo da se bude osnivač udruženja, već i kroz članstvo u udruženju čiji su osnivači punoletni građani (za nepolitička udruženja zakonom je propisan minimum od 10 osnivača). Stoga bi se moglo govoriti o delimičnoj neusaglašenosti saveznih propisa sa ovom odredbom Konvencije, koju treba imati u vidu pri eventualnim izmenama relevantnih propisa.

## Ocena stanja i komentari

U praksi, pored brojnih kritika i zalaganja nevladinih organizacija i sindikata, propisi iz ove oblasti i dalje nisu izmenjeni. Tokom poslednjih deset godina XX veka pravo na mirno okupljanje bilo je najčešće brutalno kršeno, dok je pravo na udruživanje često bilo opstruirano i veoma otežavano, naročito u Republici Srbiji. Izrazita kršenja prava deteta na mirno okupljanje, kao i zloupotreba dece u političke svrhe, dešavala su se u periodu 1996/1997. i 1999/2000. godine. Za kršenje ovog prava dece odgovorni su bili prvenstveno državni organi (nadležno ministarstvo, direktori škola, itd.), ali su i mediji pokazali veliko nerazumevanje prava deteta svojim lošim izveštavanjima ili neobraćanjem pažnje na ovo važno pitanje.[6] S druge strane, ostvarivanje ovih prava posle političkih promena 2000. godine je bolje.

[6] Bliže vidi: Zloupotreba dece u političke svrhe – Država je obavezna da omogući deci mirno demonstriranje, Nevena Vučković Šahović, *Naša borba*, 9. decembar 1996.

Državni organi više ne sprečavanu mirna okupljanja i udruživanja, ali ostaje potreba za promenom zakona.

Tokom burnih događaja pre promena 5. okotobra 2000, više stotina dece širom Srbije je uzelo učešća u organizovanom protestu protiv tadašnje vlasti, koristeći svoje pravo na udruživanje (grupa »Otpor«) i mirno okupljanje. Tokom tih aktivnosti, deca su, izražavajući svoju pripadnost pokretu protiv Miloševićeve vlasti, nosila obeležja poput bedževa, majica ili transparenata i organizovala mirne skupove ili druge nenasilne aktivnosti. Kao odgovor na njihove aktivnosti, policija je samo tokom jula i avgusta te godine, nezakonito lišila slobode više desetina maloletne dece (14-18 godina). Ta lišenja slobode sastojala su se u privođenju u policijske stanice, saslušavanju i određivanju pritvora, uglavnom bez zakonom propisanog prisustva roditelja ili staratelja. Tokom tih postupaka, po proceni (Jugoslovenskog) Centra za prava deteta, postupci policije su uključivali elemente torture: emocionalno maltretiranje, pretnje, zastrašivanja i upotrebu fizičke prinude.

Imajući u vidu te događaje, kao i pravnu neprilagođenost propisa koji se odnose na pravo maloletnika na udruživanje, Centar za prava deteta je lobirao za uvođenje adekvatne odredbe u Zakon o nevladinim organizacijama, kojom bi deci bilo obezbeđeno pravo na udruživanje od 15. godine. Na taj način bi se otklonila i neusklađenost u odnosu na uzrast za zapošljavanje (po postojećim propisima 15 godina) i adekvatno pravo na udruživanje koje proizilazi iz prava na rad. Usvajanje ovog Zakona očekuje se na proleće 2003. godine.[7]

[7] Ovaj prilog je relevantan i za pitanja definicije deteta, prava na izražavanje, zaštite dece u radu i postupke vezane za lišenje slobode dece.

# PRAVO NA PRIVATNOST

## *Član 16. Konvencije o pravima deteta*

***1. Nijedno dete neće biti biti izloženo proizvoljnom ili nezakonitom mešanju u njegovu privatnost, porodicu, dom ili prepisku, niti nezakonitim napadima na njegovu čast i ugled.***
***2. Dete ima pravo na zakonsku zaštitu protiv takvog mešanja ili napada.***

## Propisi u SRJ i Republici Srbiji

U jugoslovenskom pravu, *ustavne garancije zaštite od samovoljnog ili nezakonitog mešanja* u privatni i porodični život, dom ili ličnu prepisku, kao i od nezakonitih napada na čast ili ugled ličnosti odnose se na sva lica, bez obzira da li su maloletna ili punoletna, i predviđene su odredbama čl. 22, st. 1, 31 i 32 Ustava SRJ, kao i čl. 18, 19 i 21 Ustava RS. Ovim odredbama jamči se nepovredivost fizičkog i psihičkog integriteta čoveka, njegove privatnosti i ličnih prava, nepovredivost stana, kao i tajnost pisama i drugih sredstava opštenja.

Savezno krivično zakonodavstvo predviđa niz *krivičnih dela*, kao što su: narušavanje nepovredivosti stana, protivzakonito pretresanje stana, prostorija i lica, povreda tajnosti pisama i drugih pošiljaka, neovlašćeno prisluškivanje i tonsko snimanje i neovlašćeno fotografisanje (čl. 192-195 KZ SRJ), čije sankcionisanje ima za cilj sprečavanje neovlašćenog mešanja u nečiju privatnost. Međutim, izvršilac ovih dela može biti samo službeno lice zaposleno u saveznim organima. Republički krivični zakon predviđa dela protiv slobode i prava čoveka i građanina, čiji izvršilac može biti svako lice, u koja spadaju i: narušavanje nepovredivosti stana, protivzakonito pretresanje, neovlašćeno prisluškivanje i tonsko snimanje, neovlašćeno fotografisanje, neovlašćeno objavljivanje tuđeg spisa, portreta, fotografije, filma ili fonograma i povreda tajnosti pisama ili drugih pošiljki (čl. 68-72 KZ RS).

Krivična dela protiv časti i ugleda predviđena su republičkim propisima. Sankcionisana su krvična dela klevete, uvrede i delo iznošenja ličnih i porodičnih prilika (čl. 92-94 KZ RS).

Zakonik o krivičnom postupku predviđa posebne *mere za zaštitu privatnosti deteta u sudskim postupcima*. Jedna od ovih mera je isključenje javnosti, koje je obavezno u slučaju da se sudi detetu (član 494 ZKP SRJ). Takođe, tok postupka prema detetu ne može se objaviti bez dozvole suda, a i u slučaju kada je ta dozvola data, ne smeju se navesti ime deteta i drugi podaci na osnovu kojih bi se moglo zaključiti o kome je reč (član 473 ZKP SRJ).

## Ocena stanja i komentari

Prema podacima Ministarstva unutrašnjih poslova Republike Srbije, broj izvršenih krivičnih dela na račun maloletnika u vezi sa poštovanjem prava na privatnost, u periodu od 1. januara 1998. do 31. oktobra 2002. godine, bio je sledeći:

| Član KZ RS | 1998. | 1999. | 2000. | 2001. | 2002. | UKUPNO |
|---|---|---|---|---|---|---|
| **72** | | | | 6 | | 6 |
| **194** | 9 | 11 | 15 | 7 | 9 | 51 |
| **195** | 789 | 514 | 587 | 768 | 559 | 3.217 |

Centar ne raspolaže podacima o praksi u sudskim i administrativnim postupcima.

Precizna analiza odnosa medija prema zaštiti prava na privatnost deteta nije rađena, ali iz uvida u ograničen broj štampanih glasila (dnevni listovi) uočavaju se pojedinačni, ali značajni primeri direktnog (navođenje punog imena i prezimena) ili indirektnog (navođenje imena roditelja/staratelja i adrese) objavljivanja identiteta deteta u slučajevima kada je ono bilo žrtva protivpravne radnje, okrivljeno ili umešano u neki slučaj na drugi način. Kao dobar primer nesavesnog postupanja medija u smislu kršenja prava deteta na privatnost navodimo slučaj objavljivanja fotografija nagog deteta na naslovnoj strani najtiražnijeg dnevnog lista u zemlji. Snimak su, inače, napravile (i najverovatnije direktno dostavile) nastavnice koje su tajno fotografisale nespretno vođenu igru u jednoj od aktivnosti letnjeg kampa u kojoj su se učesnici (javno) presvlačili u grupi (incident vezan za aktivnosti u jednom od letnjih kampova u organizaciji Ministarstva prosvete i sporta Republike Srbije). Nije nam poznato da li je tužilaštvo pokrenulo postupak protiv medija ili drugog prekršioca ovog prava.

Postojeća istraživanja Centra za prava deteta (vidi fusnote uz članove 3 i 12) značajan su izvor podataka koji se mogu tretirati kao jedan od pokazatelja prakse pojedinih institucija kada je reč o pravu deteta na privatnost, ali i preovlađujućih

stavova u našoj kulturi. Svi navedeni podaci predstavljaju ocene i mišljenja adolescenata, a tamo gde je to dostupno dopunjeni su stavovima odraslih.

• *Praksa zdravstvenih službi, primarno školskih dispanzera:*
*Prilikom sistematskih kontrola, 55% ispitanih izjavljuje da su se 'osećali kao goli u izlogu', s obzirom na to da ih je lekar pregledao u grupi. Kao logičan nastavak toga, 46% ispitanih našlo se u situaciji da su im i rezultati analiza i/ili dijagnoza bili saopšteni javno u grupi. Jedna četvrtina ispitanika navodi da im se desilo da 'lekar galami na njih', 7% da im se 'izrugivao pred drugima', a 5% da su ih lekari 'dodirivali na nedoličan način'. Generalno, ispitanici u 57% slučajeva ocenjuju da redovni kontakti sa zdravstvenom službom neretko uključuju povredu privatnosti. Istovremeno, sami zdravstveni radnici se u gotovo 95% slučajeva slažu sa tvrdnjama da deca imaju pravo na poštovanje privatnosti i tajnost zdravstvenih podataka. Na taj način se ponovo susrećemo sa raskorakom između stavova i same prakse.*

• *Institucije socijalne zaštite i kolektivni centri za izbegla/raseljena lica:*
*Zaštita prava na privatnost u uslovima institucionalnog/kolektivnog smeštaja sigurno je jedan od velikih izazova sistemskim rešenjima, s obzirom na to da ovakvi centri već po svojoj prirodi predstavljaju snažnu barijeru ostvarivanju ovog zagarantovanog prava. Statistički značajan procenat dece u ustanovama socijalne zaštite (što uključuje i decu bez roditeljskog staranja i decu sa smetnjama u razvoju) ukazuje na učestalu praksu kršenja prava na privatnost (nemogućnost obavljanja telefonskog razgovora bez prisustva vaspitača ili druge dece, ulazak vaspitača u spavaonice bez prethodnog kucanja, saopštavanje važnih ličnih informacija u grupi, ograničavanje poseta prijatelja). Deca u kolektivnim centrima za izbegle/raseljene jasno ukazuju na elementarne prepreke u ostvarivanju ovog prava (kolektivne spavaonice sa do čak 30 ležaja, neadekvatno opremljeni sanitarni čvorovi, nedostatak izdvojenih prostora za rad i učenje).*

• *Obrazovne institucije:*
*Kao što je navedeno u Oceni stanja i komentarima uz član 3, nastavnici generalno imaju umereno pozitivan stav prema participativnim pravima, u okviru kojih pravo na privatnost ima najviši rang. Posmatrano iz ugla učenika, poštovanje prava na privatnost definisano kao sloboda izbora u oblačenju i izgledu u učionici, pozitivno je ocenjeno u 57% slučajeva.*

Generalno posmatrano, poštovanje prava na privatnost, kao odraz sociokulturalnog miljea, predstavlja najbolji pokazatelj savremenog shvatanja, odnosno liberalnosti stavova prema participativnim pravima uopšte. Podaci pokazuju da okruženje koje poštuje pravo na privatnost automatski predstavlja kontekst u kome dete slobodno izražava svoje mišljenje, učestvuje u odlučivanju i zajedničkim aktivnostima (i obratno). (Vidi više u članu 12).

Međutim, bez obzira koliko na ostvarivanje ovog prava (kao i drugih iz grupe participativnih) neosporno utiču preovlađujući stavovi u jednoj kulturi, to nikako ne sme biti opravdanje za njegovo (njihovo) kršenje. Osim promotivnih i obrazovnih aktivnosti na podizanju nivoa svesti o značaju njihovog poštovanja, svakako da postoje i drugi mehanizmi kojima se mogu podsticati uslovi za unapređenje u ovoj oblasti. Zakonodavna rešenja svakako treba da ponude jasnije odredbe, mada se u određenim situacijama unapređenje prakse mnogo usmerenije i specifičnije može ostvariti na nivou normativne delatnosti. Najbolji primer za to su ustanove socijalne zaštite u kojima ne postoji nijedan razlog da se pravo na privatnost deteta ne zagarantuje jasnim pravilima o postupanju (kao i merama u slučaju njihovog kršenja) u situacijama koje su direktno vezane za ostvarivanje ovog prava (npr. stvaranje uslova za privatnost telefonskih razgovora, prenošenja ličnih i poverljivih informacija i slično). Po istom modelu mogu da se urede i ostale oblasti, a posebno administrativne procedure.

# PRAVO DETETA NA ZAŠTITU OD MUČENJA I NEZAKONITOG ILI PROIZVOLJNOG LIŠENJA SLOBODE

***Član 37 (a) Konvencije o pravima deteta***

***Države ugovornice će obezbediti da:***
***a) nijedno dete ne bude podvrgnuto mučenju ili drugom okrutnom, nečovečnom ili ponižavajućem postupku ili kažnjavanju. Ni smrtna kazna, ni doživotni zatvor, bez mogućnosti oslobađanja, neće biti dosuđeni za dela koja izvrše osobe mlađe od 18 godina.***

***Član 37 (b – d) Konvencije o pravima deteta***

***Države ugovornice će obezbediti da:***
***b) nijedno dete ne bude nezakonito i proizvoljno lišeno slobode. Hapšenje, zadržavanje u pritvoru i zatvaranje deteta će biti u skladu sa zakonom i primenjeno jedino kao poslednja moguća mera i to na najkraći mogući vremenski period;***
***c) sa svakim detetom lišenim slobode bude čovečno postupano i uz poštovanje urođenog ljudskog dostojanstva i na način koji uvažava potrebe osoba njihovog uzrasta. Posebno, svako dete lišeno slobode biće odvojeno od odraslih, izuzev ako se smatra da to nije u interesu deteta, i imaće pravo da održava kontakte sa svojom porodicom putem prepiske i poseta, osim u izuzetnim okolnostima;***
***d) svako dete lišeno slobode imaće pravo da mu odmah bude omogućen pristup brzoj pravnoj i drugoj odgovarajućoj pomoći, kao i pravo da pobija zakonitost tog lišavanja slobode pred sudom ili drugim nadležnim, nezavisnim i nepristrasnim organima i na brzu odluku u svakom takvom postupku.***

## Propisi u SRJ i Republici Srbiji

Odredbama čl. 23-25 Ustava SRJ predviđeno je da svako ima pravo na ličnu slobodu i da niko ne sme biti lišen slobode osim u slučajevima i u postupku koji su utvrđeni zakonom. Pritvaranje i zadržavanje u pritvoru moguće je na osnovu odluke suda, ako je to neophodno radi vođenja krivičnog postupka, a trajanje pritvora mora biti svedeno na najkraće vreme. Ustavom je zajemčeno i poštovanje ljudske ličnosti i dostojanstva u krivičnom i svakom drugom postupku, zabranjeno je svako nasilje nad licem koje je lišeno slobode, odnosno kojem je sloboda ograničena, svako iznuđivanje priznanja i izjava, kao i podvrgavanje mučenju, ponižavajućem kažnjavanju i postupanju. Pravo na brzu pravnu i drugu odgovarajuću pomoć i na proveru zakonitosti lišavanja slobode obezbeđeno je i obavezom da se obrazloženo rešenje o pritvoru mora pritvorenom licu uručiti u času pritvaranja ili najdocnije u roku od 24 časa od pritvaranja i da pritvoreno lice na ovo rešenje ima pravo na žalbu, o kojoj sud odlučuje u roku od 48 časova. Pravo pritvorenog lica da odmah uzme branioca takođe je zagarantovano Ustavom SRJ, a detaljnije uređeno Zakonom o krivičnom postupku SRJ. Slične odredbe sadrži i republički Ustav (čl. 14-16, 24 i 26 Ustava RS).

Zakonik o krivičnom postupku predviđa niz posebnih odredaba koje se primenjuju prema licima koja su izvršila krivično delo kao maloletnici (do 18. godine), a u vreme pokretanja postupka, odnosno suđenja nisu navršila 21. godinu (član 464 ZKP SRJ).

Sudija za maloletnike može odrediti da se u toku pripremnog postupka dete stavi u *pritvor* u izuzetnim slučajevima, kada za to postoje razlozi predviđeni u članu 486, st. 1 ZKP SRJ - ako se krije ili postoje druge okolnosti koje ukazuju na opasnost od bekstva, ako postoji osnovana bojazan da će uništiti tragove krivičnog dela ili uticati na svedoke, da će ponoviti krivično delo, dovršiti pokušano krivično delo ili učiniti delo kojim preti, kao i ako je u pitanju delo za koje se može izreći kazna zatvora od 10 godina ili teža kazna, a način izvršenja, posledice ili druge okolnosti ukazuju da je pritvor neophodan radi nesmetanog vođenja krivičnog postupka ili bezbednosti ljudi. Na osnovu rešenja koje je doneo sudija za maloletnike, pritvor može trajati najviše mesec dana, a veće za maloletnike istog suda ga iz opravdanih razloga može produžiti za još najduže dva meseca (član 486, st. 2 ZKP SRJ). Dete izdržava pritvor, po pravilu, odvojeno od odraslih lica. Međutim, sudija za maloletnike može odrediti da dete bude u pritvoru zajedno sa odraslim licem ako bi usamljenje deteta duže trajalo, a postoji mogućnost da se stavi u prostoriju sa odraslim licem koje na njega ne bi štetno uticalo (član 487 ZKP SRJ).

Dete može imati *branioca* od početka pripremnog postupka. Međutim, ako se vodi postupak za krivično delo za koje je propisana kazna zatvora preko tri godine, dete obavezno mora imati branioca od početka pripremnog postupka, a za ostala dela za koja je propisana blaža kazna - ako sudija za maloletnike oceni da mu je branilac potreban. Branilac deteta može biti samo advokat (član 467 ZKP SRJ).

*Kazna maloletničkog zatvora* može se izreći deci koja su u vreme izvršenja krivičnog dela bila starija od 16 godina. Maloletnički zatvor ne može biti kraći od jedne niti duži od deset godina, pri čemu sud ne može izreći maloletnički zatvor u trajanju dužem od propisane kazne zatvora za to delo, ali nije vezan za najmanju propisanu meru te kazne (član 78 KZ SRJ). U Republici Srbiji, lica osuđena na kaznu maloletničkog zatvora izdržavaju kaznu u domu za maloletnike do navršene 23. godine života, a izuzetno mogu ostati u domu i nakon navršene 23. godine ako je to potrebno da bi završili započeto školovanje ili ako ostatak neizdržane kazne nije duži od 6 meseci (član 181 ZIKS RS). Detetu se u domu određuje vrsta posla i smer srednjeg obrazovanja prema mogućnostima doma, a imajući u vidu njegove/njene psihofizičke sposobnosti, kao i sklonosti za određeni posao ili vrstu obrazovanja (član 182 ZIKS RS). Takođe, detetu se pruža mogućnost bavljenja sportom i provođenja određenog vremena van zatvorenih prostorija (član 184 ZIKS RS). Upravnik doma može detetu koje se ističe svojim ponašanjem i zalaganjem u učenju odobriti odsustvo radi posećivanja roditelja ili bliskih srodnika, najviše dva puta godišnje i to svaki put do 14 dana (član 183 ZIKS RS). Zakon takođe predviđa da se detetu ne može odrediti mera usamljenja (član 186 ZIKS RS).

*Smrtna kazna* nije predviđena ni saveznim niti republičkim propisima. Takođe, jugoslovensko zakonodavstvo ne poznaje kaznu doživotnog zatvora.

U pogledu domaćih pozitivnopravnih propisa koji se odnose na član 37 (a) Konvencije, prema članu 25 Ustava SRJ, niko ne sme biti podvrgnut mučenju, ponižavajućem kažnjavanju i postupanju. Istovetne garancije sadrži i član 26 Ustava RS.

Krivični zakon SRJ zabranjuje *zlostavljanje u vršenju službene dužnosti*, koje definiše kao zlostavljanje, nanošenje teže fizičke ili duševne patnje, zastrašivanje, vređanje ili uopšte postupanje na način kojim se povređuje ljudsko dostojanstvo, kada se kao izvršilac pojavljuje lice zaposleno u saveznim organima (član 191 KZ SRJ). Republički propisi takođe predviđaju delo zlostave u službi, čiji izvršilac može biti službeno lice (član 66 KZ RS). Pored toga, sankcionisana su i krivična dela teške i lake telesne povrede, gde se kao izvršilac može pojaviti bilo koje lice (čl. 53 i 54 KZ RS).

Kada je reč o smrtnoj kazni, ona se kako prema Ustavu SRJ, tako ni prema krivičnim zakonima SRJ i RS ne može izreći. Takođe, naše pravo ne poznaje ni kaznu doživotnog zatvora. Najduža zaprećena kazna za punoletna lica je 40 godina, a za maloletnike 10 godina zatvora za maloletnike s mogućnošću uslovnog otpusta o čemu odlučuje prvostepeni sud.

*Psihički i fizički integritet maloletnika* zaštićen je i u nekim drugim glavama KZ RS. Recimo, među delima protiv dostojanstva ličnosti i morala, postoje dela: prinuda na obljubu ili protivprirodni blud, obljuba ili protivprirodni blud nad nemoćnim licem, obljuba ili protivprirodni blud nad licem koje nije navršilo 14 godina, obljuba ili protivprirodni blud zloupotrebom položaja kod kojih je pasivni subjekt maloletno lice, bilo u osnovnom ili kod kvalifikovanih oblika ovih krivičnih dela.

Više o kršenju prava na psihički i fizički integritet dece - pripadnika manjina videti uz član 30 Konvencije.

## Ocena stanja i komentari

U pogledu primene Krivičnog zakona Republike Srbije (ZK RS), prema podacima Ministarstva unutrašnjih poslova Republike Srbije, broj izvršenih krivičnih dela na štetu maloletnika u periodu od 1. januara 1998. do 31. oktobra 2002. godine je sledeći:

| Po članu KZ RS | 1998. godina | 1999. godina | 2000. godina | 2001. godina | 2002. godina | UKUPNO |
|---|---|---|---|---|---|---|
| **53** | 128 | 117 | 136 | 152 | 124 | 657 |
| **54** | 93 | 109 | 110 | 113 | 117 | 542 |
| **66** | | 1 | | | 2 | 3 |

Relevantne odredbe ZKP SRJ, i u starom i u novom tekstu, usklađene su sa zahtevima Konvencije. S druge strane, rezultati u praksi nisu tako dobri. O tome svedoči nekoliko pokazatelja. Mera pritvora, iako u zakonu definisana kao izuzetak, u realnom životu je funkcionisala kao pravilo. Druge mere (ranije čl. 473 i 483, a sada 485 i 495 ZKP SRJ) primenjivale su se samo sporadično. Krajem osamdesetih godina na teritoriji Okružnog suda u Beogradu[8] mera privremenog smeštaja u

[8] Ova teritorija obuhvata beogradski Okružni sud, Prvi opštinski sud, te opštinske sudove u Mladenovcu i Lazarevcu, koji su nadležni u postupcima prema maloletnicima.

prihvatilište[9] izricana je u najviše tridesetak slučajeva godišnje. Poslednjih pet godina to se čini samo u dva do tri slučaja. Neke druge mere (pojačani nadzor, smeštaj u vaspitnu ustanovu), uopšte se ne primenjuju. Sve ovo dovodi do neopravdano čestog određivanja pritvora prema maloletnicima. Stručna javnost je u više navrata kritikovala ovakav trend. Sudovi se, u nedostatku drugih osnova, pozivaju na razloge iz člana 142 ZKP SRJ određujući pritvor zbog "opasnosti od bekstva". Pitanje je da li maloletnik uopšte ima gde da pobegne? Zato se čini da bi sudovi morali obazrivije da procenjuju ispunjenost uslova za izricanje mere pritvora. Moguće rešenje bilo bi češće određivanje mera privremenog smeštaja i nadzora što zakon omogućava.

Drugi problem predstavlja sam boravak maloletnika u pritvoru. U okružnim zatvorima, doduše, postoje prostorije za maloletnike. Međutim, ako postoji samo jedan pritvoreni maloletnik, onda on mora da bude smešten zajedno s odraslim licima da bi se izbegla njegova izolacija. Daleko veći problem je stigmatizacija maloletnika, neosmišljenost njegovog boravka, negativna i agresivna atmosfera koja u pritvorskim uslovima vlada i praktično dovodi do štetnih posledica na psihu i ponašanje. Dobro rešenje bilo bi angažovanje stručnih lica, pedagoga i psihologa, koji bi osmislili rad sa pritvorenim maloletnicima.

Po Kućnom redu pritvora[10] utvrđeno je da maloletnicima pripadaju ista zakonska prava koja po Zakonu o izvršenju krivičnih sankcija (ZIKS) pripadaju i punoletnim pritvorenicima. Model Zakona o pravosuđu za mlade (radna grupa Centra za prava deteta u saradnji s Danskim centrom za ljudska prava i ministarstvima pravde i socijalne zaštite RS) unosi značajne novine, poštujući međunarodne standarde u kojima je izuzetnost mere pritvora i hitnost u postupanju još više potencirana.

Rezultati istraživanja pokazuju da pritvor prema maloletnicima u 70% slučajeva traje do mesec dana, dok samo u nepunih 5% preko tri meseca.

Zaključak je da član 37 b-d treba još doslednije sprovesti, naročito u praksi. Ovo iziskuje i posebnu obuku policije, sudova, centara za socijalni rad i vaspitnog osoblja. Država do sada nije mnogo na ovome učinila, za razliku od nekih nevladinih organizacija. Videti i komentar uz član 15.

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[9] Prihvatilište za decu i mladež u Beogradu.

[10] Akt koji je usvojilo Ministarstvo pravde RS.

# *IV*

# Porodična sredina i alternativna briga o detetu

# PRAVO NA RODITELJSKO STARANJE

## *Član 5. Konvencije o pravima deteta*

***Države ugovornice će poštovati odgovornosti, prava i dužnosti roditelja ili, gde je takav slučaj, članova šire porodice ili zajednice, kako je predviđeno lokalnim običajima, zakonskih staratelja ili drugih osoba zakonski odgovornih za dete, da bi se omogućilo, na način koji je u skladu sa razvojnim mogućnostima deteta, odgovarajuće usmeravanje i savetovanje u ostvarivanju prava priznatih ovom Konvencijom.***

## Propisi u SRJ i Republici Srbiji

Jugoslovenski porodičnopravni propisi ne definišu *porodicu*. Međutim, većina odredaba porodičnog prava, odnosi se na porodicu u užem smislu (roditelje i decu), dok manji broj (npr. one koje se odnose na obavezu izdržavanja ili na srodstvo kao bračnu smetnju) uređuje odnose šireg kruga srodnika.

S druge strane, prema Zakonu o društvenoj brizi o deci Republike Srbije, porodicu čine: bračni, odnosno vanbračni drugovi, deca (bračna, vanbračna, usvojena i pastorčad) i srodnici u prvoj liniji, a u pobočnoj do drugog stepena srodstva, pod uslovom da žive u zajedničkom domaćinstvu (član 6 ZBPO RS).

Prema članu 3 ZBPO RS, društvena zajednica obezbeđuje uslove za slobodno i odgovorno roditeljstvo merama socijalne, zdravstvene i pravne zaštite roditelja i dece, kao i sistemom vaspitanja, obrazovanja i informisanja građana. *Roditelji* imaju dužnost i pravo da čuvaju svoju decu i da se staraju o njihovom životu i zdravlju, kao i da sa njima razvijaju odnose poverenja i zajedništva i da ih usmeravaju na usvajanje porodičnih i društvenih vrednosti (čl. 113 i 115 ZBPO RS). Roditelji takođe imaju dužnost i pravo da svojim ličnim doprinosom i koristeći usluge odgovarajućih društvenih institucija stvaraju uslove za pravilno vaspitanje i obrazovanje dece i njihovo osposobljavanje za aktivan, stvaralački život (član 116 ZBPO RS). Oni su dužni da se, prema mogućnostima, staraju o školovanju i

stručnom obrazovanju svoje dece, vodeći računa o njihovim sposobnostima, sklonostima i željama (član 117 ZBPO RS). Roditeljsko pravo roditelji vrše zajednički i sporazumno, a u slučaju njihovog neslaganja odlučuje organ starateljstva (član 123 ZBPO RS). U slučaju kada, po njihovom sporazumu, ili po odluci organa starateljstva, ili po odluci suda, jedan od roditelja vrši roditeljsko pravo, o pitanjima koja su od bitnog značaja za razvoj deteta oba roditelja odlučuju sporazumno, pod uslovom da drugi roditelj ispunjava svoje dužnosti prema detetu (član 126 ZBPO RS). Organ starateljstva vrši opšti nadzor nad vršenjem roditeljskog prava (član 132 ZBPO RS). Ako interesi deteta to zahtevaju, on će upozoriti roditelje na nedostatke u vaspitanju i podizanju deteta i pomoći im da dete pravilno odgajaju, a može ih uputiti da se sami, ili sa detetom, obrate određenom savetovalištu, zdravstvenoj, socijalnoj, vaspitnoj ili drugoj odgovarajućoj organizaciji (član 134 ZBPO RS).

*Deca bez roditeljskog staranja* uživaju posebnu društvenu zaštitu (član 13 ZBPO RS). Zaštita dece bez roditeljskog staranja, u skladu sa potrebama ove dece i društvenim mogućnostima, ostvaruje se obezbeđivanjem uslova za takav razvoj ove dece, koji treba na najbolji način da nadoknadi gubitak roditelja ili roditeljskog staranja (član 150 ZBPO RS). Osnovni vidovi porodičnopravne zaštite ove dece su: usvojenje, organizovan smeštaj u drugu porodicu i drugi oblici porodičnog smeštaja (član 148 ZBPO RS). Između usvojioca i usvojenika zasnivaju se prava i dužnosti koje postoje između roditelja i dece, a kao usvojilac može se pojaviti samo lice koje ima lična svojstva potrebna za uspešno vršenje roditeljskih prava i dužnosti (čl. 151 i 154 ZBPO RS). Deca bez roditelja ili bez roditeljskog straranja i deca čiji je razvoj ometen prilikama u sopstvenoj porodici, mogu se uputiti u drugu porodicu radi obezbeđivanja uslova za njihov razvoj, vaspitavanje i osposobljavanje za samostalan život. Porodični smeštaj se takođe može obezbediti i vaspitno zapuštenoj deci, kao i deci sa smetnjama u fizičkom i psihičkom razvoju (član 200, st. 1 i 2 ZBPO RS). Smeštaj se obezbeđuje u porodici koja sa uspehom može da vrši roditeljske dužnosti, naročito u pogledu pravilnog negovanja, vaspitanja, obrazovanja i osposobljavanja deteta za samostalan život (član 202 ZBPO RS), a ugovor o porodičnom smeštaju sadrži pre svega prava i dužnosti ove porodice (član 208, st. 3 ZBPO RS). Međutim, za vreme trajanja porodičnog smeštaja ne prestaju prava i dužnosti roditelja i staraoca prema detetu (član 200, st. 4 ZBPO RS), i porodica je dužna da omogući posete roditelja deteta, osim kada organ starateljstva drukčije odredi (član 208, st. 4 ZBPO RS). Organ nadležan za poslove starateljstva prati razvoj deteta smeštenog u drugoj porodici, i dužan je da ukazuje porodici na uočene nedostatke u pogledu nege, čuvanja i vaspitavanja deteta i da daje predloge za njihovo otklanjanje (član 213, st. 1 i 2 ZBPO RS). Organ starateljstva stavlja dete

koje nije pod roditeljskim staranjem pod starateljstvo (član 265 ZBPO RS). Za staraoca se prvenstveno postavlja srodnik deteta, ako je to u njegovom interesu (član 224 ZBPO RS). Staralac je dužan da se savesno stara o detetu, naročito o njegovom zdravlju, vaspitavanju, obrazovanju i osposobljavanju za samostalni život (član 226 ZBPO RS). Odluku o prekidanju školovanja, promeni škole, izboru ili vršenju zanimanja deteta, odluku o poveravanju deteta dečjem domu ili nekom licu na čuvanje i vaspitavanje, kao i druge važnije mere u pogledu ličnosti i interesa deteta staralac može doneti samo sa odobrenjem organa starateljstva (član 269 ZBPO RS).

## Ocena stanja i komentari

U Republici Srbiji, ranijim Zakonom o društvenoj brizi o deci bio je uređen "sistem društvene brige o deci, koji se zasniva na pravu i dužnosti roditelja da se staraju o podizanju i vaspitanju svoje dece, pravu deteta na uslove života koji omogućavaju njegov pravilan psihofizički razvoj i obavezi države da mu to omogući" (član 1). Pored socijalnih davanja, koje sada reguliše Zakon o finansijskoj podršci porodici,[11] ranijim zakonom bila je regulisana cela oblast predškolskog vaspitanja i obrazovanja, uz zajedničke nadležnosti tri ministarstva Republike Srbije: Ministarstva za porodicu i decu (ukinuto 2001, a njegove nadležnosti delom prenete na novo Ministarstvo za socijalna pitanja), Ministarstva prosvete i Ministarstva zdravlja.

Tek tokom 2001. godine ostvarena je redovnost socijalnih davanja porodici i deci (dečji dodatak, porodiljske nadoknade i roditeljski dodatak). Zaostala dugovanja države iznosila su krajem 2000. godine 32,3 miliona nemačkih maraka tj. 16,15 miliona evra, a početkom 2001. godine srpska Vlada je izdala obveznice za isplaćivanje zaostalih dečjih dodataka.[12]

Pored manjkavosti samog Zakona (skoro celu materiju predškolskog vaspitanja i podrške ranom razvoju tretira kroz institucionalni okvir državnih "ustanova za decu", čl. 2 i 3), sistem društvene brige o deci nikada nije ostvario svoje proklamovane ciljeve.

[11] Član 24 ovog Zakona nije u skladu sa "najboljim interesima deteta", jer favorizuje smeštanje dece sa posebnim potrebama ("dece ometene u razvoju" u tekstu Zakona) u posebne grupe, umesto da podstiče inkluzivni pristup.
[12] Nacionalni izveštaj o realizaciji ciljeva svetskog samita za decu, Vlada SR Jugoslavije, 2001.

Oko 25% dece predškolskog uzrasta (od 1 do 7 godina) obuhvaćeno je različitim vrstama vaspitnoobrazovnih programa u predškolskim ustanovama, a 70% od tog broja uključeno je u celodnevne programe u trajanju od 8 i više časova, ali su kapaciteti nedovoljni. Budući da u prethodnih deset godina gotovo uopšte nije bilo izgradnje novih objekata, broj odbijene dece je sistematski rastao (na primer, od 3.800 u 1990/91. na 11.200 u 1998/99). Istovremeno, postoje ogromne regionalne razlike u razvijenosti mreže kapaciteta i broju obuhvaćene dece: u nerazvijenim opštinama postoji svega 11% potrebnih kapaciteta, dok je broj dece obuhvaćene programima tek 7,7%; slične su disproporcije na relaciji gradska-seoska sredina (50% dece je obuhvaćeno programima u gradskoj sredini prema 12% u seoskoj). Prema podacima dobijenim od Ministarstva za socijalna pitanja Republike Srbije postoji 159 državnih predškolskih ustanova,[13] jedna privatna ustanova i više privatnih "agencija" koje su registrovane da pružaju usluge roditeljima predškolske dece. Standardima o broju dece u vaspitnim grupama predškolskih ustanova predviđeno je da u jednoj grupi u jaslama bude desetoro dece uzrasta do 18 meseci, petnaestoro dece uzrasta od 18 do 24 meseca i osamnaestoro dece uzrasta od 24 do 36 meseci; u vrtićima u jednoj grupi predviđen broj je dvadeset troje dece uzrasta od 3 do 4 godine, dvadeset petoro dece uzrasta od 4 do 5 godina, tridesetoro dece uzrasta od 5 do 7 godina i dvadesetoro dece u mešovitim grupama uzrasta od 3 do 7 godina, dok za agencije taj broj iznosi desetoro dece u jednoj grupi.

Iako formalno[14] postoji mogućnost organizovanja različitih programa i usluga namenjenih deci i porodicama sa decom predškolskog uzrasta, ponuda u okviru javnih predškolskih ustanova je smanjivana tokom 90-ih godina XX veka, sa izuzetkom predškolskih grupa (tročasovni programi u godini pred polazak u školu koji se finansiraju iz republičkog budžeta). U istom periodu znatno je razvijena ponuda nastala kroz inicijative trećeg sektora - lokalnih, međunarodnih i stranih nevladinih organizacija. Ova poslednja, usmerena je pretežno na najmanje obuhvaćene, zanemarene i osetljive grupe: decu izbegličke populacije i interno raseljenih lica, nekih etničkih grupa (Romi) i decu sa posebnim potrebama.

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[13] Ovaj broj ne obuhvata ustanove koje se nalaze na teritoriji AP Kosovo i Metohija.

[14] Pravilnik o bližim uslovima za organizaciju oblika rada sa decom i obavljanje pojedinih poslova i usluga iz delatnosti predškolske ustanove, *Službeni glasnik RS, br. 34/95* kome je prethodila *Nomenklatura programa predškolskog vaspitanja i obrazovanja i drugih oblika društvene brige o deci*, Beograd, 1990, Ministarstva za rad i socijalna pitanja. Kao osnova za izradu ove *Nomenklature* poslužila je studija *Modeli različitih oblika predškolskog vaspitanja*, *IPA*, Beograd, 1989.

Međutim, ne postoje sistematizovani i objedinjeni podaci o programima i uslugama oba sektora, niti su oni zakonski preciznije regulisani i podsticani.

Saradnja s porodicom i pružanje pomoći roditeljima u cilju prepoznavanja i podrške razvojnim potrebama dece odvija se mahom u okviru predškolskih ustanova i obuhvata roditelje dece koja već pohađaju neke od programa u ustanovi. Pojedini programi nevladinih organizacija uključuju roditelje na partnerskoj osnovi, a tek jedan program, *Škola za roditelje*, podržan je i od prethodnog Ministarstva za porodicu i decu i sadašnjeg Ministarstva za socijalna pitanja Republike Srbije.

*Nacrt zakona o predškolskom vaspitanju i obrazovanju* sadrži pomake u tom pravcu. Takođe, u toku je izrada *Akcionog plana* u okviru *Nacionalnog foruma za obrazovanje za sve* (NAFOS) za povećanje broja dece predškolskog uzrasta obuhvaćene programima i pomoći porodici u skladu sa različitim potrebama dece i roditelja/staraoca.

Na promociji i upoznavanju kako odraslih tako i dece sa Konvencijom o pravima deteta uloženi su značajni napori, posebno u nevladinom sektoru.[15] Značajna novina na ovom planu je uvođenje predmeta *građansko vaspitanje* u osnovne i srednje škole (školske 2001/2. i 2002/3. godine, kao fakultativnog, odnosno izbornog predmeta, za prve i druge razrede), koji na oba nivoa (osnovne i srednje škole) predviđa upoznavanje dece sa sadržajem Konvencije. O tome više videti u okviru čl. 28 i 29 Konvencije.

Radi adekvatnijeg planiranja i obezbeđivanja podrške i pomoći porodici u ostvarivanju odgovornosti za podizanje deteta, potrebno je obaviti sistematsko istraživanje na nivou Republike Srbije o postojećoj ponudi (uključujući privatni i nevladin sektor) i realnim potrebama porodica i dece. Takvo istraživanje, za koje još uvek nisu obezbeđena neophodna sredstva, predložila je *Komisija za predškolsko* vaspitanje koju je imenovalo Ministarstvo prosvete i sporta, pružilo bi osnovu za izradu Nacionalnog plana podrške ranom razvoju deteta (projekt planiran u okviru *UNICEF* za Republiku Srbiju, za period 2002-2004).

Takođe, trebalo bi obavezati opštine i gradove da u decentralizovanom sistemu planiraju i razvoj ustanova, kapaciteta i službi u skladu sa utvrđenim potrebama porodica i dece i Nacionalnim planom podrške ranom razvoju deteta.

[15]Za više podataka v. godišnje Izveštaje *UNICEF*.

# ODGOVORNOST RODITELJA

## *Član 18. (1-2) Konvencije o pravima deteta*

***1. Države ugovornice će uložiti najveće napore da se obezbedi priznavanje principa da oba roditelja imaju zajedničku odgovornost u podizanju i razvoju deteta. Roditelji ili, u zavisnosti od slučaja, zakonski staratelji imaju prevashodnu odgovornost za podizanje i razvoj deteta. Najbolji interesi deteta će biti njihova osnovna briga.***
***2. U cilju garantovanja i unapređivanja prava iz ove Konvencije, države ugovornice će pružiti odgovarajuću pomoć roditeljima ili zakonskim starateljima u ostvarivanju odgovornosti za podizanje deteta i obezbeđivati razvoj ustanova, kapaciteta i službi za zaštitu dece.***

## Propisi u SRJ i Republici Srbiji

Uobičajena, idealna i najprirodnija sredina u kojoj dete živi, u kojoj se detinjstvo i prava deteta ostvaruju, jeste *porodica*. Konvencija o pravima deteta daje prioritetni značaj porodici u zaštiti prava deteta.

Ipak, različiti oblici odnosa u porodici, određeni tradicijom, kulturom, ekonomskim položajem i mnogim drugim parametrima, utiču različito na položaj deteta i na mogućnost da ono ostvari svoja prava u takvoj sredini. Odnosi u porodici uređuju se s jedne strane spontano, a s druge putem državne intervencije, tj. donošenjem i primenom zakona.

*Odnosi između roditelja i dece* menjaju se u zavisnosti od sistema vrednosti koje prihvata pojedino društvo. Pozitivnopravna regulativa ukazije na sve veće insistiranje na ravnopravnom položaju deteta i priznavanju odvajanja od tradicionalnih porodičnih odnosa. Konvencija o pravima deteta jasno govori u prilog navedenom.

Jedno od osnovnih načela bračnih odnosa i odnosa roditelja i dece je da *roditeljsko pravo* pripada majci i ocu zajedno (član 33, st. 2 ZBPO RS). Roditeljsko pravo roditelji vrše zajednički i sporazumno, a u slučaju njihovog neslaganja odlučuje organ starateljstva. Jedan roditelj vrši sam roditeljsko pravo u slučaju da je drugi roditelj umro ili je proglašen za umrlog, lišen roditeljskog prava, lišen poslovne sposobnosti, ili zbog drugih okolnosti nije u mogućnosti da vrši roditeljsko pravo (član 123 ZBPO RS). Dete se poverava na čuvanje i vaspitavanje jednom od roditelja i u slučaju odvojenog života roditelja, razvoda ili poništenja braka. Ako se roditelji ne sporazumeju o čuvanju i vaspitavanju deteta, ili ako njihov sporazum ne odgovara njegovim interesima, odluku o tome kome roditelju će dete biti povereno donosi organ starateljstva (u slučaju odvojenog života roditelja), odnosno sud (u slučaju razvoda ili poništaja braka), (čl. 124 i 125 ZBPO RS). Međutim, o pitanjima koja su od bitnog značaja za razvoj deteta odlučuju oba roditelja i u slučaju kad jedan od njih vrši prema detetu roditeljsko pravo, pod uslovom da drugi roditelj ispunjava svoje dužnosti prema detetu (član 126 ZBPO RS). Ako se roditelj koji ne vrši roditeljsko pravo ne slaže sa nekom merom ili postupkom drugog roditelja u vršenju roditeljskog prava, može o tome obavestiti organ starateljstva koji je dužan da odluči da li je takva mera, odnosno postupak, u interesu deteta (član 127 ZBPO RS).

Pružanje pomoći roditeljima i zakonskim staraocima u podizanju i vaspitavanju dece stavljeno je, pre svega, u *nadležnost organa starateljstva*, koji imaju obavezu da pružaju pomoć i intervenišu u određenim slučajevima (npr. čl. 132-138, 212 - 213 ZBPO RS).

Takođe, Zakonom o društvenoj brizi o deci RS (čl. 2 i 3) utvrđuje se *osnivanje ustanova za decu* s ciljem da se:

- stvore osnovni uslovi za približno ujednačavanje nivoa zadovoljavanja razvojnih potreba dece;
- pruži pomoć porodici u ostvarivanju njene reproduktivne, zaštitne, vaspitne i ekonomske funkcije;
- obezbedi predškolsko vaspitanje i obrazovanje dece, kao i dnevni boravak, vaspitanje i obrazovanje, preventivna zdravstvena zaštita, ishrana, odmor, rekreacija, kulturne, sportske i stvaralačke aktivnosti dece;
- odgovarajuća sadržina rada sa decom bez roditeljskog staranja, decom sa smetnjama u razvoju, decom na dužem bolničkom lečenju i decom iz socijalno ugroženih porodica;
- posebna zaštita trećeg deteta iz porodica sa troje dece.

Istim Zakonom detaljno je uređeno *ostvarivanje sistema društvene brige o deci*, koji je zasnovan na pravu i dužnosti roditelja da se staraju o podizanju i vaspitavanju svoje dece, pravu deteta na uslove života koji omogućavaju njegov pravilan psihofizički razvoj i obavezi države da im to omogući.

## Ocena stanja i komentari

U Republici Srbiji u toku je postupak reforme porodičnog zakonodavstva. Očekuje se da se novim Porodičnim zakonom ublaže postojeće i predlože nove odredbe, koje će slediti osnovne postavke Konvencije o pravima deteta u kojima roditelji snose najveći stepen odgovornosti za svoju decu, a da je kada to nisu u stanju, država dužna da im pomogne, odnosno preuzme određene obaveze.

Važeći Zakon o braku i porodici Republike Srbije ne odražava savremeni duh Konvencije o pravima deteta. Kako je reforma porodičnog zakonodavstva u toku, bilo bi nužno da se propišu odredbe kojima bi se na savremeniji način uredili odnosi između roditelja i dece. Centar za prava deteta zalaže se da novo uređenje odnosa između roditelja i dece bude zasnovano na sledećim osnovama:

- da roditelji ili staraoci imaju prevashodnu, ali ne i isključivu odgovornost za decu;
- da se nijedno pravo u okviru porodice ne može ostvarivati na račun punog ostvarivanja prava deteta;
- da država ima osnovnu odgovornost u obezbeđivanju uslova roditeljima za uspešno ostvarivanje njihove uloge u porodici.

Takođe, Centar u *Nacrtu porodičnog zakona* (u delovima Odnosa roditelja i dece, sa odgovarajućim procesnim odredbama), koji je kao model dostavljen Ministarstvu za socijalna pitanja Republike Srbije, u delu koja se tiče odgovornosti roditelja, predlaže usvajanje nove koncepcije: **zajedničke roditeljske odgovornosti**. Prema ovoj koncepciji, odgovornost roditelja, koja obuhvata sva prava i dužnosti roditelja, zajednička je, nezavisno od njihovog bračnog statusa i postojanja zajednice života. Takođe, koncepcijom zajedničke roditeljske odgovornosti potpuno se prevazilazi model roditeljskog prava u kome se posedovanje roditeljskog prava odvaja od prava na njegovo vršenje.

Praksa je potvrdila da na faktičkom planu, spor oko kvalifikovanosti roditelja za staranje o detetu (naročito u momentu razvoda braka) utiče na potpunu dezintegraciju porodice, umanjuje šansu za uspešnu reorganizaciju odnosa i donosi

povećane rizike za emocionalni status i dezorganizaciju deteta. Usvajanjem nove koncepcije u slučaju odvojenog života, roditelji bi se sporazumevali o svim pitanjima vršenja roditeljskog prava, pa i o tome sa kojim će od njih, odnosno gde će dete živeti. Neslaganje o načinu održavanja tih odnosa bio bi povod za intervenciju organa starateljstva koji poseduje ovlašćenje da ovo sporno pitanje reši. Na ovaj način, takođe, dolazi do potpunog odvajanja pitanja staranja o detetu od pitanja razvoda braka što bi znatno doprinelo umanjenju konflikta, a što je, s druge strane, u skladu s jednim od osnovnih načela Konvencije, poštovanjem najboljih interesa deteta.

Usvajanje ovih ideja, uz adekvatnu primenu, samo je jedan od načina za ostvarivanje prava deteta. Uz prilagođavanje zakona, nužne su i aktivnosti na promeni mentaliteta, kojima bi se osnažilo ravnopravno učešće deteta u porodičnom životu, a bez negiranja tradicionalnih vrednosti i osobenosti porodice u našoj sredini.

# IZDRŽAVANJE DETETA

## *Član 27. (4) Konvencije o pravima deteta*

***4. Države ugovornice će preduzeti sve odgovarajuće mere kako bi obezbedile da dete dobija izdržavanje od roditelja ili drugih lica koja su finansijski odgovorna za dete, kako u okviru strana ugovornica, tako i iz inostranstva. Posebno, ako lice koje je finansijski odgovorno za dete ne živi u istoj državi u kojoj i dete, strane ugovornice će podsticati pristupanje međunarodnim sporazumima, odnosno zaključenje takvih sporazuma, kao i drugih odgovarajućih sporazuma.***

## Propisi u SRJ i Republici Srbiji

Jugoslovenski porodičnopravni propisi predviđaju *dužnost roditelja da izdržavaju svoju decu* (član 298 ZBPO RS). Roditelj se ne oslobađa ove obaveze ni u slučaju kada je lišen roditeljskog prava (član 301 ZBPO RS). Očuh i maćeha su dužni da izdržavaju svoje maloletne pastorke, u slučaju da oni nemaju srodnike koji su dužni da ih izdržavaju ili srodnici nemaju mogućnosti za to (član 303 ZBPO RS). Braća i sestre su dužni da izdržavaju svoju maloletnu braću i sestre koji nemaju sredstava za izdržavanje, ako roditelji nisu živi ili nisu u mogućnosti da ih izdržavaju (član 305 ZBPO RS). Obaveza izdržavanja postoji i između ostalih srodnika u pravoj ushodnoj liniji (član 306 ZBPO RS). Pravo na izdržavanje od strane krvnih srodnika ostvaruje se onim redom kojim su pozvani na nasleđivanje (član 307 ZBPO RS).

*U sporu za izdržavanje* sud će utvrditi ukupan iznos sredstava potreban za izdržavanje, a pri tome će uzeti u obzir uzrast deteta, potrebe za njegovo stručno obrazovanje, zdravstveno i imovno stanje deteta, kao i druge okolnosti od kojih zavisi odluka o izdržavanju (član 310 ZBPO RS). Ako sud utvrdi da roditelji ni pojedinačno ni zajednički nisu u mogućnosti da podmire potrebe izdržavanja deteta, on će o ovome obavestiti organ starateljstva. U tom slučaju, *organ starateljstva* može u ime deteta proširiti tužbu za izdržavanje na druga lica koja su po zakonu dužna da daju izdržavanje. Ako se u daljem postupku utvrdi da ni drugi srodnici nisu u mogućnosti da izdržavaju dete, organ starateljstva će preduzeti potrebne

mere radi osiguranja sredstava za izdržavanje deteta prema propisima o socijalnoj zaštiti (član 383 ZBPO RS). Organ starateljstva takođe može u ime deteta pokrenuti i voditi spor o izdržavanju, odnosno za povećanje izdržavanja, ako roditelj kod koga se dete nalazi na čuvanju i vaspitavanju, iz neopravdanih razloga, ne vrši to pravo. Organ starateljstva može u ime deteta podneti sudu i predlog za izvršenje odluke kojom je dosuđeno izdržavanje po Zakonu o izvršnom postupku, ako roditelj sam ne traži izvršenje (član 312 ZBPO RS). Ako roditelj, koji je na osnovu sudske odluke dužan da plaća određeni iznos za izdržavanje deteta, ne izvršava svoju obavezu redovno, organ starateljstva će, na predlog drugog roditelja ili po službenoj dužnosti, preduzeti mere da se detetu obezbedi privremeno izdržavanje po propisima o socijalnoj i dečjoj zaštiti sve dok roditelj ne počne da izvršava svoju obavezu (član 318 ZBPO RS) .

Republički krivični zakon predviđa *krivično delo neplaćanja alimentacije, odnosno izbegavanja davanja izdržavanja* za lice koje je neko na osnovu izvršne sudske odluke ili izvršnog sudskog poravnanja dužan izdržavati (član 119 KZ RS). Teži oblik ovog dela postoji ako su nastupile teške posledice za izdržavano lice, koje bi se mogle sastojati u pogoršanju zdravstvenog stanja, teškoćama u obrazovanju i školovanju i sl.

## Ocena stanja i komentari

U većini slučajeva organi i obaveznici izdržavanja izvršavaju svoju obavezu. Međutim, kod jednog manjeg broja slučajeva obaveznici izdržavanja izbegavaju obavezu plaćanja izdržavanja deteta, posebno u slučajevima posle razvoda braka. U tim slučajevima, deca su često sredstvo različitih manipulacija i stavljena su u svrhu raščišćavanja međusobnih odnosa. Tada se kao jedan od oblika ucene pojavljuje i izbegavanje plaćanja alimentacije. Organ starateljstva dosta retko u ime deteta pokreće sudski postupak već to prepušta roditelju da on sam radi. I kada se pokreću postupci u pojedinim slučajevima sudovi su neefikasni, pogotovo u manjim sredinama.

Centar nije uspeo da dođe do preciznih podataka o broju kršenja ovog prava dece.

# ODVAJANJE OD RODITELJA

***Član 9. Konvencije o pravima deteta***

***1. Države ugovornice će obezbediti da dete ne bude odvojeno od svojih roditelja protiv njihove volje, osim kada nadležne vlasti, uz sudski nadzor, odrede u skladu sa važećim zakonom i postupkom, da je takvo odvajanje neophodno u najboljem interesu deteta. Takva odluka može biti neophodna u određenom slučaju, kao npr. ako roditelji zlostavljaju ili zanemaruju dete ili žive odvojeno pa se mora doneti odluka o mestu stanovanja deteta.***
***2. U svakom postupku koji proizilazi iz stava 1 ovog člana, sve zainteresovane strane imaće mogućnost da učestvuju u postupku i da iznesu svoje mišljenje.***
***3. Države ugovornice će poštovati pravo deteta odvojenog od jednog ili oba roditelja da redovno održava lične odnose i neposredne kontakte sa oba roditelja, osim ako je to u suprotnosti sa najboljim interesima deteta.***
***4. U slučajevima kada je razdvajanje posledica mere koju je preduzela država ugovornica, kao što je pritvor, hapšenje, egzil, deportacija ili smrt (uključujući smrt koja je nastupila iz bilo kog razloga dok je osoba pod merom države) jednog ili oba roditelja deteta, ta država ugovornica će, na zahtev, pružiti roditeljima, detetu ili, prema okolnostima, nekom drugom članu porodice, neophodne informacije o tome gde se nalazi odsutni član (članovi) porodice, osim ako bi pružanje takve informacije bilo štetno po dobrobit deteta. Države ugovornice će dalje osigurati da samo podnošenje takvog zahteva ne proizvede nikakve negativne posledice po osobu (osobe) na koju se odnosi.***

## Propisi u SRJ i Republici Srbiji

*Pravo deteta da ne bude odvojeno od svojih roditelja protiv njihove volje* zaštićeno je krivičnim zakonodavstvom na taj način što je, u grupi krivičnih dela protiv braka i porodice, predviđeno kažnjavanje za protivpravno zadržavanje ili oduzimanje deteta od roditelja, usvojioca, staraoca ili od ustanove, odnosno lica kojima je ono povereno (član 116 KZ RS), kao i za promenu porodičnog stanja deteta podmetanjem, zamenom ili na drugi način (član 117 KZ RS).

*Uslovi i način odlučivanja o razdvajanju deteta od jednog ili oba roditelja* regulisani su republičkim porodičnim zakonodavstvom. Deca imaju pravo da žive zajedno sa svojim roditeljima, a mogu živeti odvojeno samo ako to zahtevaju opravdani interesi dece ili zajednički interesi dece i roditelja (član 114 ZBPO RS).

Ako roditelji žive odvojeno, dete će, prema njihovom sporazumu, živeti sa jednim od njih i taj roditelj će vršiti roditeljsko pravo. Ako se u slučaju odvojenog života roditelji ne sporazumeju kod koga će od njih dete da živi, odluku o tome donosi organ starateljstva (član 124 ZBPO RS).

U presudi kojom se brak razvodi, ili se poništava, ili se odbija tužbeni zahtev za utvrđenje da brak postoji, sud će odlučiti i o čuvanju i vaspitavanju dece. Ako se roditelji nisu o ovome sporazumeli, ili ako njihov sporazum ne odgovara interesima dece, sud, pošto pribavi mišljenje i predlog organa starateljstva i ispita sve okolnosti, može da odluči da sva deca ostanu na čuvanju i vaspitavanju kod jednog roditelja, ili da neka ostanu kod majke, a neka kod oca. U slučaju da to zahtevaju interesi dece, ona mogu biti poverena na čuvanje i vaspitavanje drugom licu ili organizaciji. Sud će presudom urediti i način održavanja ličnih kontakata deteta sa roditeljem koji ne vrši roditeljsko pravo ako ga drugi roditelj u tome sprečava, ili ako smatra da je to potrebno radi zaštite deteta. Na zahtev jednog roditelja ili organa starateljstva, sud može izmeniti odluku o čuvanju i vaspitavanju dece i ličnim odnosima roditelja prema njihovoj zajedničkoj deci, ako to zahtevaju promenjene prilike (član 126 ZBPO RS).

Kada to zahtevaju interesi deteta, roditelj, odnosno roditelji, mogu *privremeno da povere dete na čuvanje i vaspitavanje trećem licu* ako to lice ispunjava uslove za staraoca. Isto mogu učiniti i u slučaju odlaska na privremeni boravak u drugo mesto u zemlji ili inostranstvu (član 128 ZBPO RS).

*U slučaju smrti ili gubitka poslovne sposobnosti roditelja koji je sam vršio roditeljsko pravo*, kao i kada on napusti dete, drugi roditelj ima pravo da zahteva da mu lice kod koga se dete nalazi preda dete na čuvanje i vaspitavanje. U slučaju spora između roditelja i trećeg lica, sud može odlučiti da dete poveri na čuvanje i vaspitavanje licu kod koga se dete nalazi, ili drugom licu ili organizaciji, ako po pribavljenom mišljenju organa starateljstva, pošto ispita sve okolnosti, utvrdi da opravdani interesi deteta to zahtevaju (član 129 ZBPO RS).

Sud, odnosno organ starateljstva koji donosi odluku o poveravanju dece na čuvanje i vaspitavanje, dužan je da na pogodan način ispita sve okolnosti koje su od značaja za pravilan duhovni i fizički razvoj i vaspitavanje deteta i da se prilikom donošenja odluke rukovodi prvenstveno interesima deteta, pritom posebno uzimajući u obzir emocionalne potrebe i želje deteta, o čemu pribavlja mišljenje odgovarajućih stručnjaka uvek kada okolnosti slučaja to zahtevaju (član 130 ZBPO RS).

*Ako dete ne živi u zajednici sa roditeljima ili sa jednim od njih*, roditelji će se sporazumeti o načinu održavanja ličnih odnosa sa detetom. U slučaju spora odluku o tome donosi organ starateljstva. Organ starateljstva može ponovo da uredi način održavanja ličnih odnosa roditelja sa decom ako to zahtevaju promenjene prilike, bez obzira da li je o tome ranije odlučivao sud ili organ starateljstva. Održavanje ličnih odnosa dece sa roditeljima može se ograničiti ili privremeno zabraniti samo radi zaštite zdravlja ili drugih važnih interesa dece (član 131 ZBPO RS).

*Organ starateljstva* vrši opšti nadzor nad vršenjem roditeljskog prava (član 132 ZBPO RS). U slučaju da postoji ozbiljna opasnost za pravilno podizanje deteta, organ starateljstva može oduzeti dete od roditelja i poveriti ga drugom licu ili organizaciji na čuvanje i vaspitavanje (član 136 ZBPO RS). Sam, ili po predlogu roditelja, staratelja ili drugog lica kome je dete povereno na čuvanje ili vaspitavanje, organ starateljstva može i uputiti dete u organizaciju za vaspitavanje zbog poremećaja u ponašanju (član 138 ZBPO RS).

Roditelj će biti *lišen roditeljskog prava* ako zloupotrebljava njegovo vršenje ili grubo zanemaruje vršenje roditeljskih dužnosti. Roditelj može biti lišen roditeljskog prava u pogledu sve dece, a ako to posebne okolnosti zahtevaju, samo prema pojedinom detetu. Odluku o lišenju roditeljskog prava donosi sud u vanparničnom postupku po pribavljenom mišljenju organa starateljstva, pošto ispita sve okolnosti slučaja. Postupak može pokrenuti drugi roditelj, organ starateljstva ili javni tužilac. Organ starateljstva je dužan da pokrene postupak kad na bilo koji način sazna da

postoje zakonom predviđeni razlozi za to, kao i da hitno preduzme mere za zaštitu ličnosti, prava i interesa deteta. U bračnim sporovima i sporovima iz odnosa roditelja i dece, sud koji rešava ove sporove može po službenoj dužnosti da donese odluku o lišenju roditeljskog prava ako utvrdi da postoje, zakonom, za to, predviđeni razlozi. Roditelju se može odlukom suda vratiti roditeljsko pravo kada prestanu razlozi zbog kojih je lišen tog prava. Predlog za vraćanje roditeljskog prava mogu podneti roditelj i organ starateljstva. U bračnim sporovima i sporovima iz odnosa roditelja i dece, sud koji ih rešava može po službenoj dužnosti doneti odluku o vraćanju roditeljskog prava, ako utvrdi da za to postoje uslovi (čl. 139-142 ZBPO RS).

Prethodna analiza pokazuje da prema jugoslovenskim propisima koji se odnose na *odvajanje deteta od roditelja*, dete ne može biti odvojeno od svojih roditelja protiv njihove volje, osim u slučajevima i pod uslovima predviđenim zakonom, po odluci nadležnih državnih organa, u zakonom propisanom postupku. Nadležni državni organi su ili sudovi (kada se primenjuju odredbe o sudskim postupcima), ili organi starateljstva (kada se primenjuju propisi o upravnom postupku, a sudski nadzor obezbeđen je putem upravnog spora). I u sudskom i u upravnom postupku omogućeno je učešće svih zainteresovanih strana.

Kada je reč *o obavezi državnih organa u slučaju razdvajanja porodice* koje je posledica mere koju je preuzela država, Zakonom o krivičnom postupku SRJ predviđena je obaveza organa unutrašnjih poslova, odnosno suda, da o lišenju slobode obavesti u roku od 24 sata porodicu lica lišenog slobode, osim ako se ovo lice tome protivi. O lišenju slobode obavestiće se i nadležni organ socijalnog staranja, ako je potrebno da se preduzmu mere za zbrinjavanje dece i drugih članova porodice lica lišenog slobode o kojima se ono stara (član 147 ZKP SRJ).

## Ocena stanja i komentari

U praksi, po pitanju prava deteta da odrasta u prirodnoj sredini, podaci do kojih je Centar za prava deteta došao, govore o tome da su zakonske mogućnosti u ostvarivanju ovog prava i zaštiti dobrobiti deteta slabo korišćene, a u slučajevima kada su korišćene najčešće su to činila fizička lica i to roditelj deteta kome je pravosnažnom odlukom organa starateljstva ili suda dete povereno na dalju brigu i staranje po prestanku vanbračne ili bračne zajednice. Kaznena politika bila je na donjoj granici zakonskog minimuma sa značajnom prisutnošću uslovnih osuda. Na primer:

| | |
|---|---|
| **Prijavljena krivična dela po čl. 116 i 120 KZ RS** | 201 |
| **Optuženja po čl. 116 i 120 KZ RS** | 121 |

*Prijavljivanje i optuženja po čl. 116 i 120 KZ RS u 2001. godini*[16]

| **Vrsta krivičnog dela** | Osuđena punoletna lica |
|---|---|
| **Zatvor** | 15 |

*Osuđena punoletna lica zbog učinjenog krivičnog dela iz čl. 116 i 120 KZ RS u 2001. godini*[17]

| | |
|---|---|
| **Novčana kazna** | 8 |
| **Uslovna kazna zatvora** | 53 |
| **Sudska opomena** | 6 |
| **UKUPNO:** | 82 |

U poslednje vreme, i to poslednje 3 godine, u cilju zaštite interesa deteta, organi starateljstva u velikoj meri po službenoj dužnosti prijavljuju izvršenje krivičnog dela iz člana 116 KZ RS i aktivno u tim postupcima zastupaju interese dece.

U slučajevima ozbiljne opasnosti za pravilno podizanje deteta, odnosno grubog zanemarivanja deteta, pored krivičnopravne zaštite, Zakonom o braku i porodičnim odnosima Republike Srbije predviđene su mere iz oblasti porodičnopravne zaštite (nadzor nad vršenjem roditeljskog prava i lišavanje roditeljskog prava). U ostvarivanju opšteg nadzora nad vršenjem roditeljskog prava organ starateljstva može preduzeti sledeće mere: upozorenje (član 134 ZBPO RS), stalni nadzor (član 135 ZBPO RS), oduzimanje deteta od roditelja bez njegove saglasnosti (čl. 136 i 137 ZBPO RS), stavljanje roditelja u položaj staraoca u odnosu na imovinu deteta (član 138 ZBPO RS) i lišavanje roditeljskog prava (član 139 ZBPO RS). Ove mere

[16] Saopštenje Saveznog zavoda za statistiku, broj 150/5. 7. 2002. godine.

[17] Saopštenje Saveznog zavoda za statistiku, broj 150/5. 7. 2002. godine.

organ starateljstva preduzima u slučajevima kada to zahtevaju "opravdani interesi deteta", ako postoji "ozbiljna opasnost za njegovo pravilno podizanje", ako postoji "zloupotreba vršenja roditeljskog prava ili grubo zanemarivanje vršenja roditeljskih dužnosti".

*Kao što je već navedeno u poglavlju o uvažavanju mišljenja deteta (član 12), u 30-76% slučajeva (u zavisnosti od vida zaštite i konkretne ustanove) deca u sistemu socijalne zaštite iznose da nemaju mogućnost uticaja na učestalost kontakata s roditeljima. Naglašavamo da nemamo podatak o tome u koliko od ispitanih slučajeva je reč o zabrani kontakta roditelja s detetom od strane nadležnog organa starateljstva.*

*U ovom delu navodimo i mišljenja štićenika Vaspitnopopravnog doma u Kruševcu koji ocenjuju kao neprihvatljivo pravilo kojim se propisuju dva telefonska razgovora mesečno s roditeljima.*

Pre donošenja odluke o preduzimanju mera, organ starateljstva sprovodi određeni stručni i formalnopravni postupak koji omogućava učešće svih zainteresovanih, pa i deteta (davanje predloga, saopštavanje mišljenja, stavova i izjavljivanje žalbi).

*Nadzor nad vršenjem roditeljskog prava*[18]

| | **1998.** | **1999.** |
|---|---|---|
| **Deca prema čijim roditeljima je preduzeta mera iz člana 136 ZBPO RS** | 190 | 195 |
| **Deca prema čijim roditeljima je preduzeta mera iz člana 137 ZBPO RS** | 84 | 46 |
| **Deca prema čijim roditeljima je preduzeta mera iz člana 138 ZBPO RS** | 112 | 148 |
| **Deca prema čijim roditeljima je preduzeta mera iz člana 139 ZBPO RS** | 68 | 62 |
| **UKUPNO:** | 454 | 451 |

[18] Izvor izveštaji centara za socijalni rad za 1998. i 1999. godinu dostavljeni Ministarstvu za socijalna pitanja Republike Srbije.

U poređenju sa prethodnim periodom, tokom poslednje dve godine, ove mere porodičnopravne zaštite značajnije se primenjuju, što je rezultat, pre svega, senzibilizacije stručne i druge javnosti za pojavu zlostavljanja i zanemarivanja dece, kod koje se ove mere najčešće primenjuju.

Zakonska rešenja iz Zakona o braku i porodičnim odnosima Republike Srbije da odluke po čl. 136 i 137 donosi organ starateljstva iako u upravnim sporovima po pravu tužbe roditelji imaju sudsku zaštitu, nisu u skladu sa članom 9 Konvencije o pravima deteta (koja predviđa da kada se dete odvaja od roditelja odluku o tome donosi sud), pa su u okviru reforme porodičnog zakonodavstva u Republici Srbiji predviđena zakonska rešenja koja će biti u potpunosti u skladu sa navedenim članom Konvencije.

Praksa u oblasti krivičnopravne zaštite (član 118 KZ RS - krivično delo zapuštanja i zlostavljanja maloletnog deteta i član 120 KZ RS - krivično delo kršenja porodičnih odnosa) pokazuje sledeće:

*Prijavljivanje i optuženja punoletnih lica zbog učinjenog krivičnog dela iz člana 118 KZ RS u 2001. godini*[19]

| | |
|---|---|
| **Prijavljena krivična dela po čl. 118 KZ RS** | 48 |
| **Optuženja po čl. 118 KZ RS** | 27 |

*Osuđena punoletna lica zbog učinjenog krivičnog dela iz člana 118 KZ RS u 2001. godini*[20]

| **Vrsta krivičnog dela** | **Osuđena punoletna lica** |
|---|---|
| **Zatvor** | 3 |
| **Zatvor, uslovna kazna** | 13 |
| **UKUPNO:** | 16 |

[19] Savezni zavod za statistiku broj 150/5.7.2002. godine.

[20] Savezni zavod za statistiku broj 150/5.7.2002. godine.

U postupcima poveravanja dece po prestanku bračne i vanbračne zajednice odlučuje sud i organ starateljstva. U skladu sa pozitivnim zakonodavstvom, u kompletnom postupku učestvuju roditelji i deca.

Participacija roditelja i maloletne dece u ovim postupcima obezbeđna je primenom člana 130 ZBPO RS u kome je propisano da su sud, odnosno organ starateljstva koji donosi odluku o poveravanju dece na čuvanje i vaspitanje, dužni da na pogodan način ispitaju sve okolnosti koje su od značaja za pravilan razvoj i vaspitanje deteta, kao i da se prilikom donošenja odluke rukovode isključivo interesima deteta. Pri donošenju odluke ovi organi su dužni da uzmu u obzir emocionalne potrebe i želje deteta.

*Poremećeni porodični odnosi*[21]

| | **1998.** | **1999.** |
|---|---|---|
| **Zahtevi suda za mirenje i procenu podobnosti za poveravanje po prestanku bračne zajednice** | 10.630 | 9.474 |
| **Zahtevi suda za procenu podobnosti za izmenu odluke o poveravanju** | 843 | 720 |
| **Zahtevi stranaka za mirenje i poveravanje po prestanku vanbračne zajednice** | 1.756 | 1.448 |
| **Zahtevi stranaka za izmenu odluke o poveravanju po prestanku vanbračne zajednice** | 175 | 166 |
| **Zahtevi stranaka za regulisanje viđenja dece i roditelja kojem nisu poverena** | 2.121 | 863 |
| **Zahtevi suda za mišljenje o sposobnosti maloletnika za sklapanje braka** | 950 | 863 |
| **Vanprocesno rađeno na poremećenim porodičnim odnosima** | 5.868 | 6.342 |
| **UKUPNO:** | 22.343 | 20.863 |

[21] Izveštaji centara za socijalni rad za 1998. i 1999. godinu, dostavljeni Ministarstvu za socijalna pitanja Republike Srbije.

Centar za prava deteta smatra za potrebnim da se, u ovoj oblasti, ustanovi jasna i neposrednija veza između dva pravna podsistema u kojima je zastupljena zaštita maloletnih lica i porodice: porodičnog i krivičnog prava. Smatramo da je za to najadekvatniji način ustanovljavanje sistema maloletničkog pravosuđa, koji obuhvata sistem i organizaciju zaštite prava, i to u odnosu na najosetljivije i najugroženije grupe dece:

- one koja su izložena zlostavljanju ili zanemarivanju, ili čiji je razvoj ugrožen poremećajima u funkcionisanju porodice, i
- one koja su u sukobu sa zakonom.

*Nacrt porodičnog zakona* (u delovima Odnosa roditelja i dece, sa odgovarajućim procesnim odredbama) i *Nacrt zakona o pravosuđu za mlade*, koji su kao modeli dostavljeni Ministarstvu pravde Republike Srbije, Ministarstvu za socijalna pitanja Republike Srbije i Savetu za prava deteta, predstavljaju doprinos Centra u tom pravcu. Tu posebno mislimo na rešenja koja nude ovi modeli, a odnose se na: ustanovljavanje koncepta zajedničke roditeljske odgovornosti, ustanovljavanje posebnih mera za zaštitu prava deteta (i u tom smislu naročito obezbeđivanje alternative institucionalnom zbrinjavanju dece), specijalizacija sudstva u porodičnoj materiji, nezavisna pravna reprezentacija prava deteta i u krivičnopravnom smislu ustanovljavanje posebnih pravila krivičnog postupka i organizacije pravosudnog sistema, kao i razrađeniji sistem krivične odgovornosti odraslih u pogledu dela nasilja prema deci.

# NEZAKONITO ODVOĐENJE I ZADRŽAVANJE DETETA U INOSTRANSTVU

## *Član 11. Konvencije o pravima deteta*

***1. Države ugovornice će preduzeti mere za borbu protiv nezakonitog prebacivanja i zadržavanja dece u inostranstvu.***
***2. U tom cilju, države ugovornice će podsticati zaključivanje bilateralnih ili multilateralnih sporazuma ili pristupanje postojećim sporazumima.***

## Propisi u SRJ i Republici Srbiji

Ova odredba Konvencije odnosi se, pre svega, na situacije kada se dete, suprotno odluci nadležnih vlasti, odvede ili ne vrati licu kome je povereno na staranje. Republičko krivično zakonodavstvo predviđa krivično delo *oduzimanja maloletnog lica* koje definiše kao zadržavanje, ili oduzimanje deteta od roditelja, usvojioca, staraoca ili ustanove, odnosno lica kojima je ono povereno, ili onemogućavanje izvršenja odluke o dodeli deteta (član 116 KZ RS).

SR Jugoslavija je takođe zaključila *multilateralne i bilateralne ugovore o pravnoj pomoći* između sudskih i drugih nadležnih organa odnosnih država u izvršavanju odluka koje se odnose na staranje o detetu. Najznačajnija konvencija u ovoj oblasti je Konvencija o građanskopravnim aspektima međunarodne otmice dece. Države ugovornice su je usvojile u cilju da na međunarodnom planu zaštite dete od štetnih posledica nezakonitog odvođenja ili zadržavanja, kao i da utvrde postupak kojim će osigurati brz povratak deteta u državu redovnog boravišta i osigurati zaštitu prava na viđenje.

Pružanje pravne pomoći moguće je i primenom *domaćih propisa* o sudskim postupcima, pod uslovom reciprociteta. Tako je Zakonom o rešavanju sukoba zakona sa propisima drugih država u određenim odnosima SRJ (čl. 86–96) predviđeno da će se, pod određenim uslovima, priznati strane sudske odluke koje su

pravosnažne po pravu druge države u kojoj su donesene. Ove sudske odluke izjednačuju se sa odlukama domaćih sudova i proizvode pravno dejstvo u SRJ.

Što se tiče *izdavanja putnih isprava detetu*, prema Zakonu o putnim ispravama jugoslovenskih državljana, jugoslovenski državljanin do navršene 14. godine života koji nema svoj pasoš može, na zahtev roditelja ili drugog zakonskog zastupnika, biti upisan u pasoš jednog roditelja ili drugog zakonskog zastupnika. Ako je dete starije od pet godina, pored upisa u pasoš roditelja ili drugog zakonskog zastupnika mora biti i fotografija deteta (član 7). Upis deteta u pasoš roditelja ili drugog zakonskog zastupnika važi dve godine i ne može se produžavati. Upis deteta u pasoš jednog roditelja ili drugog zakonskog zastupnika može poništiti organ nadležan za izdavanje putne isprave ili vize, ako to zahteva drugi roditelj ili zakonski zastupnik. Upis deteta u pasoš roditelja ili drugog zakonskog zastupnika poništiće se po službenoj dužnosti kad detetu bude izdat sopstveni pasoš (član 8).

Odluka o načinu izdavanja pasoša, zajedničkog pasoša, putnog lista i vize reguliše situaciju ako su roditelji maloletnog lica razvedeni. Zahtev za izdavanje pasoša ili vize tom licu podnosi roditelj kome je sudskom odlukom maloletno lice povereno na čuvanje i vaspitanje. Kada službeno lice sazna da su bračni ili porodični odnosi narušeni (prijava drugog roditelja, obaveštenje nadležnog organa starateljstva ili drugog organa), upis deteta u pasoš jednog od roditelja, odnosno izdavanje pasoša, izvršiće se na osnovu saglasnosti oba roditelja. Ako drugi roditelj nije saglasan, službeno lice će prekinuti postupak i zatražiti mišljenje nadležnog organa starateljstva.

## Ocena stanja i komentari

Centralni izvršni organ zadužen za primenu Konvencije o građanskopravnim aspektima međunarodne otmice dece u našoj zemlji je Ministarstvo pravde RS. Navedeno Ministarstvo je dužno da obezbedi saradnju između nadležnih organa država ugovornica radi sprečavanja nezakonitog odvođenja ili zadržavanja dece, kao i u cilju što hitnijeg vraćanja nezakonito odvedenog deteta u zemlju redovnog boravišta. To znači da ono postupa kako po zahtevima državljana SRJ (ukoliko se dete nalazi u inostranstvu) tako i po zahtevima stranaca (ukoliko se dete nalazi u SRJ) u cilju što bržeg vraćanja deteta u zemlju redovnog boravišta. Po njihovom mišljenju, kao centralnog izvršnog organa u našoj zemlji, ova Konvencija je u potpunosti ignorisana i neprimenjivana na međunarodnom planu. U zavisnosti od konkretnog slučaja, naša zemlja je prosledila desetine zahteva izvršnim organima pojedinih država ugovornica Konvencije, ali niti u jednom slučaju nije primenjen

postupak predviđen Konvencijom. S druge strane, i u slučajevima zahteva postavljenih po istoj Konvenciji Ministarstvu pravde RS, nije postupano po njoj. Dakle, u praksi se postupak predviđen Haškom konvencijom ne primenjuje i u slučajevima nezakonite otmice dece pribegava se primeni nacionalnog zakonodavstva.

U periodu od 1. januara 1998. do 31. oktobra 2002. godine, prema podacima Ministarstva unutrašnjih poslova Republike Srbije, ukupan broj izvršenih krivičnih dela na štetu maloletnika, po članu 116 KZ RS je 27, i to u 1998. godini - 1, 1999. godini - 5, 2000. godini - 6, 2001. godini - 7 i 2002. godini - 8.

U razgovoru sa državnim organima nadležnim za kontrolu prelaska granice dobili smo informaciju da oni ne zahtevaju nikakvu pismenu saglasnost roditelja za odvođenje maloletnika u inostranstvo. Naime, navedeni organi postupaju tako što vrše proveru svakog pojedinačnog slučaja na osnovu putnih isprava, tj. pasoša, a ukoliko se pojavi neka sumnja, tada vrše dodatnu kontrolu. Mišljenja smo da je ovakva procedura potpuno neprilagođena ozbiljnosti situacije. Tako dolazimo do zaključka da se u praksi dete može odvesti u inostranstvo od strane jednog roditelja i bez saglasnosti (znanja) drugog roditelja ili od strane bilo kog drugog lica, a bez saglasnosti roditelja. Da li će se blagovremeno otkriti i predupreditи slučajevi nezakonitog odvođenja deteta u inostranstvo isključivo zavisi od procene i sposobnosti navedenih organa. Drugačije uređena procedura i veća kontrola prelaska državne granice svakako bi doprinela sprečavanju ovakvih slučajeva.

# SPAJANJE SA PORODICOM

## *Član 10. Konvencije o pravima deteta*

***1. U skladu sa obavezom država ugovornica, shodno članu 9, stav 1, zahtevi deteta ili njegovih roditelja da uđe na teritoriju države ugovornice ili je napusti radi ponovnog spajanja porodice, države ugovornice će rešavati na pozitivan, human i efikasan način. Države ugovornice će dalje obezbediti da podnošenje takvog zahteva ne prouzrokuje nikakve štetne posledice za podnosioce i članove njihove porodice.***
***2. Dete čiji su roditelji nastanjeni u različitim državama će imati pravo da, osim u izuzetnim okolnostima, redovno održava lične odnose i neposredne kontakte sa oba roditelja. U tom cilju i u skladu sa obavezom država ugovornica shodno članu 9, stav 2, države ugovornice će poštovati pravo deteta i njegovih roditelja da napuste svaku zemlju, uključujući i sopstvenu, kao i da uđu u svoju zemlju. Pravo na napuštanje bilo koje zemlje, biće podložno samo ograničenjima propisanim zakonom i koja su potrebna radi zaštite nacionalne bezbednosti, javnog poretka (ordre public), javnog zdravlja ili morala ili prava i sloboda drugih i koja su u skladu sa ostalim pravima priznatim u ovoj Konvenciji.***

## Propisi u SRJ i Republici Srbiji

Član 30 Ustava SRJ svakom jugoslovenskom državljaninu garantuje *slobodu kretanja i nastanjivanja*, kao i mogućnost da napusti SR Jugoslaviju i da se u nju vrati. Ograničenje slobode kretanja i nastanjivanja i prava da se napusti SR Jugoslaviju saveznim zakonom moguće je u slučaju da je to neophodno radi vođenja krivičnog postupka, sprečavanja širenja zaraznih bolesti ili za odbranu SRJ. Slične odredbe sadrži i republički Ustav (član 17 Ustava RS).

*Pravo deteta ili roditelja koji su strani državljani na ulazak u SR Jugoslaviju* regulisano je Zakonom o kretanju i boravku stranaca SRJ (čl. 5 – 30) dok je njihovo pravo da napuste SRJ garantovano drugim međunarodnim dokumentima koji su neposredno primenjivi. Strancu koji se iseljava iz SRJ neće se izdati viza za odlazak ako se protiv njega vodi krivični ili prekršajni postupak, pod uslovom da to zatraži organ koji vodi postupak (član 30 Zakona o kretanju i boravku stranaca SRJ).

## Ocena stanja i komentari

Sastavni deo identiteta deteta je njegova veza s porodicom. Zbog toga je bitno omogućiti, u slučajevima razdvojenosti porodice, da dođe do spajanja. Jedan od razloga razdvojenosti se tiče različitog državljanstva deteta i roditelja. O zavhtevima za izdavanje državljanstva radi spajanja sa porodicom, podatke treba potražiti u Ministarstvu unutrašnjih poslova Srbije. Centar ne raspolaže podacima o takvim zahtevima i broju rešenih slučajeva.

Do razdvajanja je dolazilo i zbog ratnih dejstava na teritoriji bivše SFRJ, kojom prilikom je veliki broj dece rastavljen od jednog ili oba roditelja. Pojedine međunarodne organizacije, npr. *UK Save the Children*, radile su projekte spajanja porodica tokom poslednjih desetak godina, kroz koje je više stotina dece spojeno s porodicama.

Do razdvajanja od porodice dolazi i u slučaju nezakonitog prebacivanja preko granice i nevraćanja. Takvi slučajevi se sada posebno istražuju u okviru programa sprečavanja u traganja za decom koja su žrtve trafikinga, o čemu takođe vode evidenciju relevantni državni organi. Postoji sumnja da je jedan broj dece sa teritorije SRJ na taj način prebačen preko granice, kao i da u SRJ i Srbiji radi prostitucije boravi jedan broj dece stranog državljanstva, takođe razdvojen od porodica. Preciznih podataka nema, odnosno, Centar nije bio u mogućnosti da do istih dođe.

# DETE LIŠENO PORODIČNE SREDINE

## *Član 20. Konvencije o pravima deteta*

***1. Dete koje je privremeno ili stalno lišeno porodične sredine ili kojem, u njegovom najboljem interesu, ne može biti dopušteno da u takvoj sredini ostane, imaće pravo na posebnu zaštitu i pomoć države.***
***2. Države ugovornice će u skladu sa svojim nacionalnim zakonima obezbediti alternativnu brigu za takvo dete.***
***3. Takva briga može da uključi, između ostalog, smeštaj u drugu porodicu, kafalah prema islamskom pravu, usvojenje ili, ako je neophodno, smeštaj u odgovarajuće ustanove za brigu o deci. Pri razmatranju rešenja, dužna pažnja će biti posvećena potrebi uspostavljanja kontinuiteta u podizanju deteta kao i etničkom, religioznom, kulturnom i jezičkom poreklu deteta.***

## Propisi u SRJ i Republici Srbiji

Organ starateljstva vrši opšti nadzor nad vršenjem roditeljskog prava i preduzima potrebne mere radi zaštite ličnih i imovinskih prava i interesa deteta (čl. 132 i 133 ZBPO RS). U cilju zaštite dece predviđena je i obaveza organa pravosuđa, drugih organa, organizacija i zajednica, kao i građana, da obaveste organ starateljstva čim saznaju da roditelj nije u mogućnosti da vrši roditeljsko pravo ili je detetu iz drugih razloga potrebna zaštita. Takođe, matičar je dužan da prijavi organu starateljstva rođenje deteta čiji jedan ili oba roditelja nisu poznati radi preduzimanja mera za njegovu/njenu zaštitu (član 133 ZBPO RS).

Zakon reguliše slučajeve kada, zbog toga što postoji ozbiljna opasnost za pravilno podizanje deteta, ono može biti oduzeto od roditelja i povereno drugom licu ili organizaciji na čuvanje i vaspitavanje. Međutim, oduzimanjem deteta ne prestaju ostala prava koja pripadaju roditeljima niti njihove dužnosti prema detetu. (član 136 ZBPO RS). Takođe, organ starateljstva može sam ili po predlogu roditelja, odnosno

staratelja ili drugog lica kome je dete povereno na čuvanje i vaspitavanje da uputi dete u organizaciju za vaspitavanje zbog poremećaja u ponašanju (član 137 ZBPO RS). U opravdanim slučajevima organ starateljstva može i da zahteva od roditelja polaganje računa o upravljanju imovinom deteta, kao i da traži da sud u vanparničnom postupku, radi zaštite imovinskih prava deteta, dozvoli sredstva obezbeđenja na imovini roditelja ili da odluči da roditelji u pogledu upravljanja imovinom imaju položaj staraoca (član 138 ZBPO RS). Roditelj koji zloupotrebljava vršenje roditeljskog prava ili grubo zanemaruje vršenje roditeljskih dužnosti, može odlukom suda biti lišen roditeljskog prava. Ovu odluku sud će doneti po pribavljenom mišljenju organa starateljstva, pošto ispita sve okolnosti slučaja (član 139 ZBPO RS).

*Detetom bez roditeljskog staranja* smatra se dete koje nema žive roditelje, čiji su roditelji nepoznati ili nestali, kao i dete čiji roditelji iz bilo kojeg razloga, privremeno ili trajno ne vrše svoja prava ili dužnosti (član 147 ZBPO RS). Deca bez roditeljskog staranja uživaju posebnu društvenu zaštitu (član 148 ZBPO RS).

*Osnovni vidovi porodično - pravne zaštite dece bez roditeljskog staranja* su: usvojenje, organizovan smeštaj u drugu porodicu i drugi oblici porodičnog smeštaja (član 148 ZBPO RS). Odluka o primeni pojedinog oblika zaštite donosi se na osnovu svestranog razmatranja svakog pojedinačnog slučaja, kao i mogućnosti izbora onog oblika porodične zaštite koji u najvećoj meri odgovara potrebama deteta (član 149 ZBPO RS). Osnovno načelo je da se zaštita dece bez roditeljskog staranja, u skladu sa potrebama ove dece i društvenim mogućnostima, ostvaruje obezbeđivanjem uslova za takav razvoj dece, koji treba na najbolji način da nadoknađuje gubitak roditelja ili roditeljskog staranja (član 150 ZBPO RS).

*Porodični smeštaj* se može obezbediti deci bez roditelja ili bez roditeljskog staranja, deci čiji je razvoj ometen prilikama u sopstvenoj porodici, vaspitno zapuštenoj deci, kao i deci sa smetnjama u fizičkom i psihičkom razvitku (član 200, st. 1 i 2 ZBPO RS). Smeštaj se obezbeđuje u porodici koja sa uspehom može da vrši roditeljske dužnosti, naročito u pogledu pravilnog negovanja, vaspitanja, obrazovanja i osposobljavanja deteta za samostalan život (član 202 ZBPO RS). Prema zakonu dete se može smestiti samo u porodici u kojoj član porodice kome se dete poverava i sa kojim se zaključuje ugovor ispunjava zakonske uslove za staraoca i u kojoj nema više od troje maloletne dece (član 203 ZBPO RS). Izbor porodice vrši organ starateljstva na osnovu predloga stručne grupe koja se sastoji od socijalnog radnika, pedagoga, psihologa, lekara i drugih stručnjaka, zavisno od prirode uzroka koji iziskuju porodični smeštaj deteta (član 207 ZBPO RS). Organ starateljstva

zaključuje ugovor sa jednim od članova porodice koji sadrži naročito prava i dužnosti ove porodice (član 208, st. 3 ZBPO RS) i takođe vrši nadzor nad ostvarivanjem svrhe porodičnog smeštaja (član 212 ZBPO RS). Nadzor obuhvata praćenje razvoja deteta i ostvarivanje uvida da li se čuvanje, nega i vaspitavanje deteta vrše u skladu sa zakonom i ugovorom o porodičnom smeštaju. Ako uoči nedostatke u pogledu nege, čuvanja i vaspitavanja deteta, nadzorni organ će dati predloge za njihovo otklanjanje i preduzeti druge mere na koje je po zakonu ovlašćen (član 213 ZBPO RS). Organ starateljstva će doneti odluku o raskidu ugovora ukoliko porodica prestane da ispunjava zakonom propisane uslove ili ako svrha smeštaja nije ostvarena, i dužan je da obezbedi dalje čuvanje, negu i vaspitavanje deteta (član 211 ZBPO RS).

Dete koje nije pod roditeljskim staranjem, organ starateljstva stavlja pod *starateljstvo* (član 265 ZBPO RS). Svrha starateljstva nad detetom je da se zbrinjavanjem, vaspitavanjem i obrazovanjem što potpunije razvije njegova ličnost i da se osposobi za aktivan stvaralački život (član 219 ZBPO RS). Za staraoca se prvenstveno postavlja srodnik deteta, ako je to u njegovom interesu (član 224 ZBPO RS). Staralac je dužan da se savesno stara o ličnosti deteta, naročito o njegovom zdravlju, vaspitavanju, obrazovanju i osposobljavanju za samostalni život (član 226 ZBPO RS). On je takođe dužan da podnese izveštaj organu starateljstva i položi račun o svom radu početkom svake kalendarske godine za proteklu godinu, u toku godine kad to zatraži organ starateljstva i kad mu prestane dužnost staraoca (član 243 ZBPO RS), koji će ovaj organ ispitati i po potrebi preduzeti odgovarajuće mere da zaštiti interese štićenika (član 245 ZBPO RS). Osim toga, štićenik koji je u mogućnosti da to učini, njegovi srodnici, druge organizacije i građani mogu uputiti organu starateljstva prigovor na rad staraoca (član 253 ZBPO RS). Organ starateljstva razrešiće staraoca dužnosti, ako utvrdi da zloupotrebljava svoja ovlašćenja ili da se njegovim radom ugrožavaju interesi štićenika, da je u vršenju dužnosti postao nemaran ili ako smatra da bi za štićenika bilo korisno da mu se neko drugo lice postavi za staraoca. U tom slučaju organ starateljstva je dužan da preduzme neophodne mere za zaštitu štićenikovih interesa do postavljanja novog staraoca (član 250 ZBPO RS).

Staralac može, uz odobrenje organa starateljstva, poveriti štićenika dečjem domu ili drugoj organizaciji za decu na čuvanje, vaspitavanje i obrazovanje ili ga smestiti u zdravstvenu ustanovu na duže vreme (član 269 ZBPO RS). Međutim, štićenik se može uputiti u organizaciju za vaspitavanje zbog poremećaja u ponašanju samo na osnovu odluke organa starateljstva (član 270 ZBPO RS). Ove organizacije dužne su da obaveštavaju staraoca i organ starateljstva o svim važnim problemima u pogledu

života, zdravlja, vaspitavanja i obrazovanja štićenika, otpuštanja iz organizacije i njegovog novog boravišta (član 271 ZBPO RS).

## Ocena stanja i komentari

Na osnovu evidencije Centra za socijalni rad struktura dece bez roditeljskog staranja u Republici Srbiji je sledeća:[22]

**Tabela 1 -** Deca bez roditeljskog staranja (struktura)

| **Deca** | **1998. godina** | **1999. godina** | **2000. godina** | **2001. (novoeviden-tirani)** |
|---|---|---|---|---|
| **Čiji su roditelji umrli** | 1.805 | 1.874 | 1.203 | 1.254 (192) |
| **Čiji su roditelji nepoznati** | 83 | 101 | 37 | 40 (6) |
| **Koju su roditelji napustili** | 4.187 | 4.154 | 3.023 | 3.240 (472) |
| **Čiji roditelji neadekvatno vrše roditeljsko pravo** | 495 | 548 | 588 | 632 (150) |
| **Čiji su roditelji sprečeni da vrše roditeljsko pravo** | 2.602 | 2.555 | 1.793 | 1.809 (305) |
| **UKUPNO:** | 9.172 | 9.232 | 6.644 | 6.975 (1.125) |

Na osnovu prikazanih podataka, po pitanju razloga odsustva roditeljskog staranja, može se konstatovati značajan porast broja dece bez roditeljskog staranja zbog neadekvatnog vršenja roditeljskog prava. U 1998. godini na celoj teritoriji Republike Srbije, uključujući i teritoriju Kosova i Metohije, prema izveštajima svih organa starateljstva, evidentirano je 495 dece roditelja koji neadekvatno vrše roditeljsko pravo, dok je 2001. godine samo na teritoriji Vojvodine i centralne Srbije, bez izveštaja 23 organa starateljstva, evidentirano 632 takve dece, što predstavlja porast od preko 20%. Razloge takvog porasta, pored ostalih, možemo

[22] Podaci napravljeni na osnovu godišnjih izveštaja centara za socijalni rad (organa starateljstva) za 1998, 1999, 2000. i 2001. godinu. Za 1998. i 1999. godinu podaci su potpuni za celu teritoriju Republike Srbije, dok za 2000. i 2001. godinu su nekompletni odnosno ne sadrže podatke organa starateljstva sa Kosova i Metohije i 23 organa starateljstva iz Vojvodine i centralne Srbije.

naći i u rezultatima sveobuhvatne i kontinuirane senzibilizacije i dodatnog obrazovanja stručnih radnika u organima starateljstva za prepoznavanje neadekvatnog roditeljstva, kroz programe obuke o zaštiti dece od zlostavljanja i zanemarivanja.

Na osnovu podataka u 1998. godini, u centrima za socijalni rad evidentirano je 90.597 dece i omladine, a 1999. godine 94.028. Ova deca i omladina evidentirana su u centrima za socijalni rad po raznim osnovama - kao materijalno neobezbeđena deca, deca iz porodica sa porodičnom krizom, deca u sukobu sa zakonom, deca ometena u psihofizičkom razvoju, deca bez roditeljskog staranja, itd. U odnosu na ukupan broj evidentirane dece i omladine u centrima za socijalni rad, deca bez roditeljskog staranja čine oko 10%.

U pogledu primene člana 37, tačka 1 Zakona o socijalnoj zaštiti i obezbeđivanju socijalne sigurnosti građana, koji utvrđuje pravo na smeštaj u ustanovu socijalne zaštite deteta bez roditeljskog staranja, na osnovu evidencije centara za socijalni rad struktura primenjenih mera je sledeća:[23]

**Tabela 2 -** Deca bez roditeljskog staranja (struktura primenjenih mera)

| **Oblici i mere** | **1998. godina** | **1999. godina** | **2000. godina** | **2001. godina** |
|---|---|---|---|---|
| **Starateljstvo (stalno)** | 5.566 | 5.116 | 5.216 | 4.485 |
| **Usvojenje** | 270 | 262 | 169 | 182 |
| **Smeštaj u porodicu** | 2.690 | 2.744 | 2.007 | 2.052 |
| **Smeštaj u ustanovu socijalne zaštite** | 3.800 | 3.568 | 2.166 | 2.157 |
| **UKUPNO:** | 12.326 | 11.690 | 9.558 | 8.876 |

Na osnovu podataka sadržanih u prethodnoj tabeli može se konstatovati da je najveći broj dece bez roditeljskog staranja obuhvaćen merama starateljske zaštite. Međutim, ako se uporede podaci o broju dece bez roditeljskog staranja i primenjene mere starateljske zaštite, mere koje se obavezno primenjuju kada se kod deteta utvrdi odsustvo roditeljskog staranja, uočava se da značajan broj dece nije stavljen pod starateljstvo (1998. godine 40% dece nije stavljeno pod starateljstvo, 1999. godine 44,6%, 2000. godine 21,5%, 2001. godine 35,7%).

[23] Napomena isto kao kod tabele 1.

Po pitanju obaveze iz člana 243 Zakona o braku i porodičnim odnosima Republike Srbije, koji predviđa da je staralac dužan da podnese izveštaj organu starateljstva i položi račun o svom radu početkom svake kalendarske godine za proteklu godinu, kao i tokom godine kada god mu to zatraži organ starateljstva, konstatujemo da se u praksi ova odredba poštuje, odnosno organ starateljstva, po posebno sačinjenom individualnom planu zaštite svakog deteta bez roditeljskog staranja pod starateljstvom, prati sadržaj primenjenih mera i najmanje jedanput godišnje u skladu sa zakonskom obavezom pribavlja izveštaje staraoca o svom angažovanju na zaštiti detetove ličnosti, imovine, prava i interesa. Takve izveštaje staraoca, organ starateljstva proverava i po posebnoj stručnoj proceduri verifikuje. Izostajanje saradnje staralac - organ starateljstva, pa i nedostavljanje izveštaja o realizaciji starateljske zaštite i svom radu može biti razlog da se staralac razreši dužnosti.

Tačna evidencija - u koliko slučajeva je primenjena mera "neposrednog starateljstva", iz člana 232 ZBPO RS, da organ starateljstva sam neposredno vrši dužnost staraoca kada je to u interesu štićenika, ne postoji. Prema nekim procenama taj broj se kreće između 30-40% od ukupnog broja dece bez roditeljskog staranja pod starateljstvom.

Posebno treba istaći da se u poslednje dve godine (2000. i 2001) izjednačava broj dece smeštene u porodicu i broja dece smeštene u ustanovu socijalne zaštite. Na taj način, favorizuje se smeštaj u porodicu, kao povoljniji oblik zaštite dece bez roditeljskog staranja. U 1998. godini na porodičnom smeštaju bilo je 29,32%, a u ustanovi socijalne zaštite 41,3% dece bez roditeljskog staranja. Posle tri godine, 2001. godine, odnos broja dece na porodičnom smeštaju i dece u ustanovi je značajno promenjen, 29,4% dece bez roditelja smešten je u hraniteljsku porodicu, a 30,9% dece u ustanovu socijalne zaštite.

**Tabela 3**[24]

| Godina | Broj hraniteljskih porodica |
|---|---|
| 1998. | 1.834 |
| 1999. | 1.707 |
| 2000. | 1.608 |
| 2001. | 1.338 |

[24] Podaci prikupljeni iz ERC-a Ministarstva za rad i socijalna pitanja RS.

Na osnovu podataka predstavljenih u tabeli broj 3 može se videti da značajno opada broj hraniteljskih porodica na teritoriji Republike Srbije. Ovakav pad uzrokovan je, pre svega, ekonomskom situacijom u zemlji, izostankom adekvatne materijalne situacije hraniteljskih porodica i izostankom kampanje za popularizaciju ovog oblika zaštite dece bez roditeljskog staranja i na taj način angažovanja novih porodica.

Međutim, u 2002. godini, pokrenuto je više kampanja na lokalnom nivou, u cilju pronalaženja novih hraniteljskih porodica, kao i poseban reformski projekat Ministarstva za socijalna pitanja "Strategija razvoja porodičnog smeštaja", kao deo reformskih ciljeva u deinstitucionalizaciji i razvoju otvorenih alternativnih oblika zaštite dece bez roditeljskog staranja.

U pogledu čl. 212 i 213 ZBPO RS koji predviđaju da nadzor nad ostvarivanjem svrhe porodičnog smeštaja, vrši organ starateljstva, kao i posebne institucije socijalne zaštite koje su osnovane da organizuju porodični smeštaj u cilju ostvarivanja nadzora nad organizovanjem zaštite dece na porodičnom smeštaju, organ starateljstva neposrednim uvidom prati razvoj deteta, organizaciju čuvanja i nege, vaspitanja i obrazovanja, podaci su sledeći:

**Tabela br. 4**[25]

| Godina | Broj dece čiji su roditelji lišeni roditeljskog prava |
|---|---|
| 1995. | 210 |
| 1996. | 222 |
| 1997. | 207 |
| 1998. | 170 |
| 1999. | 178 |

Poseban problem u primeni člana 139 ZBPO RS, koji predviđa da se roditelj koji zloupotrebljava vršenje roditeljskog prava ili grubo zanemaruje vršenje roditeljskih dužnosti, lišava roditeljskog prava o čemu odluku donosi sud u vanparničnom

[25] Savezni zavod za statistiku - Statistički bilten 22/93, "Socijalna zaštita, korisnici, oblici, mere i usluge u 1999. godini."

postupku po pribavljanju mišljenja nadležnog organa starateljstva, u nedovoljnoj je zakonskoj definisanosti pravnih standarda kao što su "zloupotreba vršenja roditeljskog prava" ili "grubo zanemarivanje roditeljske dužnosti", komplikovanosti sudske procedure i dužine trajanja postupka. Iz navedenih razloga ova mera zaštite detata relativno retko se primenjuje u odnosu na obim pojave nekompetentnog i neodgovornog roditeljstva, a primenjuje se najčešće u slučajevima tzv. "samodiskvalifikacije" roditelja, kada dete u stvari postane dete napušteno od roditelja i kada oni trajno odustaju od roditeljstva.

Ovo je ujedno i razlog zbog čega u praksi nije poznat nijedan slučaj vraćanja u sudskom postupku oduzetog roditeljskog prava, odnosno rehabilitovanog roditeljstva.

O deci bez roditeljskog staranja (izbeglice, prognani, raseljeni) podaci su sledeći:[26]

**Tabela br. 5**

| | **Broj dece bez roditeljskog staranja** | **Broj dece bez roditeljskog staranja pod starateljstvom** | **Broj dece bez roditeljskog staranja smeštene u domovima** | **Broj dece bez roditeljskog staranja u porodičnom smeštaju** |
|---|---|---|---|---|
| **Izbeglice** | 184 | 126 | | |
| **Prognani** | 50 | 34 | 136 | 99 |
| **Raseljeni** | 125 | 73 | | |
| **UKUPNO:** | **359** | **233** | | |

**Tabela br. 6**

| | **Hrvatska** | **Bosna i Hercegovina** | **Kosovo i Metohija** | **Ostalo** |
|---|---|---|---|---|
| **Izbeglice prognani raseljeni** | 137 | 94 | 126 | 2 |
| **UKUPNO:** | | | | **359** |

[26] Prema izveštajima centra za socijalni rad o stanju na dan 25. februara 2002. godine.

U okviru populacije izbegle, prognane i raseljene dece u Jugoslaviji, značajan broj dece je privremeno ili trajno lišen roditeljskog staranja. Iz ovih razloga neophodno je prema ovoj deci preduzimati mere starateljske i socijalne zaštite kako bi se na adekvatan i efikasan način zaštitili njihova ličnost, prava, interesi i imovina. S druge strane, zakonodavstvo Republike Srbije, koje reguliše porodičnopravnu zaštitu dece, ne poznaje termin izbeglica, prognanik ili raseljeno lice, pa se iz toga može zaključiti da se deca bez roditeljskog staranja, izbeglice, prognanici i raseljeni ne štite institutom starateljstva. Međutim, ova deca nisu van sistema zaštite. Prema tumačenju člana 280 ZBPO RS koji propisuje da organ starateljstva može preduzimati zakonom utvrđena prava, u zaštiti prava i interesa stranog državljanina, dok organ države čiji je on državljanin ne donese potrebne odluke i ne preduzme određene mere. U ovakvim slučajevima, za preduzimanje mera starateljske zaštite dece izbeglica, prognanika i raseljenih, bez roditeljskog staranja nadležan je organ starateljstva gde ta deca imaju boravište, odnosno gde su regulisala svoj izbeglički ili prognanički status.

Inače, u kompletnom toku, obimu i sadržaju mera starateljske zaštite ove dece, važe i primenjuju se pravila i propisi Republike koji uređuju oblast porodičnopravne zaštite dece bez roditeljskog staranja.

# USVOJENJE

***Član 21. Konvencije o pravima deteta***

***Države ugovornice koje priznaju i/ili dozvoljavaju sistem usvajanja će obezbediti da najbolji interesi deteta budu od prevashodne važnosti i one će:***
***a) obezbediti da usvojenje deteta odobravaju samo nadležni organi koji utvrđuju, u skladu sa odgovarajucim zakonima i postupkom i na osnovu svih relevantnih i pouzdanih informacija, da je usvojenje dopušteno s obzirom na status deteta u odnosu na roditelje, rodbinu i zakonske staratelje i da su se, ukoliko je tako propisano, zainteresovana lica saglasila sa usvojenjem posle upoznavanja sa svim bitnim činjenicama, a na osnovu stručnih mišljenja u meri kojoj su ona nužna;***
***b) priznati da se međudržavno usvojenje moze smatrati alternativnim načinom brige o detetu, ukoliko se dete ne može smestiti u drugu porodicu ili biti usvojeno ili se o detetu ne može na pogodan način voditi briga u zemlji njegovog porekla;***
***c) obezbediti da dete na koje se primenjuje međudržavno usvojenje uživa svu zaštitu i standarde jednake onima koji postoje u slučaju nacionalnog usvojenja;***
***d) preduzeti sve odgovarajuće mere da obezbedi da u međudržavnom usvojenju smeštaj nema za posledicu neopravdanu finansijsku korist za one koji u tome učestvuju;***
***e) unaprediti, kada je to pogodno, ciljeve ovog člana zaključivanjem bilateralnih ili multilateralnih dogovora ili sporazuma i nastojati da se u tom okviru obezbedi da smeštanje deteta u drugu zemlju sprovode nadležne vlasti ili organi.***

## Propisi u SRJ i Republici Srbiji

*Usvojenje* je u SR Jugoslaviji regulisano republičkim porodičnopravnim propisima (ZBPO RS), koji utvrđuju uslove i postupak usvojenja, kao i organe koji odlučuju u tom postupku. Među relevantnim zakonskim institutima koji se odnose na decu lišenu roditeljskog staranja, nalaze se i zakonske odredbe o starateljstvu. U okviru vidova socijalne zaštite dece bez roditeljskog staranja, Zakon o socijalnoj zaštiti i obezbeđivanju socijalne sigurnosti građana, sadrži odredbe o smeštaju dece bez roditeljskog staranja u ustanove socijalne zaštite za decu bez roditeljskog staranja.

Usvojenjem se između usvojioca i usvojenika zasnivaju prava i dužnosti koja postoje između roditelja i dece, u skladu sa Zakonom. ZBPO RS poznaje *dva oblika usvojenja*: nepotpuno i potpuno usvojenje, između kojih postoje razlike u pogledu uslova za zasnivanje usvojenja, prava i dužnosti usvojioca i usvojenika (posledica usvojenja), kao i razloga prestanka usvojenja.

Usvojenje je dopušteno ako je korisno za usvojenika (član 152 ZBPO RS), što predstavlja *zakonski osnovni uslov za zasnivanje usvojenja*. Korisnost za usvojenika, u kontekstu ostalih oblika zašite dece bez roditeljskog staranja (porodičnopravne i socijalne zaštite), podrazumeva, u skladu sa ZBPO RS i ZSZ RS, da je usvojenje najcelishodniji oblik zaštite za dete bez roditeljskog staranja, s tim što dete po svom pravnom, odnosno porodičnom, statusu mora biti podobno za usvojenje. Podobnost deteta za usvojenje, podrazumeva detetove pravne atribute, odnosno pravne uslove na strani deteta, i to: da je dete bez roditeljskog staranja, a detetom bez roditeljskog staranja smatra se dete koje nema žive roditelje, ili su mu roditelji nepoznati, ili su nestali, ili da iz bilo kojih razloga trajno ne izvršavaju svoja roditeljska prava i dužnosti (član 147 ZBPO RS); da je dete maloletno (član 154, st. 1 ZBPO RS); da postoji saglasnost za usvojenje deteta starijeg od deset godina (član 156, st. 3 ZBPO RS); da dete sa usvojiocem nije srodnik u pravoj liniji, niti mu je brat niti sestra, odnosno da nije štićenik lica koje namerava da ga usvoji, a koje organ starateljstva nije razrešio dužnosti staraoca (član 158 ZBPO RS); da dete, kod zasnivanja potpunog usvojenja, nije starije od pet godina, a ako je starije da se pre navršene pete godine života nalazilo na čuvanju, nezi i vaspitanju kod lica koje želi da ga usvoji, u ustanovi socijalne zaštite, ili kod lica koja nisu u srodstvu s njim u pravoj liniji i do četvrtog stepena srodstva u pobočnoj liniji (član 188, st. 3 ZBPO RS). Odluke o primeni bilo kog od vidova zaštite dece bez roditeljskog staranja donose se na osnovu svestranog razmatranja svakog pojedinačnog slučaja, kao i mogućnosti izbora onog oblika porodične zaštite deteta koji u najvećoj meri odgovara potrebama deteta (član 149 ZBPO RS), što je u korelaciji sa odredbom

člana 21 Konvencije, u kojoj stoji da će strane ugovornice koje priznaju i/ili dozvoljavaju sistem usvajanja obezbediti da najbolji interes deteta bude od prevashodne važnosti.

*Usvojilac* može biti samo ono lice koje je poslovno sposobno i koje ima lična svojstva potrebna za uspešno vršenje roditeljskih prava i dužnosti (član 154, st. 2 ZBPO RS); lice koje je od usvojenika starije najmanje 18 godina, osim kada je usvojilac bračni drug roditelja deteta koje se usvaja, a kada razlika u godinama između usvojioca i usvojenika može biti i manja od 18 godina (član 155 ZBPO RS). Usvojilac ne može biti: 1) lice koje je sudskom odlukom lišeno roditeljskog prava; 2) lice za koje postoji osnovana sumnja da će položaj usvojioca upotrebiti na štetu usvojenika; 3) lice koje ne pruža dovoljno jemstva da će usvojenika vaspitavati i odgajati tako da bude koristan član društvene zajednice; 4) lice koje je duševno bolesno ili slaboumno, kao i ono koje boluje od bolesti koja može dovesti u opasnost zdravlje i život usvojenika (član 159 ZBPO RS).

U pogledu *prava i dužnosti usvojioca i usvojenika, kod nepotpunog usvojenja*, prema članu 174 ZBPO RS usvojenje se zasniva između usvojioca, s jedne strane, i usvojenika i njegovih potomaka, s druge strane, odnos srodstva i druga prava i dužnosti koja po zakonu postoje između roditelja i dece, ukoliko ovim Zakonom nisu predviđena određena odstupanja. Nepotpunim usvojenjem ne nastaje između usvojenika i srodnika usvojioca odnos srodstva i prava i dužnosti koja se na tom osnovu zasnivaju, a usvojenje ne utiče na prava usvojenika prema njegovim roditeljima i drugim srodnicima, kao i na njegove dužnosti prema njima. Zasnivanjem nepotpunog usvojenja ne prestaje srodnički odnos između usvojenika i njegovih prirodnih roditelja i ostalih srodnika. Usvojilac, prema normi člana 175 ZBPO RS, u nepotpunom usvojenju može, ali ne mora, odrediti novo lično ime usvojeniku. Ako usvojilac ima rođene dece, nasledna prava usvojenika prema usvojiocu mogu se ograničiti ili sasvim isključiti, a ako su bračni drugovi zajednički usvojili, nasledna prava usvojenika mogu se drugačije odrediti prema svakom od njih, sve u skladu sa članom 176 ZBPO RS.

U pogledu *prava i dužnosti kod potpunog usvojenja*, u članu 195 ZBPO RS stoji da se potpunim usvojenjem zasnivaju između usvojioca i njegovih srodnika, s jedne, i usvojenika i njegovih potomaka, s druge strane, odnos srodstva i sva prava i dužnosti koja po zakonu postoje između roditelja i dece i drugih sordnika. Potpunim usvojenjem gase se prava i dužnosti usvojenika prema njegovim roditeljima i drugim srodnicima, kao i prava i dužnosti roditelja i srodnika prema njemu. Usvojilac koji potpuno usvoji dete, ima status identičan statusu prirodnog roditelja

deteta, pa u skladu sa članom 197, st. 2 ZBPO RS može biti ograničen u vršenju roditeljskih prava ili lišen roditeljskih prava prema usvojeniku, pod uslovima i na način predviđen ovim Zakonom kao za roditelje deteta.

Nepotpuno *usvojenje može prestati* raskidom (pod uslovima i u skladu sa čl. 177-180 ZBPO RS) i poništajem (u skladu sa čl. 181-187 ZBPO RS).

Nepotpuno usvojenje može prestati rešenjem organa starateljstva kad on utvrdi da to zahtevaju opravdani interesi maloletnog deteta (član 177, st. 1 ZBPO RS), a krug subjekata koji mogu organu starateljstva podneti inicijativu za prestanak usvojenja izuzetno je širok i terminološki i anahrono određen (član 177, st. 2 ZBPO RS). Nepotpuno usvojenje može prestati i na osnovu zahteva usvojioca ili usvojenika, kada za to postoje opravdani razlozi, kao i na osnovu njihovog sporazuma, a ako je usvojenik postao punoletan organ starateljstva neće ispitivati da li je prestanak usvojenja koristan za usvojenika (član 178 ZBPO RS). Nepotpuno usvojenje prestaje poništajem, presudom suda o poništenju usvojenja, ukoliko prilikom njegovog zasnivanja nije poštovana neka od pretpostavki koje se odnose na adoptivnu sposobnost usvojioca, usvojenika, odnosno na okolnosti koje se tiču usvojioca i usvojenika, ili na pretpostavke koje se odnose na formu usvojenja, pod uslovom da je takav nedostatak predviđen zakonom kao razlog ništavosti (u skladu sa članom 181, st. 1 ZBPO RS). Pravo na podnošenje tužbe za poništaj usvojenja iz uzroka predviđenih navedenom zakonskom normom, u skladu sa stavom 2 istog člana, imaju roditelji, usvojilac, usvojenik i druga lica koja imaju neposredni pravni interes da usvojenje bude poništeno. Ništavo je i usvojenje za čije zasnivanje bračni drug usvojioca nije dao svoj pristanak, a pravo na podizanje tužbe ima samo bračni drug usvojioca, u roku od šest meseci od dana saznanja da je usvojenje zasnovano, a najkasnije u roku od jedne godine od zasnovanog usvojena (član 182 ZBPO RS). Usvojenje će se poništiti i ako je zasnovano bez saglasnosti lica čija je saglasnost bila potrebna za zasnivanje usvojenja, osim ako su ta lica naknadno izjavila pred nadležnim organom da su saglasna sa usvojenjem (član 183 ZBPO RS), kao i ako su lica čija je saglasnost bila potrebna za zasnivanje usvojenja, istu dala u zabludi ili pod prinudom (član 184, st. 1 ZBPO RS). O poništenju usvojenja odlučuje sud na čijem se području nalazi organ starateljstva pred kojim je usvojenje zasnovano (član 185 ZBPO RS).

Potpuno usvojenje se ne može raskinuti, već se samo može poništiti ukoliko pri njegovom zasnivanju nisu bili ispunjeni uslovi navedni u članu 198 ZBPO RS: da dete nije bilo maloletno; da je usvojenje zasnovano bez saglasnosti roditelja usvojenika, odnosno njegovog staraoca; da je dete usvojeno od strane više lica,

osim u slučaju zasnivanja usvojenja od strane supružnika; da je usvojen srodnik u pravoj liniji ili brat ili sestra; da je usvojenik prilikom zasnivanja usvojenja bio stariji od pet godina, osim u slučajevima iz člana 188, st. 3; da dete nisu usvojili supružnici zajedno, osim u slučajevima koji dopuštaju izuzetke, iz člana 191; da je usvojilo lice koje je lišeno roditeljskog prava ili duševno obolelo ili slaboumno lice, kao i ono koje boluje od bolesti koja može dovesti u opasnost zdravlje i život usvojenika; da je zasnovano usvojenje od strane inostranih državljana, bez saglasnosti nadležnog državnog organa uprave. Potpuno usvojenje će se poništiti i pod uslovima iz člana 199 ZBPO RS, koji se odnose na odredbe istog Zakona o poništaju nepotpunog usvojenja, a koji su gore navedeni u odnosu na poništaj nepotpunog usvojenja.

Prema normama ZBPO RS, za zasnivanje usvojenja nadležan je *organ starateljstva*, a prema članu 23 istog Zakona organ starateljstva je centar za socijalni rad, koji vrši poslove zaštite porodice, pomoći porodici i starateljstva. Organ starateljstva u obavljanju navedenih poslova može i rešavati u upravnim stvarima i te poslove obavlja kao poverene poslove.

U pravnom poretku Srbije, dakle, poslove vezane za usvojenje i postupak usvojenja sprovodi *centar za socijalni rad* (CSR) odnosno organ starateljstva. Taj organ nije organ sudske vlasti, a ne može se reći niti da je organ upravne vlasti. To je zapravo javna služba (ustanova) kojoj je država poverila obavljanje poslova sa državnim ovlašćenjima.

CSR je organ koji je prema svim poslovima iz svoje nadležnosti po pravilu multidisciplinaran. U CSR su stručni radnici (socijalni radnici, pedagozi, psiholozi i pravnici) organizovani u stručne timove odnosno ekipe, koje se bave zaštitom odraslih i starih lica, kao i dece i omladine. U okviru timova za zaštitu dece i omladine u CSR postoje ekipe za zaštitu dece bez roditeljskog staranja, unutar kojih se vrše poslovi usvojenja: utvrđivanja uslova za usvojenje na strani deteta, utvrđivanje ovih uslova na strani lica zainteresovanih za usvojenje, utvrđivanje komplemetnarne podobnosti usvojilaca i usvojenika, drugi poslovi od značaja za zasnivanje usvojenja. Po utvrđenim svim relevatnim činjenicama i okolnostima, posle svih izvedenih dokaza u postupku, kao i pošto se utvrdi da je zasnivanje usvojenja najbolji oblik zaštite deteta trajno lišenog roditeljskog staranja i da je u interesu deteta, pred CSR zasniva se usvojenje.

Usvojenje se zasniva pred organom starateljstva prema mestu prebivališta, a ako ovog nema, prema mestu boravišta usvojenika (član 161 ZBPO RS). Lice koje želi

da usvoji dete i roditelji lica koje se usvaja podnose zajednički predlog za usvojenje nadležnom organu starateljstva, a uz predlog podnose izvod iz matične knjige rođenih za usvojioca i usvojenika, kao i druge dokaze o postojanju uslova za usvojenje, sve prema članu 162, st. 2 ZBPO RS. Navedena zakonska odredba odnosi se na otpočinjanje postupka radi zasnivanja nepotpunog usvojenja, koje se može zasnovati i ako dete ima poznata oba roditelja, uz sporazum roditelja deteta i lica koja žele da usvoje dete. Postupak za utvrđivanje postojanja uslova radi zasnivanja potpunog usvojenja otpočinje podnošenjem zajedničkog predloga supružnika zainteresovanih za usvojenje. Kako je usvojenje po pravilu dozvoljeno bračnim drugovima, odnosno kako prema članu 191 ZBPO RS samo oba bračna druga zajedno mogu potpuno usvojiti maloletno dete (kao i bračni drug roditelja deteta koje se usvaja), a samo izuzetno se može usvojiti i lice koje nije u braku ako za to postoje opravdani razlozi – to je potrebno da oba supružnika podnesu zajednički predlog usvojenja.

Organ starateljsta pribavlja po službenoj dužnosti *dokaze o uslovima za usvojenje* koji nisu podneti uz predlog za usvojenje, a može licu koje je podnelo predlog za usvojenje naložiti da ove dokaze naknadno priloži (član 162, st. 3 ZBPO RS). U postupku utvrđivanja postojanja uslova za zasnivanje usvojenja organ starateljstva postupa kako po pravilima upravnog postupka, odnosno po normama Zakona o opštem upravnom postupku, tako i po pravilima stručnog rada i postupka koji se vodi u CSR. Ovo je kombinacija pravnog i vanpravnog postupka, tj. specifičnog postupka multidisciplinarnog stručnog timskog rada u CSR. Kako je to prethodno rečeno, u timu za zaštitu dece bez roditeljskog staranja rade: socijalni radnik, pedagog, psiholog i pravnik, koji svaki sa aspekta svoje struke ispituju postojanje uslova za zasnivanje usvojenja (na strani potencijalnih usvojilaca, prirodnog roditelja deteta, i samog deteta), ispituju da li je usvojenje korisno za usvojenika, odnosno da li je u interesu deteta, kao i posledice zasnivanja usvojenja. Stručni radnici CSR sa strankama u postupku usvojenja rade u ekipi, a mogu raditi pojedinačno i grupno, što znači da će svaki stručni radnik moći da sa svim učesnicima u postupku usvojenja obavi intervju i na drugi odgovarajući način ispita potrebne činjenice i okolnosti, odnosno pitanja, ali će se, kada je to potrebno, stručni radnici i zajedno (grupnim radom) posvetiti razjašnjenju relevantnih pitanja ili obaviti drugu potrebnu radnju u postupku. O preduzetim aktivnostima u postupku stručni radnici vode evidenciju na listu praćenja slučaja, sačinjavanjem službenih beležaka i na drugi odgovarajući način, s tim što svaki stručni radnik svoj rad u pojedinom segmentu postupka finalizira izradom pojedinačnog pismenog nalaza i mišljenja. Prema razrađenoj metodologiji stručnog rada CSR u postupku radi zasnivanja usvojenja, stručni radnici CSR sačinjavaju pismene nalaze i

mišljenja o: roditelju/roditeljima deteta; detetu; licima zainteresovanim za usvojenje u cilju utvrđivanja njihove opšte podobnosti za usvojenje i komplementarne podobnosti ovih lica u odnosu na konkretno dete. Prema članu 164 ZBPO RS, organ starateljstva po službenoj dužnosti pribavlja obrazloženo mišljenje socijalnog radnika, pedagoga, psihologa i lekara o podobnosti usvojioca i usvojenika za zasnivanje usvojenja. Svi stručni radnici donose i timski zaključak, kao vrstu formalne stručne odluke, odnosno stava o predmetu postupka. Timski zaključak nema atribute formalnopravne odluke, već predstavlja jedan od osnova za donošenje formalnopravne odluke po pravilima Zakona o opštem upravnom postupku, a u posupku usvojenja timski zaključci prethode zasnivanju usvojenja. Stručni radnici CSR su do zasnivanja usvojenja dužni da u formi timskog zaključka zauzmu svoje stanovište o: izboru usvojenja kao oblika zaštite deteta trajno lišenog roditeljskog staranja; opštoj podobnosti potencijalnih usvojilaca; davanju deteta na adaptaciju; usvajanju izveštaja o adaptaciji i daljem postupku usvojenja; komplementarnoj podobnosti potencijalnih usvojilaca i deteta; davanju deteta na usvojenje konkrentim usvojiocima.

Organ starateljstva je dužan da u *postupku pripreme usvojenja* detaljno i na odgovarajući način upozna roditelje, lica koja žele da usvoje i budućeg usvojenika sa pravnim, vaspitnim, moralnim i drugim značajnim ciljevima i posledicama zasnivanja usvojenja, a takođe organ starateljstva će budućim usvojiocima ukazati na značaj obaveštenosti usvojenika o pravnoj prirodi njihovog odnosa i pružiće mu u tom smislu odgovarajuću savetodavnu pomoć (član 163 ZBPO RS). Ova norma govori o obavezi organa starateljstva da preduzme potrebne mere radi pružanja potrebnih informacija učesnicima u postupku usvojenja o svim bitnim aspektima i posledicama usvojenja. Pored toga, ista norma ide sa ostvarenjem pravila iz člana 173 ZBPO RS prema kojoj dete ima pravo na saznanja o svom prirodnom poreklu, tj. prema kojoj će se uvid u isprave o zasnovanom usvojenju (koje predstavljaju službenu tajnu) dozvoliti usvojiocu, usvojeniku sa navršenih 16 godina života, a kad nije u pitanju potpuno usvojenje i roditeljima usvojenika. Pored toga, ZBPO RS, u članu 166, predviđa da za vreme postupka prikupljanja obaveštenja i dokaza o uslovima za zasnivanje usvojenja, organ starateljstva neposredno ili preko odgovarajuće stručne službe obezbeđuje neophodnu pripremu za zasnivanje usvojenja, roditelja, usvojenika, usvojioca, kao i lica kod koga se usvojenik nalazi na čuvanju i vaspitavanju.

## Ocena stanja i komentari

Predstavljene norme ZBPO RS obuhvataju čitav niz pitanja koje je zakonodavac smatrao bitnim za razjašnjenje u postupku koji prethodi zasnivanju usvojenja, kao i okolnosti o kojima CSR treba da vodi računa u ovom postupku. Ova pitanja i okolnosti mogu se podeliti tako da se može zaključiti da zasnivanju usvojenja prethode četiri stručna postupka, ili isto toliko segmenata jednog postupka radi primene usvojenja kao odgovarajućeg oblika zaštite deteta trajno lišenog roditeljskog staranja. U okviru ovih postupaka, ili segmenata jednog postupka, treba:

1. **Utvrditi opšte uslove i okolnosti u smislu postojanja zakonskih uslova za zasnivanje usvojenja.** Postojanje ovih uslova i okolnosti treba utvrditi, odnosno njihovim propitivanjem treba učiniti nespornim da u konkretnom slučaju ne stoji niti jedna zakonska prepreka za zasnivanje usvojenja. Ova se pitanja i okolnosti odnose na: dete, potencijalne usvojioce i roditelje usvojenika. Pored ispitivanja zakonskih uslova za zasnivanje usvojenja i utvrđivanja nepostojanja adoptivnih smetnji na strani deteta, organ starateljstva ispituje i da li je usvojenje kao oblik porodičnopravne zaštite u najboljem interesu deteta.
2. **Utvrditi uslove i okolnosti koji se tiču potencijalnih usvojilaca, s ciljem utvrđivanja njihove opšte podobnosti za usvojenje.** Ovo podrazumeva obavezu organa starateljstva da utvrdi relevantne okolnosti koje nepobitno ukazuju na podobnost potencijalnih usvojilaca da se na adekvatan način bave detetom, da se o detetu brinu, da ga čuvaju i vaspitavaju. Takođe, obaveza organa starateljstva je da ispita fizičke, emocionalne, zdravstvene, pedagoške, psihološke karakteristike i kapacitete potencijalnih usvojilaca.
3. **Obezbediti potrebnu pomoć roditelju deteta, pružiti potrebne informacije potencijalnim usvojiocima o usvojenju, kao i obezbediti potencijalnim usvojiocima, roditelju i detetu pripremu za zasnivanje usvojenja.** Organ starateljstva u ovom smislu ima čitav niz obaveza koje treba da idu u susret pravima svih pomenutih, odnosno relevantnih subjekata postupka usvojenja. Obaveze organa starateljstva su kompleksne, zahtevaju visoku stručnost i profesionalnost.
4. **Utvrditi komplementarnu (konkretnu) podobnost u odnosu na potencijalne usvojioce i dete.** Pod komplementarnom podobnošću podrazumeva se psihofizička i druga mogućnost, odnosno potencijali lica zainteresovanih za usvojenje u odnosu na konkretno dete. Tom prilikom ima se utvrditi da li sveukupni roditeljski kapacitet konkretnog potencijalnog usvojilačkog para odgovara potrebama i osobenostima konkretnog deteta.

Radi provere roditeljskih kapaciteta konkretnog usvojilačkog para, kao i s ciljem utvrđivanja da li isti par svojim osobenostima odgovara potrebama deteta, organ starateljstva može, ako je to u interesu usvojenika, odlučiti da dete pre zasnivanja usvojenja provede izvestan period vremena u porodici potencijalnih usvojilaca, s tim što ovaj rok ne može biti duži od godinu dana (član 165 ZBPO RS).

Organ starateljstva će, ukoliko u toku postupka ispitivanja činjenica i okolnosti relevantnih za zasnivanje usvojenja utvrdi da nisu ispunjeni uslovi propisani Zakonom za usvojenje, ili da usvojenje nije korisno za usvojenika – doneti rešenje o odbijanju predloga za usvojenje (član 167, st. 1 ZBPO RS). Protiv ovog rešenja može se, prema stavu 2 navedenog člana ZBPO RS, izjaviti žalba u roku od 30 dana od dana prijema rešenja. Rešenje po žalbi donosi u drugostepenom postupku Ministar za socijalna pitanja Republike Srbije, a protiv drugostepenog (konačnog) rešenja može se, u skladu sa Zakonom o upravnim sporovima, pokrenuti upravni spor tužbom kod Vrhovnog suda Republike Srbije.

Ako nadležni CSR utvrdi da su ispunjeni uslovi za usvojenje, pristupiće zasnivanju usvojenja. Za zasnivanje usvojenja potrebno je prisustvo usvojioca, njegovog bračnog druga, roditelja, odnosno staraoca usvojenika, kao i usvojenika ako je stariji od 10 godina, izuzev ako je do ovog uzrasta bio na nezi, čuvanju i vaspitavanju kod lica koje želi da ga usvoji. Nije potrebno prisustvo bračnog druga usvojioca, kao ni roditelja deteta, pri zasnivanju usvojenja, ako pred CSR nadležnim za zasnivanje usvojenja ili CSR u mestu svog prebivališta izjavi da se saglašava sa usvojenjem i da neće prisustvovati zasnivanju usvojenja. Ova izjava daje se na zapisnik pred ovlašćenim licem CSR, a u njoj mora biti naveden usvojilac i usvojenik (član 168 ZBPO RS).

Usvojenje se prema ZBPO RS zasniva na osnovu sporazuma usvojilaca i roditelja deteta, a ako dete nema roditelje, odnosno ako je dete pod starateljstvom, sporazum se sačinjava između usvojilaca i staraoca deteta. Sporazum se utvrđuje pred organom starateljstva i o tome se sačinjava zapisnik. Član 170, st. 1 ZBPO RS kaže da se o zasnivanju usvojenja vodi poseban zapisnik. O ovome u članu 170, st. 2 i 3, stoji da se u zapisnik o zasnivanju usvojenja unose preduzete radnje, date izjave i (kod nepotpunog usvojenja) sporazum usvojioca i roditelja, odnosno staraoca o ličnom imenu i naslednim pravima usvojenika, kao i proglašavanje usvojenja. Zapisnik potpisuju lica koja su prilikom zasnivanja usvojenja dala izjavu, službeno lice organa starateljstva koje vodi postupak i zapisničar. Prema članu 171 ZBPO RS, posle saglasnih izjava usvojioca, roditelja, odnosno staratelja, o zasnivanju usvojenja, službeno lice organa starateljstva pročitaće zapisnik koji su stranke potpisale i proglasiće da je usvojenje zasnovano.

Za zasnivanje potpunog usvojenja potrebno je prisustvo usvojioca i roditelja deteta, izuzev ako je roditelj dao saglasnost za usvojenje svog deteta, odnosno staraoca deteta (član 192, st. 2 ZBPO RS).

Kod zasnivanja potpunog usvojenja u zapisnik se unosi prezime usvojenika prema prezimenu usvojioca, a ne unose se podaci o roditelju usvojenika koji je dao saglasnost za usvojenje svog deteta bez označenja usvojioca. Ovo je predviđeno članom 193 ZBPO RS, kao i to da se kod potpunog usvojenja u matičnu knjigu rođenih usvojilac upisuje kao roditelj usvojenika.

Dakle, pozitivnopravno rešenje u Srbiji u pogledu forme zasnivanja usvojenja, sadrži ugovornu formu (saglasnost volja među relevatnim stranama u konkretnom odnosu, tj. postupku), u skladu sa čim se u zapisniku pred organom starateljstva utvrđuje postojanje svih uslova za zasnivanje usvojenja i saglasnost volja relevantnih strana, posle čega se zapisnik potpisuje i proglašava da je usvojenje zasnovano. Proglašenje da je usvojenje zasnovano nije konstitutivnog karaktera, njime ne nastaje novi odnos, već ima deklarativni karakter – njime se konstatuje postojanje pravnog odnosa koji je nastao saglasnošću volja strana u postupku, na osnovu svih nesporno utvrđenih činjenica, okolnosti i ispunjenih uslova za zasnivanje usvojenja.

U slučaju zasnivanja nepotpunog usvojenja, zapisnik o zasnivanju usvojenja, CSR dostavlja nadležnom matičaru radi upisa u matičnu knjigu rođenih, a CSR je dužan da vodi evidenciju o usvojenim licima (član 172 ZBPO RS).

Na osnovu zapisnika o zasnovanom potpunom usvojenju CSR donosi rešenje koje sadrži podatke za novi upis rođenja usvojenika, sa podacima o usvojiocima kao roditeljima, radi upisa u matičnu knjigu rođenih. Ovim rešenjem poništava se raniji upis usvojenog lica u matičnu knjigu rođenih (član 194 ZBPO RS).

Prema članu 160 ZBPO RS usvojilac izuzetno može biti i strani državljanin ako za to postoje naročito opravdani razlozi, a za usvojenje deteta od stranog državljanina potrebna je prethodna saglasnost republičkog organa uprave nadležnog za poslove zdravlja i socijalne politike.

Ova norma je u potpunosti u skladu sa članom 21 Konvencije, da se međudržavno usvojenje može smatrati alternativnim načinom brige o detetu, ukoliko se dete ne može smestiti u drugu porodicu, ili biti usvojeno, ili se o detetu ne može na pogodan način voditi briga u zemlji njegovog porekla. Takođe, navedena norma ZBPO RS u skladu je i sa Haškom konvencijom o zaštiti dece i saradnji kod međudržavnog

usvojenja, od 29. maja 1993. godine,[27] iz koje proizilazi da međudržavno usvojenje može pružiti prednost stalne porodice detetu kome odgovarajuća porodica ne može biti nađena u zemlji njegovog porekla. U ZBPO RS je jasno apostrofirana izuzetnost primene međudržavnog usvojenja, što se vidi i kroz propisani uslov da se ono primenjuje pri postojanju prethodne saglasnosti nadležnog državnog organa.

Iz navedenog je jasno da se na inostrano usvojenje mogu davati deca za koju, iz određenih razloga, nije moguće pronaći odgovarajući oblik zaštite u matičnoj zemlji, a nije moguće niti naći usvojioce u slučaju da je usvojenje odgovarajući oblik zaštite te dece.

U Srbiji, sudeći po višegodišnjoj praksi primene instituta međudržavnog usvojenja, kandidati za ovu vrstu usvojenja po pravilu su deca sa posebnim potrebama, odnosno deca koja imaju problema u razvoju. Ovo znači da dete, koje ima posebne potrebe samim tim što je trajno lišeno roditeljskog staranja, ima dodatne specifične potrebe utoliko što u razvojnom smislu odstupa u odnosu na decu istog kalendarskog uzrasta, ili ima trajnu kongenitalnu malformaciju. Deci sa posebnim razvojnim rizicima (sa biološkog, genetskog, ili mentalnog stanovišta), po pravilu nije moguće naći odgovarajuću hraniteljsku porodicu u Srbiji, niti lica zainteresovana za usvojenje, tako da im je često perspektiva odrastanje u ustanovi socijalne zaštite. Među licima zainteresovanim za usvojenje u Srbiji, najčešće su osobe koje nisu spremne da dodatno investiraju u dete sa pomenutim problemima u psihičkom ili fizičkom razvoju, koje bi ga prihvatile kao svoje adoptivno dete. Ove osobe žele zdravo adoptivno dete, što ih ne mora diskvalifikovati u postupku usvojenja, ali svakako nisu odgovarajući kandidati za decu sa smetnjama u razvoju, odnosno decu sa invaliditetom.

Kada se, u skladu sa nekim istraživanjima, ima u vidu da su određene vrste smetnji u razvoju deteta reverzibilne, a posledice nekih se mogu bitno umanjiti obezbeđenjem normalnih uslova za rast i razvoj deteta, ako se to učini na što ranijem uzrastu deteta, onda se pojačava važnost pitanja obezbeđenja ovakvom detetu usvojilačke porodice koja će biti u stanju da mu obezbedi odgovarajuće

[27] Savezna Republika Jugoslavija nije članica ugovornica ove Konvencije.

razvojne mogućnosti. Često je jedini način da detetu bude obezbeđenja podsticajna razvojna sredina, a pri ispunjenosti ostalih zakonskih uslova u pogledu primene usvojenja kao oblika zaštite deteta bez roditeljskog staranja, davanje deteta na usvojenje usvojiocima stranim državljanima.

Prilikom zasnivanja usvojenja od strane stranih državljana, primenjuju se sve odredbe ZBPO RS i sve metode stručnog rada u organu starateljstva kao kada je u pitanju usvojenje od domaćih državljana. Uz određene specifičnosti koje neposredno proizilaze iz ZBPO RS (u pogledu prethodne saglasnosti nadležnog državnog organa), iz Zakona o rešavanju sukoba zakona sa propisima drugih zemalja u određenim odnosima – kolizionog propisa, kao i specifičnostima u pogledu saradnje sa odgovarajućim inostranim organima nadležnim za pribavljanje potrebnih informacija i utvrđivanje određenih činjenica i okolnosti na strani lica zainteresovanih za usvojenje, a ima se učiniti nespornim postojanje ispunjenosti uslova na strani potencijalnih usvojilaca stranih državljanja za zasnivanje usvojenja.

Praksa CSR kao organa nadležnog za zasnivanje usvojenja, zasniva se pre svega, na odredbama ZBPO RS, ali i na pravilima stručnog multidisciplinarnog rada u CSR. Pravila i metode stručnog rada u odnosu na usvojenje, u skladu su sa normama ZBPO RS, ali ove odredbe ih i dopunjuju dajući im sadržaj i životnost koja ide u susret duhu propisa i njihovim ciljevima.

ZBPO RS, propis koncipiran i donet znatno pre usvajanja Konvencije o pravima deteta, stupio je na snagu juna 1980. godine, s tim što kasnije izmene i dopune ovog propisa nisu uticale na koncepcijski drugačija rešenja. I pored toga što hronološki prethodi Konvenciji, može se konstatovati da ZBPO RS, kada je u pitanju usvojenje umnogome sadrži norme koje su u skladu sa principima i standardima Konvencije.

Kako je Konvencija zasnovana na uverenju da su sva ljudska prava, pa i prava deteta, međusobno povezana i uzajamno zavisna, te kako se Konvencija zasniva na: 1) pravu na obezbeđenje opstanka, života i razvoja deteta; 2) pravu deteta na participaciju u svim postupcima i predmetima koji ga se tiču i na poštovanje njegovog mišljenja; 3) principu najboljeg interesa deteta; i 4) principu nediskriminacije.

U pogledu usvojenja, kao i u pogledu drugih mera i postupaka koji se preduzimaju u odnosu na dete, treba imati na umu da Konvencija daje prioritet principu najboljeg interesa deteta. S tim u vezi, analiza zakonskih rešenja u odnosu na usvojenje dovodi do zaključka da je zakonodavac imao u vidu »najbolji interes deteta«,

odnosno »interes deteta« kao vrednost i cilj. Ovo je u ZBPO RS izraženo različitim terminima, odnosno sintagmama, tako da imamo sledeće modalitete, odnosno formulacije, koje su suštinski identične principu »najboljeg interesa deteta« iz Konvencije:

- Odluke o primeni bilo kog od vidova zaštite dece bez roditeljskog staranja donose se na osnovu svestranog razmatranja svakog pojedinačnog slučaja, kao i mogućnosti izbora onog oblika porodičnopravne zaštite deteta koji u najvećoj meri odgovara potrebama deteta (član 149 ZBPO RS);
- Usvojenje je dopušteno ako je korisno za usvojenika (član 152 ZBPO RS);
- Organ starateljstva može, ako je to u interesu usvojenika, odlučiti da budući usvojenik pre zasnivanja usvojenja provede u porodici usvojilaca određeno vreme (član 165 ZBPO RS).

Ovo su eksplicitne zakonske norme, tj. jasni i određeni delovi zakonskih normi, iz kojih se vidi intencija zakonodavca da uspostavi i čuva vrednost interesa deteta kada se prema njemu primenjuje usvojenje kao oblik zaštite. Međutim, čitav deo ZBPO RS koji uređuje usvojenje, nesporno u svom duhu ima princip interesa deteta kao temeljnu postavku i premisu od koje se polazi kada se odlučuje o davanju deteta na usvojenje, kao i cilj kome se teži zasnivanjem usvojenja konkretnog deteta. Ovo se može apodiktično tvrditi kada je u pitanju zakonski nivo organizovanosti usvojenja.

U sferi primenjivanja zakonskih normi o usvojenju, takođe je veoma izražen princip najboljeg interesa deteta, i to (a što je veoma bitno) u pogledu potpunog usvojenja u slučajevima kada je potpuno usvojenje zasnovano. Međutim, ono što se može primetiti u praksi organa starateljstva, a što donekle narušava očuvanje principa najboljeg interesa deteta u odnosu na usvojenje, može proisteći iz:

a) zasnivanja nepotpunog usvojenja,
b) nezasnivanja usvojenja nad decom trajno lišenom roditeljskog staranja, koja se nalaze na smeštaju u ustanovama socijalne zaštite.

Kada se govori o nepotpunom usvojenju u Srbiji, prvo treba navesti da je ovaj oblik usvojenja znatno ređi u odnosu na potpuno usvojenje. Potpuno usvojenje je pravilo, a nepotpuno gotovo izuzetak. No, s obzrom na to da se nepotpuno usvojenje vrlo često zasniva kao tzv. »srodničko usvojenje«, može se dovesti u pitanje njegova konzistentnost s aspekta najboljeg interesa deteta. Srodničko usvojenje ide za tim da kompenzira nedostatak prirodnog potomstva kod konkretnog bračnog para, a

kompenzacija se vrši davanjem na usvojenje deteta bliskih srodnika usvojilaca. Ovde se, naravno, imaju u vidu sve okolnosti slučaja, tj. da organ starateljstva ne odobrava zasnivanje nepotpunog (srodničkog) usvojenja isključivo radi udovoljavanja zahtevima i potrebama usvojilaca, ali je u takvim situacijama nesporno da se ne govori o detetu trajno lišenom roditeljskog staranja kome je usvojenje odgovarajući oblik zaštite. Samim tim što u srodničkom usvojenju vrlo često nema okolnosti lišenosti deteta roditeljskog staranja, dovodi se u pitanje potreba deteta za usvojenjem. Ova kratka nota o nepotpunom (srodničkom) usvojenju je principijelne prirode, a s obzirom na to da se ono u praksi sprovodi retko, ne može joj se dati težina kardinalne primedbe na praksu zasnivanja usvojenja u Srbiji.

U pogledu nezasnivanja usvojenja nad decom trajno lišenom roditeljskog staranja koja se nalaze na smeštaju u ustanovama socijalne zaštite, može se reći da princip najboljeg interesa deteta nije poštovan u svim onim slučajevima u kojima se neopravdano dugo ne razrešava porodični status deteta, odnosno po razrešenom porodičnom statusu deteta ono se ne daje na usvojenje, a istovremeno se ne čini dovoljno da bi se dete razvijalo izvan okruženja institucije. U slučajevima kada je dete trajno lišeno roditeljskog staranja, kada se nalazi u insituciji socijalne zaštite, a ne u hraniteljskoj porodici, te kada nema izgleda da se izvrši reunifikacija deteta u prirodnu porodicu iz bilo kog razloga, usvojenje se načelno pokazuje kao mogući način zaštite deteta. Kada se taj način ne ispita blagovremeno i dovoljno brzo da bi se detetu odabrao najcelishodniji oblik zašitite, odnosno kada se dete ne da na usvojenje na ranom uzrastu, a postoje sve indikacije da je usvojenje najcelishodniji oblik zašitite – onda je po sredi narušavanje principa najboljeg interesa deteta.

U pogledu prava deteta na participaciju, u odnosu na usvojenje, predviđa se da je za usvojenje deteta starijeg od deset godina potrebna i njegova saglasnost (član 156, st. 3 ZBPO RS). Takođe, u slučaju promene ličnog imena deteta, po zasnovanom usvojenju, ako je u pitanju dete starije od deset godina, potrebna je i saglasnost deteta – što proishodi iz odredbe člana 175 ZBPO RS (»Usvojlac određuje lično ime usvojeniku na način i pod uslovima propisanim u ovom Zakonu«) u vezi sa članom 404, st. 5 istog Zakona (»Ako se promena ličnog imena traži za dete starije od deset godina, potreban je i njegov pristanak«).

Pored navedenog, pravo deteta na participaciju u postupku usvojenja, proističe i iz odredbe ZBPO RS (član 163, st. 1) koja govori o pravu usvojenika da bude na odgovarajući način upoznat sa pravnim, moralnim, i drugim značajnim ciljevima i posledicama usvojenja. Zakon ne sadrži neku eksplicitniju odredbu od pravnog

standarda »na odgovarajući način«, na koji će se dete upoznati sa prirodom, ciljevima i posledicama usvojenja, što ide za tim da će se za ostvarenjem ovog prava deteta ići u skladu sa razvojnim sposobnostima deteta i njegovim mogućnostima da shvati značaj usvojenja i postupka koji se na njega odnosi.

U pogledu nediskriminacije deteta, s obzirom na usvojenje, valja spomenuti položaj dece sa smetnjama u razvoju, kao i dece pripadnika etničkih manjinskih grupa. ZBPO RS ne sadrži diskriminacijske odredbe, u odnosu na bilo koju društvenu grupu kojoj dete može pripadati.

Sam položaj deteta sa smetnjama u psihofizičkom razvoju, utiče na njegove male šanse da bude usvojeno od strane domaćih državljana, te se, kako je to već obrazloženo, ovo dete najčešće usvaja od stranih državljana, što ga na izvestan način čini u praksi diskriminisanim samim tim što su mu šanse smanjene da kroz usvojenje ostane u državi porekla.

Decu manjinskih etničkih grupa, pa i romsku decu, usvajaju, pre svega, osobe iste etničke pripadnosti, što je u skladu sa pravom deteta na očuvanje etničkog identiteta.

Razvijen multidisciplinarni rad u CSR ima značajne vrednosti i kada se ceni u odnosu na usvojenje. CSR svojom organizacijom rada, profilima stručnih radnika, njihovom profesionalnošću, metodologijom rada, primenom zakonskih normi i pravila stručnog rada – znatno utiče na ostvarenje principa najboljeg interesa deteta. Sistem zaštite dece bez roditeljskog staranja, sa usvojenjem u fokusu, sadrži pozitive karakteristike, koje su derogirane izvesnim nedostacima prakse, koji proističu delom iz neodgovarajuće legislative, a delom iz insuficijentnosti organizacije sistema zaštite i nedostataka prakse.

Nedostaci prakse brige o deci bez roditeljskog staranja u vezi sa usvojenjem, mogu se označiti kroz sledeće primedbe:[28]

[28] Pokazatelji nedostataka prakse u pogledu usvojenja, delom su preuzeti iz Izveštaja o radu Ministarstva za brigu o porodici Republike Srbije, za 2000. godinu kao i Obrazloženja modela zakonskih normi o zaštiti dece bez roditeljskog staranja, sačinjenim od strane ekspertskog tima Ministarstva za rad i socijala pitanja Republike Srbije i NVO *Save the Children UK – Belgrade Office*.

- CSR u velikom broju slučajeva kasne sa utvrđivanjem porodičnopravnog statusa deteta kao bitne pretpostavke za blagovremenu primenu usvojenja;
- Ustanove za zbrinjavanje dece bez roditeljskog staranja, u nekim slučajevima, prolongiraju dostavljanje izveštaja o zdravstvenom i razvojnom statusu smeštenog deteta, što odlaže primenu usvojenja;
- U postupku koji prethodi donošenju odluke o primeni usvojenja, CSR ne primenjuje uvek sve raspoložive mere zaštite prirodnog roditelja sa ciljem očuvanja roditeljske funkcije;
- CSR nedovoljno koristi svoja zakonska ovlašćenja za pokretanje postupka kod nadležnog suda za lišenje roditeljskog prava roditelja koji zloupotrebljava vršenje roditeljskog prava ili zanemaruje vršenje roditeljske dužnosti, a ovaj propust utiče na nemogućnost primene usvojenja kada sve okolnosti upućuju da je u pitanju dete trajno lišeno roditeljskog staranja prema kojem bi se moglo primeniti usvojenje kao odgovarajući oblik zaštite;
- U izjavama o saglasnosti roditelja za usvojenje često izostaje na koji oblik usvojenja se ova saglasnost odnosi (nepotpuno ili potpuno usvojenje);
- Prethodno dostignuti standardi stručnog rada u porodičnopravnoj socijalnoj zaštiti dece bez roditeljskog staranja, stagnirali su ili opali;
- U pristupu stručnih radnika CSR pretežan je administrativni u odnosu na profesionalni i stručni aspekt;
- CSR su ustanove preopterećene različitim poslovima, usled čega nemaju dovoljno mogućnosti za razvoj i unapređenje usluga u okviru zaštite dece bez roditeljskog staranja (pa i u okviru usvojenja);
- U praksi CSR nema dovoljno izražene (ili nema nikakve) pripreme potencijalnih usvojilaca za usvojenje, a njihovo informisanje o prirodi usvojenja i posledicama istog, svedeno je na formalno i površno – bez osmišljenih i celishodnih programa;
- U praksi CSR po pravilu nema pružanja usluga podrške porodicama posle zasnovanog usvojenja (socijalno-psihološke, savetodavne, medicinske, pravne i dr.);
- Nema ustanovljenih nadzornih mehanizama za praćenje deteta po zasnovanom usvojenju.

Prema ZBPO RS, organ starateljstva je dužan da vodi evidenciju o zasnovanim usvojenjima. CSR u svojim godišnjim izveštajima obaveštava resorno ministarstvo (trenutno je to Ministarstvo za rad i socijalna pitanja Republike Srbije, u skladu sa Zakonom o ministarstvima Republike Srbije), između ostalog i o broju zasnovanih usvojenja i drugim indikatorima u vezi sa usvojenjem.

S obzirom na to, Ministarstvo raspolaže određenim podacima o zasnovanim usvojenjima u Srbiji, prema čemu se mogu izvlačiti zaključci o prirodi ovog zakonskog instituta primenjenog u praksi.

Prema podacima dobijenim na osnovu godišnjih izveštaja o radu CSR za 1998. i 1999. godinu, među ostalim oblicima zaštite dece bez roditeljskog staranja nalaze se i pokazatelji o usvojenju:[29]

1. Broj zasnovanih usvojenja: u 1998. godini je 270; u 1999. godini je 262. Napomena: U odnosu na ostale oblike zaštite dece bez roditeljskog staranja (smeštaj u ustanovu socijalne zaštite, smeštaj u hraniteljsku porodicu, ostalo) usvojenje je 1998. godine učestvovalo sa 2,94%, a 1999. godine sa 2,84%.

2. Starost usvojene dece:

| | |
|---|---|
| Deca do 1 godine | 1998. godine - 22; 1999. godine - 29; |
| Deca od 1 do 2 godine | 1998. godine - 17; 1999. godine - 25; |
| Deca od 2 do 3 godine | 1998. godine - 8; 1999. godine - 13; |
| Deca od 3 do 4 godine | 1998. godine - 2; 1999. godine - 10; |
| Deca od 4 do 5 godina | 1998. godine - 0; 1999. godine - 3; |
| Deca preko 5 godina | 1998. godine - 2; 1999. godine - 22. |

Napomena: U 1998. godini Ministarstvu je dat na uvid 51 predmet usvojenja, što čini 18,89% zasnovanih usvojenja te godine, dok je 1999. godine dostavljeno 102 predmeta, što čini 38,93% od ukupnog broja zasnovanih usvojenja iste godine. Predstavljanje usvojenja po starosnoj strukturi, kao i po polnoj, po oblicima usvojenja, porodičnom statusu dece, kao i analiza drugih podataka o usvojenju u ove dve godine (što sledi dalje u ovom tekstu) biće moguća samo na osnovu ovog broja predmeta (51 i 102).

Najveći broj usvojene dece je pri ulasku u usvojilačku porodicu bio na najnižem kalendarskom uzrastu. Sa povećanjem uzrasta opada i broj usvojene dece.

3. Pol usvojene dece:

| | |
|---|---|
| Dečaci | 1998. godine - 24; 1999. godine - 49; |
| Devojčice | 1998. godine - 27; 1999. godine - 53. |

[29] Podaci su, kao i komentari istih, preuzeti iz Analize o usvojenju, Ministarstva za brigu o porodici Republike Srbije.

I u 1998. i 1999. godini prisutna je tendencija da se nešto više usvajaju deca ženskog pola. Prema navodu u Analizi iz koje su ovi podaci preuzeti, primetno je da se ženska deca usvajaju više u gradu, a muška na selu, s tim što je ovoj drugoj pojavi uzrok verovatno tradicionalno-patrijarhalno shvatanje o supremaciji muškog pola, zbog želje za produženjem porodične loze (prezimena usvojilaca), zbog nasleđivanja imovine, rada na imanju, ostajanja na zemlji i sl.

4. Oblici zasnovanih usvojenja:
   Potpuno 1998. godine - 46; 1999. godine - 86;
   Nepotpuno 1998. godine - 5; 1999. godine - 16.
   Najveći broj usvojenja je sa potpunim dejstvom. Najveći broj usvojilaca želi da usvojenjem uspostavi potpun i trajan roditeljski odnos sa usvojenim detetom, pa je stoga razumljivo da se u najvećem broju slučajeva, po ispunjenju zakonskih uslova, pristupa zasnivanju potpunog usvojenja.

5. Porodični status usvojene dece:
   Vanbračna 1998. godine - 46; 1999. godine - 86;
   Vanbrač. utvrđ. očinstva 1998. godine - 3; 1999. godine - 5;
   Bračno 1998. godine - 0; 1999. godine - 10;
   Nahoče 1998. godine - 2; 1999. godine - 1.
   Najveći broj usvojene dece je vanbračnog porekla, stoga što vanbračna deca često nisu željena niti planirana od svojh roditelja. Vanbračna deca su gotovo po pravilu kandidati za potpuno usvojenje. Kao motivi za davanje dece na usvojenje bliskim ili daljim rođacima, sreću se: solidarnost i želja da se srodnicima koji ne mogu da imaju decu ispuni želja za detetom; želja prirodnih roditelja da se detetu omoguće bolji uslovi za razvoj, vaspitanje i školovanje; želja deteta da dete nasledi imovinu usvojilaca, porodičnu penziju i sl.

Prema podacima Ministarstva za rad i socijalna pitanja, u periodu 1995-1999. godine broj zasnovanih domaćih i međudržavnih usvojena (gde su usvojioci strani državljani), jeste sledeći:

| Godina | Domaće | Inostrano |
|---|---|---|
| 1995. | 337 | 18 |
| 1996. | 334 | 16 |
| 1997. | 289 | 22 |
| 1998. | 270 | 6 |
| 1999. | 262 | 1 |

Iz navedenih podataka se vidi da je broj zasnovanih usvojenja u stalnom padu, kako domaćih tako i sa inostranim elementom. Tokom 1998, 1999. i 2000. godine Ministarstvo za brigu o porodici je imalo izuzetno restriktivnu politiku za primenu međudržavnog usvojenja, tako da je taj vid usvojenja u praksi bio ukinut. Obustava ovog vida usvojenja uticala je na povećanje broja i produženje boravka u ustanovama one dece bez roditelja, kojoj zbog nasleđenih opterećenja, invaliditeta, usporenog razvoja ili etničke pripadnosti, nije bilo moguće pronaći hraniteljsku ili usvojilačku porodicu u nacionalnim okvirima.

Prema podacima objavljenim od strane Savezog zavoda za statistiku,[30] u Srbiji bez Kosova i Metohije zasnovano je:

1998. godine - 222 usvojenja;
1999. godine - 231 usvojenje.

Podaci o usvojenju kao obliku zaštite dece bez roditeljskog staranja, ne mogu se smatrati dovoljno obuhvatnim i konzistentnim. U zvaničnom statističkom biltenu stoje podaci o broju zasnovanih usvojenja, bez drugih brojnih potrebnih indikatora, dok su podaci resornog ministarstva sadržajniji, sa većim brojem indikatora, međutim indikatori postoje za veoma mali broj slučajeva (u odnosu na ukupan broj zasnovanih usvojenja u predmetnom periodu), pa se ne mogu korisititi za obuhvatnu analizu karakteristika pojave i trendova.

Pored ovoga, nedostaju brojni indikatori koji bi bili od koristi za stručna praćenja i analize, što bi bilo od uticaja na kreiranje zakonodavne i politike unapređenja usvojenja u svim segmentima njegove kompleksnosti.

S obzirom na prirodu usvojenja kao oblika porodičnopravne zaštite dece lišene roditeljskog staranja, bilo bi neophodno postojanje podataka o određenom broju indikatora s ciljem praćenja kretanja i napretka u sprovođenju odredaba člana 21 Konvencije, kao npr:

- broj dece sa smetnjama u psihofizičkom razuvoju (po polu, s obzirom na vrstu usvojenja /potpuno, nepotpuno/ i domaće i međudržavno);

[30] Statistički bilten broj 2244, "Socijalna zaštita korisnici, oblici, mere i usluge u 1998", Beograd, 2000; i Statistički bilten broj 2293, "Socijalna zaštita korisnici, oblici, mere i usluge u 1999", Beograd, 2001.

- broj usvojene dece pripadnika nacionalnih manjina;
- broj dece upućene na adaptaciju, pre zasnovanog usvojenja;
- broj prestanaka nepotpunog usvojenja (raskidom i poništajem);
- broj prestanaka potpunog usvojenja (poništajem);
- podaci o upoznavanju usvojenika sa spisima predmeta o zasnovanom usvojenju;
- podaci i mehanizmi pomoći potencijalnim usvojiocima pre zasnivanja usvojenja;
- podaci o mehanizmima organa starateljstva za praćenje razvoja usvojenika u usvojilačkim porodicama, odnosno podaci o podršci usvojilačkim porodicima po zasnovanom usvojenju;
- broj usvojilačkih porodica iz grada i sela;
- broj usvojene dece od strane pojedinca;
- podaci o pruženoj pomoći roditelju deteta pre davanja deteta na usvojenje;
- podaci da li je dete bilo pod starateljstvom pre zasnivanja usvojenja;
- podaci o valjanosti izjave roditelja deteta o saglasnosti za usvojenje;
- broj dece maloletnih roditelja date na usvojenje.

# ZAŠTITA DECE OD ZLOSTAVLJANJA I ZANEMARIVANJA

## *Član 19. Konvencije o pravima deteta*

***1. Države ugovornice će preduzeti odgovarajuće zakonske, administrativne, socijalne i obrazovne mere za zaštitu deteta od svih oblika fizičkog ili mentalnog nasilja, povređivanja ili zlostavljanja, zapostavljanja ili nemarnog postupanja, maltretiranja ili eksploatacije, uključujući seksualno zlostavljanje, dok je pod brigom roditelja, zakonskih zastupnika ili bilo koje druge osobe koja se brine o detetu.***
***2. Takve zaštitne mere, treba, prema potrebi, da uključuju efikasne postupke za donošenje socijalnih programa za obezbeđivanje neophodne podrške detetu i onima koji se o detetu staraju, kao i drugih oblika zaštite i sprečavanja, utvrđivanja, prijavljivanja, prosleđivanja, istrage, postupanja i praćenja slučajeva ovde navedenog zlostavljanja deteta i, po potrebi, obraćanja sudu.***

## Propisi u SRJ i Republici Srbiji

Porodičnopravni propisi SR Jugoslavije predviđaju obavezu organa pravosuđa, drugih organizacija (npr. vaspitnih i obrazovnih) i svakog građanina da obaveste organ starateljstva čim saznaju da roditelj nije u mogućnosti da vrši roditeljsko pravo ili da je detetu iz drugih razloga potrebna zaštita (član 133 ZBPO RS). Ako utvrdi da postoji ozbiljna opasnost za pravilno podizanje deteta, organ starateljstva može dete oduzeti od roditelja i poveriti ga drugom licu ili organizaciji na čuvanje i vaspitavanje (član 136 ZBPO RS). Takođe, sud može roditelja koji zloupotrebljava vršenje roditeljskog prava ili grubo zanemaruje vršenje roditeljskih dužnosti, lišiti roditeljskog prava (član 139 ZBPO RS).

Postojeće krivično zakonodavstvo predviđa mere za zaštitu dece od fizičkog i mentalnog nasilja, povreda ili zloupotrebe, zanemarivanja ili nemarnog odnosa,

maltretiranja ili eksploatacije, uključujući i seksualnu zloupotrebu. Najpre, predviđena su dela kojima je sankcionisano nasilje prema bilo kojem licu (npr. teška i laka telesna povreda - čl. 53 i 54 KZ RS). U grupi krivičnih dela protiv dostojanstva ličnosti i morala predviđeni su kvalifikovani oblici dela silovanja (ako je učinjeno prema maloletnom ženskom licu), kao i prinude na obljubu i protivprirodan blud, obljube ili protivprirodnog bluda nad nemoćnim licem, bludnih radnji, protivprirodnog bluda i podvođenja i omogućavanja vršenja bluda (ako su učinjeni prema detetu koje je napunilo 14 godina) (čl. 103 - 105, 108 - 111 KZ RS). Zasebno krivično delo je delo obljube i protivprirodnog bluda sa detetom mlađim od 14 godina (član 106 KZ RS). Kao izvršilac svih nabrojanih dela može se pojaviti bilo koje lice. Osim toga, zakon predviđa delo obljube i protivprirodnog bluda zloupotrebom položaja, gde se u kvalifikovanom obliku kao izvršilac pojavljuje nastavnik, vaspitač, staralac, usvojilac, očuh ili drugo lice koje zloupotrebom svoga položaja izvrši obljubu ili protivprirodni blud sa detetom starijim od 14 godina (član 107 KZ RS). U grupi krivičnih dela protiv braka i porodice predviđeno je i kažnjavanje zapuštanja i zlostavljanja maloletnog lica, čiji izvršilac može biti roditelj, usvojilac, staralac ili drugo lice koje se o detetu stara (član 118 KZ RS).

Kada je reč *o ostvarivanju zaštite kroz otkrivanje i prijavljivanje krivičnih dela, vođenje sudskog postupka i kažnjavanje učinilaca*, ono je regulisano Zakonom o krivičnom postupku. Dete – oštećeni koje je napunilo 16 godina ovlašćeno je da samo daje izjave i preduzima radnje u postupku (član 65, st. 2 ZKP SRJ). Ovaj Zakon takođe predviđa obavezu posebno pažljivog postupanja prilikom saslušavanja deteta koje je oštećeno krivičnim delom da se ne bi štetno uticalo na njegovo psihičko stanje. Ako je to potrebno, saslušanje će se obaviti uz pomoć pedagoga ili drugog stručnog lica (član 102 (4) ZKP SRJ ).

Podneti su *predlozi za izmenu i dopunu zakona*, odnosno potpuno novi zakoni u oblasti zaštite dece i porodice od nasilja, zloupotrebe i iskorišćavanja: Zakon protiv seksualne eksploatacije dece, Zakon protiv seksualnog uznemiravanja, novi Zakon o porodici i porodičnim odnosima, Krivični zakon (deo o zlostavljanju i zanemarivanju dece i nasilju u porodici), izmene zakona upravnog postupka kada su osumnjičeni počinioci maloletni i drugi zakoni. Procedura usvajanja zakona je veoma spora i otežana, ali će novi zakoni biti veoma korisni u radu sudova u okviru mreže institucija i organizacija za zaštitu dece od zloupotrebe i nasilja.

Obimne i dugotrajne aktivnosti na zastupanju ovih zakona, kao i okupljanje kritičnog broja stručnjaka koji su uneli savremene progresivne elemente okupio je i vodio (Jugoslovenski) Centar za prava deteta.

## Ocena stanja i komentari

U postojećem sistemu, zaštita dece se uklapa u postojeći sistem za brigu o deci koji se razvija kao jedan od prioriteta društva u periodu posle II svetskog rata. Značajna sredstva država je izdvajala za unapređenje mreže socijalnih, zdravstvenih, obrazovnih službi i institucija za decu. Zlostavljanje i zanemarivanje, uopšte zloupotreba dece, posebno seksualna zloupotreba i eksploatacija nisu prepoznavane kao pojave od strane stručnjaka, čak su i negirane od zvaničnih institucija u veoma dugom periodu.

Prolaskom društva kroz ozbiljnu krizu i ratna dešavanja sa svim svojim posledicama u periodu 1991-1999. godine, nasilje je došlo u centar pažnje i domaće i međunarodne javnosti. Ovaj period transformacije društva i institucija obeležen je i širenjem aktivnosti nevladinog sektora u kojem su primenjivani brojni svetski standardi u teorijskim postavkama i naročito u praktičnim aktivnostima i intervencijama. Posebno je značajno jačanje ženskog pokreta i organizacija.

U sistemu dečje socijalne zaštite središnje mesto imaju centri za socijalnu zaštitu kao zakonski ovlašćeni organ starateljstva, koji donosi odluke i vrši mere i intervencije sa napuštenom decom bez roditeljskog staranja, zanemarenom, ometenom u razvoju, sa poremećenim, delinkventnim ponašanjem, kada su u preadolescentnom i adolescentnom uzrastu, kod disfunkcionalnih porodica sa konfliktom, u razvodu i posle razvoda. Centar u tom smislu raspolaže veoma širokim ovlašćenjima: izdvajanje dece iz porodice, postavljanje nadzora i starateljstva, smeštaj u dečje ustanove i hraniteljske porodice, ograničenje ili ukidanje roditeljskih prava i drugo.

U periodu od 1991 - 1999. godine, veliki broj stručnjaka je bio suočen sa masovnim stradanjem stanovništva, dece i njihovih porodica i sa posledicama rata, izbeglištva, prinudne migracije, dugotrajnog hroničnog lišavanja i neposrednog nasilja i zloupotrebe dece na prostorima prethodne Jugoslavije. U različitim programima psihosocijalne pomoći uz podršku UNICEF-a, oko 14.000 stručnjaka svih profila koji se bave decom je dobilo najraznovrsnije praktično obrazovanje i postali su senzibilisani da prepoznaju posledice nasilja, zloupotrebe i lišavanja kod dece.

Tako su od 1997. godine započele sve brojnije i organizovanije edukacije za stručnjake radi ranog otkrivanja, intervencije zaštite i prevencije kod zlostavljane i zanemarene dece. Dodatnim obrazovanjem stečena su, ne samo nova znanja i veštine, već su menjani stavovi i pristup deci, ojačavana je motivacija i entuzijazam

za zaštitu dece i postavljani su zajednički ciljevi u radu. Tako je počelo stvaranje svojevrsnog pokreta za zaštitu dece od zloupotrebe, kroz razvoj mreže službi, organizacija, institucija i pojedinaca. Postignuto je povećanje svesnosti, veća senzibilnost za postojanje nasilja i zloupotrebe dece u našoj sredini, što je povećalo i potrebu za akcijom na nivou društva.

Nevladine organizacije za pomoć ženama i deci žrtvama nasilja u porodici, svojim angažovanjem i neposredno intervencijama podrške žrtvama i akcijama na zastupanju ideje da postoji nasilje u porodici i da ga društvo mora sprečavati su otvorile širok front. U tom frontu ubrzo su se našle i brojne službe i institucije tzv. vladinog sektora koje su bile suočene sa posledicama nasilja nad decom, kako u porodici, tako i izvan porodice.

Kao nadležni organi starateljstva centri za socijalni rad su mesta prijavljivanja slučajeva, inicijalne procene i planiranja i oni vrše intervencije zaštite u saradnji s drugim relevantnim službama, institucijama i organizacijama (sudom, policijom, obrazovnim institucijama i zdravstvenim službama), a sve više i češće u saradnji sa NVO sektorom: SOS telefoni i savetovališta protiv nasilja u porodici, skloništa za žene, devojke, centri za pravnu, materijalnu i drugu pomoć žrtvama nasilja u porodici i van porodice. Centar organizuje i konferencije slučaja na kojima se koordinira i planira intervencija i ima funkciju menadžera, voditelja slučaja kada su u pitanju slučajevi visokog rizika. U Republici Srbiji radi 120 centara za socijalni rad sa veoma značajnom koncentracijom visoko obrazovanih stručnjaka koji raspolažu bogatim iskustvima iz oblasti brige za decu, organizovanih u timove za rad sa decom i porodicama.

Tokom 1999 - 2001. godine, sva odeljenja Gradskog centra za socijalni rad Beograd su prošla intenzivan sistematski trening za vođenje slučajeva i intervencije u zaštiti dece, uz podršku UNICEF. U istom periodu od 1999-2002. godine, 6 gradskih centara u Srbiji je prošlo kroz edukaciju multiprofesionalnih timova za zaštitu dece od nasilja (u organizaciji NVO "Sačuvajmo decu"), kao i četiri opštinska centra u Beogradu (u organizaciji Centra za prava deteta). Tako su formirana jezgra i sedišta multiprofesionalnih lokalnih timova za zaštitu dece, kojima su priključivani predstavnici lokalnih službi i organizacija, koji učestvuju u radu na slučajevima.

Dopunsko, sistematsko obrazovanje kako stručnjaka socijalne službe, tako i u drugim oblastima: primarna zdravstvena zaštita (pedijatri školskih i predškolskih dispanzera, patronažne sestre, pedijatrijske sestre i drugi zdravstveni radnici i saradnici); predškolske ustanove (medicinske sestre, pedagozi, psiholozi,

vaspitačice i drugi), stručnjaci i ekipe iz ustanova za smeštaj dece bez roditeljskog staranja; sudstvo i policija, podigli su senzibilisanost i kompetenciju, tako da se pojavi mnogo više prepoznatih i tretiranih slučajeva zlostavljanja i zanemarivanja dece, nego u ranijem periodu.

Ukupan broj dece koje socijalna služba vodi zbog poremećene porodične situacije ili/i neadekvatne roditeljske brige i nege se procenjuje na oko 90.000 u Srbiji. Samo u Beogradu je registrovano 4000 dece iz porodice u razvodu ili razvedene, bez adekvatne brige za decu. U 2/3 slučajeva kod ove dece se dijagnostikuje jedan ili više oblika ozbiljnog emocionalnog i fizičkog zlostavljanja i/ili zanemarivanja.

Deca u sukobu sa zakonom, sa teškim poremećajima ponašanja su u značajnom broju pod zaštitom CSR (17 - 20 000), mnogi od njih sa ličnom istorijom ozbiljnog zanemarivanja i zlostavljanja. Prilikom smeštaja u odgovarajuće vaspitne ustanove oni unose sindrom zlostavlja ("žrtve ili zlostavljanog zlostavljača") u tu novu sredinu gde borave i druga vulnerabilna deca i adolescenti. Ova kategorija dece nosi vrlo visok rizik za dalju transmisiju zlostavljanja.

Bez roditeljskog staranja i brige je bilo 9000 dece: 45% napuštene i 27% čiji roditelji nisu bili u stanju da se o njima staraju.[31] Posebno su pod rizikom deca čiji roditelji imaju problem zloupotrebe psihoaktivnih supstanci, nelečene ozbiljne psihijatrijske poremećaje ili su vršili krivična dela i bili recidivisti u zatvoru. Među njima su najugroženija najmlađa deca (0-3 godine starosti).

Deca sa smetnjama u razvoju takođe su u velikom broju korisnici usluga CSR: 6000 dece sa smetnjama u razvoju i 4000 dece sa fizičkim hendikepom - ukupno oko 10 000 dece sa ometenim razvojem. Rizik za zanemarivanje i zlostavljanje ove dece je tri puta veći nego za zdravu decu, i to kako u porodici, tako i van porodičnog okruženja.

U Srbiji postoji veliki broj izbeglica i raseljenih lica iz svih krajeva bivše SFRJ i sa Kosova (oko 10% cele populacije Srbije). Deca iz ovih porodica su veoma brojna (160 000), a posebno su brojna deca sa Kosova (82 000). Ova deca su prolaskom kroz ratna stradanja, gubitke i egzodus prinudnog iseljavanja stekla rizike za zanemarivanje i zlostavljanje. Najvulnerabilnija među njima su deca koja borave u kolektivnim centrima za izbeglice (40 000, od kojih je 9200 bez roditelja).

[31] Podaci Ministarstva za socijalnu zaštitu Republike Srbije

Ministarstvo za socijalnu zaštitu je u svojim aktivnostima, posebno tokom specifičnih konferencija održanih u 2002. godini dalo značajno mesto zaštiti dece od zlostavljanja i zanemarivanja. Ministarstvo je formiralo ekspertsku grupu kao stručno telo za koordinaciju sa drugim resornim ministarstvima koja imaju u svom domenu brigu o deci.

Prema raspoloživim podacima, u Srbiji je oko 4500 dece smešteno u dečje institucije. Reč je o deci sa mentalnim ili/i fizičkim smetnjama (deca sa posebnim potrebama), sa ozbiljno poremećenim ponašanjem i napuštena deca. Sva ova deca su bila u povećanom riziku za zlostavljanje i zanemarivanje pre ulaska u instituciju.

Aktuelno započeta transformacija dečjih ustanova sa tendencijom smanjivanja kapaciteta i preusmeravanja dece u različite oblike hraniteljskih porodica i druge alternativne programe predstavlja veliki izazov i period transformacije nosi dodatne rizike zanemarivanja najboljeg interesa, dobrobiti ove dece.

Primarna zdravstvena zaštita, posebno predškolski i školski dispanzeri, pokazali su se izuzetno važnim mestima za rano otkrivanje i iniciranje intervencija sa zlostavljanom decom. Problemi se javljaju u koordinaciji sa drugim službama, posebno službom socijalne zaštite, naročito u mestima gde CSR nije prošao edukaciju iz zaštite i zlostavljanja dece i gde ne postoje lokalni multiprofesionalni timovi.

Posebno važnu ulogu u prepoznavanju zloupotrebe dece u porodici dobile su patronažne sestre koje vrše kućne posete i imaju pristupa porodici i deci najmanjeg uzrasta (novorođenčad i dojenčad). U Beogradu je u Gradskom zavodu za zdravstvenu zaštitu formirana teleapel služba "Telefonom do saveta", koja radi 24 časa prateći sve porodilje i novorođenu decu. U praksi ova služba telefonskim savetovanjem pokriva čitavo područje Srbije i kroz mrežu saradnika i ustanova pruža pomoć radi efikasne intervencije i u slučajevima zlostavljanja male dece.

(Jugoslovenski) Centar za prava deteta je, u okviru svog seminara "Prava deteta i zdravlje", značajan prostor dao obuci lekara i medicinskih sestara iz primarne zdravstvene zaštite u svim regionima Srbije, baš u oblasti zaštite prava deteta i zaštite od zlostavljanja i zanemarivanja dece.

Na planu specijalizovane zdravstvene zaštite posebno se razvija aktivnost interdisciplinarnih timova pri ustanovama sa velikim brojem pregleda za decu.

Interdisciplinarni tim ZoZZ u Institutu za mentalno zdravlje u Beogradu, koji radi

od 1997/1998. godine, postao je klinički Odsek za zaštitu dece od zlostavljanja i zanemarivanja. Aktuelno u okviru Odseka ZoZZ počinje sa radom Centar za podršku deci i porodici "U najboljem interesu deteta".

Ekipa Klinike za dečju neurologiju i psihijatriju u Pasterovoj ulici vrši dijagnostiku i tretman dece koja su zlostavljana i zanemarena u saradnji sa CSR i u okviru "Mreže poverenja" u saradnji sa Incest-trauma centrom.

Interdisciplinarni tim za rad sa zlostavljanom decom Instituta za majku i dete je unapredio svoje funkcionisanje i povećao broj intervencija u saradnji sa lokalnim centrima za socijalni rad i timovima.

Dečja klinika Univerzitetskog kliničkog centra u Tiršovoj aktivirala je svoj interdisciplinarni tim usled velikog broja dece koja dolaze na preglede i intervencije zbog posledica zlostavljanja i zanemarivanja.

Institut za sudsku medicinu sa svojom ekipom vodi Registar smrtnih slučajeva dece usled zlostavljanja i zanemarivanja.

Predstoji usaglašavanje metodologija i formiranje jedinstvenog medicinskog protokola za somatsku i psihosocijalnu procenu svakog slučaja, radi dijagnostike, terapijske intervencije i praćenja deteta i porodice, kao i radi koordiniranog i istovremenog aktiviranja intervencije zaštite sa CSR i dečjim institucijama. To će omogućiti i proširivanje terapijskih mogućnosti i šire uključivanje drugih organizacija i institucija u rehabilitaciju i reintegraciju dece i porodica.

(Jugoslovenski) Centar za prava deteta bio je baza brojnih aktivnosti i programa u domenu zastupanja, unapređenja zakonodavstva u oblasti zaštite dece i dečjih prava, kao i nosilac značajnih projekata u transformaciji sistema za zaštitu maloletnih delinkvenata, ustanova socijalne zaštite, sudstva i drugih. U svojoj izdavačkoj delatnosti, pored brojnih naslova JCPD je izdao i metodološki Priručnik o zaštiti dece od zlostavljanja koji je u najširoj upotrebi kako u centrima za socijalni rad, tako i u najširoj stručnoj javnosti.

Organizacija "Sačuvajmo decu" je nastavila aktivnosti na unapređenju rada multiprofesionalnih timova u lokalnoj zajednici u gradovima Srbije, čiji se broj povećao na 8. Održano je više regionalnih seminara za multiprofesionalne timove iz 6 gradova.

U okviru "Mreže poverenja" su okupljene najaktivnije nevladine organizacije, posebno iz pokreta za ženska prava i to zajedno sa jednim brojem predstavnika i stručnjaka iz službi i institucija zdravstva, policije i uz saradnju socijalnih službi, CSR. Ova uzajamna saradnja koja je označila veliki napredak u odnosu na funkcionisanje u prethodnoj deceniji, omogućila je i efikasnije korišćenje resursa (skloništa za žene sa decom, SOS telefoni i drugo).

Porastao je broj slučajeva najtežih oblika seksualnog i fizičkog zlostavljanja čiji su počinioci dospeli na sud i intenzivirano je procesuiranje najtežih slučajeva. I dalje ostaje problem predugog vremenskog perioda kada su potrebne hitne intervencije zaštite, posebno za jako malu decu sa visokim rizikom za opasne forme fizičkog zlostavljanja.

Policija se 2002. godine mnogo više i aktivnije uključila u aktivnosti sprečavanja, obrazovanja i u intervencije na slučajevima. Zahvaljujući zajedničkoj edukaciji multiprofesionalnih timova, pripadnici policije su mogli da usvoje znanja i veštine koji su bazični i zajednički sa drugim stručnjacima iz drugih oblasti. Takođe, kroz zajednički rad u edukaciji započinje i rad na slučajevima i intervencijama.

Intervencije protiv trgovine ljudima, posebno ženama i decom, dečje seksualne eksploatacije i pornografije, bile su posebno evidentne zbog uspešnih prekida kanala trafikinga.

Mediji su intenzivno pratili sve akcije i davali svoj doprinos podsticanju aktivnosti na poboljšanju zaštite dece od zanemarivanja i zlostavljanja. Promocija zaštite prava dece i zaštite od nasilja u porodici je ostvarena kroz kvalitetno pripremljene medijske kampanje.

Objavljeni su i slučajevi čije razrešavanje može da dovede do znatnih pozitivnih promena u praksi i policije i sudova i da bude deo javnog pritiska za ubrzavanje donošenja novih neophodnih zakona u ovoj oblasti.

Pojedini slučajevi se još uvek tretiraju sa dosta senzacionalizma i u pojedinim novinama se ne vodi dovoljno računa o zaštiti deteta ili majke koji su žrtve nasilja, pošto se iznose vrlo lični detalji na neprikladan način.

Popularizacija prevencije nasilja u porodici i zloupotrebe dece zahteva dobru organizaciju i koordinaciju sa medijima i daje veoma dobre rezultate.

U svom funkcionisanju sistem zaštite dece pokazuje neefikasnost iz nekoliko razloga:

- Zlostavljana/zanemarena deca nisu dovoljno vidljiva u sistemu brige o deci, među drugim kategorijama dece;
- Nedovoljna je senzibilnost za prava deteta;
- Saradnja između institucija, službi i stručnjaka je nedovoljna i nekoordinisana;
- Zakonske sankcije za neprijavljivanje slučajeva zlostavljanja dece ne postoje;
- Stručnjaci nemaju dovoljno specifičnih znanja i veština za procenu, dijagnostiku, intervencije u zaštiti dece, za tretman, reintegraciju dece i porodica, kao i za sve oblike prevencije zloupotrebe dece.

Na međunarodnim skupovima i u razgovorima sa međunarodnim stručnjacima procenjeno je da je promena u našoj zemlji bila veoma intenzivna i da su za relativno kratko vreme (5 godina), a u jako nepovoljnim uslovima, izgrađeni i mreža i usvojena metodologija po modelu vodećih evropskih i svetskih sistema za zaštitu dece. Problemi rastu eksponencijalno što je više aktivnosti, a resursi za njihovo rešavanje neprate kretanje bazičnih promena u društvu: ekonomskih, političkih, zakonskih i drugih. Tako se pojavljuje i nesklad između mogućnosti da se podrže aktivnosti i potreba koje su sve veće i izraženije.

Najveći potencijal su motivisani stručnjaci koji rade u ustanovama i organizacijama. Ulaganje u njihovo dalje obrazovanje, primarna je potreba. Pored toga, neophodna je transformacija i unapređenje postojećih kapaciteta koji bi odgovorili potrebama društva.

(Seksualno zlostavljanje: pogledati čl. 34 i 39, tretman i oporavak žrtava zlostavljanja).

# PERIODIČNA PROVERA SMEŠTAJA

## *Član 25. Konvencije o pravima deteta*

***Države ugovornice priznaju pravo detetu koje su nadležni organi zbrinuli u cilju staranja, zaštite ili lečenja njegovog fizičkog ili mentalnog zdravlja, na periodičnu proveru obezbeđenog tretmana i sve druge okolnosti od značaja za njegovo zbrinjavanje.***

## Propisi u SRJ i Republici Srbiji

U skladu za Zakonom o braku i porodici RS (član 136) *organ starateljstva vrši opšti nadzor nad vršenjem roditeljske dužnosti*. U okviru tog prava, organ starateljstva (u našoj praksi je to centar za socijalni rad kome su Zakonom povereni poslovi organa starateljstva) može da upozorava roditelje, da ograniči njihovo roditeljsko pravo ili da pokrene postupak kod suda za lišavanje roditeljskog prava. Ukoliko postoji ozbiljna opasnost po pravilno podizanje deteta, organ starteljstva može oduzeti dete od roditelja i poveriti ga na čuvanje, staranje i vaspitavanje drugom licu ili organizaciji.

U skladu sa Zakonom organ starateljstva može sam ili po predlogu roditelja - staratelja ili drugog lica kome je dete povereno na čuvanje i vaspitavanje, uputiti dete u vaspitnu ustanovu na vaspitavanje zbog poremećaja u ponašanju (član 137 ZBPO RS).

*Deca bez roditeljskog staranja* takođe mogu pod određenim uslovima biti smeštena u organizacije ili ustanove. Staralac može uz odobrenje organa starateljstva poveriti dete – štićenika dečjem domu ili drugoj organizaciji za decu na čuvanje, vaspitavanje i obrazovanje ili ga smestiti u zdravstvenu ustanovu na duže vreme (član 269 ZBPO RS). Na osnovu odluke organa starateljstva dete se može uputiti u neku organizaciju za vaspitavanje zbog *poremećaja u ponašanju* (član 270 ZBPO RS). Organ starateljstva doneće ovu odluku pošto je prethodno pribavio mišljenje socijalnog radnika, pedagoga, i psihologa o ličnosti deteta – štićenika i o njegovim socijalnim prilikama i potrebi da se uputi u organizaciju za vaspitavanje. Mera upućivanja u organizaciju za vaspitavanje biće obustavljena čim prestane potreba za njenim daljim izvršenjem, a najkasnije u roku od 3 godine od dana kada je dete

upućeno. Posle ovog roka zadržavanje se može produžiti samo na osnovu novog rešenja organa starateljstva (član 270 ZBPO RS). Socijalna i druga organizacija kojoj je štićenik poveren ili organizacija u koju je upućen, kao i lice kome je poveren na čuvanje i vaspitavanje i zdravstvena organizacija u kojoj je smešten na lečenje, dužni su da obaveste staraoca i organ starateljstva o svim važnim problemima u pogledu života, zdravlja, vaspitavanja i obrazovanja štićenika, otpuštanja iz organizacije i njegovog novog boravišta (član 271 ZBPO RS).

## Ocena stanja i komentari

U pogledu prakse, u sistemu socijalne zaštite Srbije postoji 16 ustanova za smeštaj dece bez roditeljskog staranja u kojima je smešteno 1.500 dece. U sledećoj tabeli dajemo podatke o broju dece razvrstane po uzrastu i polu.

| | **od 0 - 1 godine** | **od 2 - 4 godine** | **od 4 - 6 godine** | **od 7 - 14 godina** | **od 14 - 18 godina** | **preko 18 godina** | **UKUPNO** |
|---|---|---|---|---|---|---|---|
| **Ženski** | 14 | 103 | 41 | 280 | 181 | 45 | 664 |
| **Muški** | 17 | 134 | 66 | 324 | 218 | 77 | 836 |
| **Ukupno** | 31 | 237 | 107 | 604 | 399 | 122 | 1.500 |

Pored dece smeštene u ustanovama socijalne zaštite, oko 2.100 dece bez roditeljskog staranja smešteno je u hraniteljskim porodicama.

U Srbiji, u sistemu socijalne zaštite, postoji 5 ustanova za smeštaj dece i omladine ometene u psihofizčkom razvoju od kojih je jedna usko specijalizovana i prima na smeštaj samo decu i omladinu obolelu od autizma. U sledećoj tabeli dajemo prikaz dece i omladine smeštene u ovim ustanovam u odnosu na pol i uzrast štićenika.

| | **od 0 - 1 godine** | **od 2 - 3 godine** | **od 4 - 6 godine** | **od 7 - 14 godina** | **od 14 - 18 godina** | **preko 18 godina** | **UKUPNO** |
|---|---|---|---|---|---|---|---|
| **Ženski** | - | 22 | 66 | 182 | 91 | - | 361 |
| **Muški** | - | 41 | 75 | 227 | 146 | - | 489 |
| **Ukupno** | - | 63 | 141 | 409 | 237 | | 850 |

Pored dece, u ovim ustanovama smešteno je i 1.203 odraslih i starih korisnika.

Po pitanju smeštaja dece sa poremećajima u ponašanju, u sistemu socijalne zaštite postoje tri vaspitne ustanove. U donjoj tabeli dajemo podatke prema uzrastu dece smeštene u ovim ustanovama.

| **do 6 godina** | **od 7 - 14 godina** | **od 14 - 18 godina** | **preko 18 godina** | **UKUPNO** |
|---|---|---|---|---|
| 0 | 59 | 74 | 13 | 146 |

Uloga ustanove, odnosno hraniteljske porodice, jeste da u saradnji sa centrom za socijalni rad kao organom starateljstva, obezbedi socijalnu brigu, zdravstvenu zaštitu, vaspitno-obrazovni proces i pravnu zaštitu za svako dete. S druge strane, centar za socijalni rad je obavezan da kroz periodičnu proveru, posetom doma ili hraniteljske porodice, prati svaki od ovih aspekata. Međutim, **poslednjih deset godina izostajala je poseta i provera zaštite dece u domovima i hraniteljskim porodicama, jer usled izuzetno teškog materijalnog položaja centara za socijalni rad ovi praktično nisu bili u mogućnosti da realizuju posete**. Zbog toga se uvid u zaštitu pravio na osnovu izveštaja domova i hraniteljskih porodica koje su ovi dostavljali centrima, najčešće jednom godišnje. Pošto ne postoje propisani elementi za ovo izveštavanje to su i izveštaji bili neujednačeni. U najvećem broju slučajeva, po dobijanju ovih izveštaja najčešći zaključak organa starateljstva bio je da dete i dalje ostaje na smeštaju, osim ako se nisu stekli uslovi da dete bude usvojeno.

Zbog veoma malog broja hraniteljskih porodica koje su spremne da prihvate dete ometeno u psihofizičkom razvoju, izuzetno mali broj ove dece se nalazi na porodičnom smeštaju. Nijedno dete sa poremećajima u ponašanju ne nalazi se u porodičnom smeštaju, mada je ova mera predviđena Zakonom. Iz tih razloga ova deca ostaju dugo smeštena u ustanovama i to deca ometena u razvoju najčešće čitav svoj vek, a deca u vaspitnim ustanovama do isteka mere od tri godine.

Pored ovih problema sa hraniteljskim porodicama, u poslednjih deset godina došlo je do značajnog osipanja hraniteljskih porodica, najčešće zbog neredovnih naknada za izdržavanje dece. Iako je trend opadanja zaustavljen, jer su naknade i zaostaci nadoknađeni, izvršene su i neke vanredne isplate i povećani iznosi za izdržavanje, čitav niz problema i dalje prati ovaj vid smeštaja. Razvijen porodični smeštaj ima samo nekoliko opština u Srbiji. Zapravo najveći broj hraniteljskih porodica nalazi se u: Miloševcu (Velika Plana), Aleksandrovu (Žitište), Subotici i seoskim područjima beogradskih opština Barajevo i Zemun. Veoma mali broj hraniteljskih

porodica živi na gradskom području. Ova činjenica često uzrokuje odluku organa starateljstva da decu, po završetku osnovnog školovanja, smeštaju u ustanove.

Sadašnje hraniteljske porodice najčešće su porodice koje se godinama bave hraniteljstvom, tako da je većina njih u poodmakloj životnoj dobi i postoji neprimerena razlika u godinama između dece i hranitelja.

Nerešena neka pitanja statusa hraniteljica, visina naknade za rad hranitelja, mali broj porodica koje su primile decu na izdržavanje bez naknade samo su neki od nerešenih problema.

Kada je reč o domskoj zaštiti, poslednjih godina centralno pitanje bili su uslovi u kojima su deca živela.

Ruinirani objekti, dotrajala oprema, nedostatak lekova, obuće i odeće, neadekvatna ishrana dece, nepoštovanje normativa u odnosu na prostor za boravak dece, pitanje kadrova, nemotivisanost zaposlenih, samo su neke od karakteristika uslova u kojima su deca živela.[32]

*Pored ocena o položaju dece u sistemu socijalne zaštite prikazanih uz članove 2, 9, 12, 16 i 19, ovde posebno ističemo poruku koju su nam sama deca poslala procenjujući uslove i okolnosti u kojima žive[33] – jedan od prioriteta na kojima treba raditi jeste poboljšanje kvaliteta komunikacije s vaspitačima i stručnim radnicima. Vredne su svakako i konkretne preporuke koje oni vide kao način da se taj problem prevaziđe:*

- *povećati broj vaspitača i stručnih radnika kako bi imali više vremena za neposredan rad s decom;*
- *više ličnog kontakta dece sa stručnim radnicima centra za socijalni rad, bolja informisanost o pravima i mogućnostima za njihovo ostvarivanje;*
- *više zajedničkih aktivnosti u ustanovama radi lakšeg zbližavanja, kao što su izleti, proslave, sportska okupljanja, ali i mogućnost za otvoren razgovor;*
- *primena kriterijuma prilikom zapošljavanja vaspitača i stručnih radnika koji uzima u obzir lične motive i sklonost za rad s decom.*

[32] *Položaj dece u ustanovama socijalne zaštite u Srbiji*, Centar za prava deteta, Beograd, 2001.

[33] *Agenda za budućnost*, (Jugoslovenski) Centar za prava deteta, Beograd, 2001.

U skoro svim institucijama za smeštaj dece poslednje dve godine su značajno poboljšani uslovi zahvaljujući ulaganjima države, naporima nadležnog ministarstva da poboljša uslove za smeštaj dece, njihov razvoj i zaštitu, poboljšanje materijalnog položaja zaposlenih i značajnom pomoći međunarodnih organizacija. No, i pored toga, mnoge slabosti iz prethodnog dugogodišnjeg perioda u kome je orjentacija na domsku zaštitu bila dominantna, i dalje su prisutne.

Iz gore navedenih podataka uočljivo je da je u ustanovama smešten veliki broj dece. Ono što najviše zabrinjava jeste to da se u ovim ustanovama nalazi 375 dece bez roditeljskog staranja stare manje od 7 godina i 204 dece ometene u razvoju istog uzrasta. Ovaj podatak je u suprotnosti sa trendovima u svetu da se deca ovog uzrasta ne nalaze u institucijama.

Pored toga, preko 70% dece smešteno u ustanovama ima jednog ili oba živa roditelja. Prema podacima za socijalni rad, nešto ispod 50% ovih roditelja ne vrši svoju roditeljsku dužnost valjano iz subjektivnih razloga, a jedan broj dece je smešten u ustanove iz ekonomskih razloga, što nije u skladu sa zakonom. Na ovaj korak da smeštaju decu u ustanove iz ekonomskih razloga centri za socijalni rad su bili prinuđeni jer nisu imali skoro nikakve mogućnosti da pruže adekvatnu pomoć prirodnoj porodici.

Nepostojanje alternativnih programa i servisa za podršku prirodnoj porodici, nepostojanje poluinstitucionalnih oblika zaštite, dovode organ starteljstva u situaciju da mora da dete smesti u ustanovu ili drugu porodicu, kojih najčešće nema dovoljno, što je jedan od uzroka boravka velikog broja dece u ustanovama.

Komplikovana procedura oko usvojenja dece, i pored velikog broja zahteva za usvojenje, duga procedura utvrđivanja pravnog statusa deteta, uzrokovala je delimično veliki broj dece u ustanovama najranijeg uzrasta.

Pored ovih činjenica, valja napomenuti još neke slabosti zbog kojih se može zaključiti da i pored svoje zakonske obaveze organa starateljstva da detetu pruži najbolju zaštitu, on to ne može uraditi iz objektivnih razloga.

Jedan od velikih problema u zaštiti dece je njihov otpust iz ustanove. Dete napušta instituciju punoletstvom, odnosno završetkom redovnog školovanja, jer se smtra da je time steklo pretpostavke za samostalan život. Ova pretpostavka u našim uslovima je potpuno nerealna, jer su skoro nikakve šanse da dete nađe posao, stan i obezbedi sebi takve prihode da može samostalno da živi.

*Pored prethodno navedenog prioriteta (kvalitetnija komunikacija s vaspitačima i stručnim radnicima), deca u ustanovama socijalne zaštite ističu i potrebu za obezbeđivanjem izvesnije budućnosti po izlasku iz sistema socijalne zaštite:*

- *Veće angažovanje centara za socijalni rad i saradnja sa školama da bi deca imala mogućnost većeg izbora budućih zanimanja;*
- *Podsticanje samostalnosti, inicijativa i ovladavanja veštinama koje su neophodne za samostalan život (spremanje hrane, kućni poslovi, razvijanje odnosa prema novcu i zarađivanju kroz podsticanje prakse i sl.);*
- *Pomoć pri zapošljavanju i smeštaju.*

U ustanovama za smeštaj dece ometene u psihofizičkom razvoju dva problema su izrazita: veliki broj korisnika u ustanovama (od 300 do 600 korisnika) i zajednički boravak odraslih i starih u istoj ustanovi.

Pored toga, ove ustanove su smeštene izvan gradskog područja, a jedna od njih je udaljena preko 30 km od najbližeg grada, što otežava rad zaposlenih, a često iz tih razloga je teško obezbediti adekvatan stručni kadar.

Na planu stručnog rada je dominantan zaštitnički model, bez značajnije participacije dece u bilo kojoj fazi zaštite. Čuvanje i zdravstvena nega su dominirajući oblici rada sa decom ometenom u razvoju. Nedostak individualnog pristupa u radu sa decom je izražen skoro u svim ustanovama.

Od reformskih projekata u sistemu socijalne zaštite koji su u toku očekuje se da se razreši veći deo problema u ovoj oblasti i u tom smislu se preporučuje:

1. Preduzimanje mera na jačanju funkcija prirodne porodice, prvenstveno ekonomske, kako nijedno dete ne bi bilo u instituciji iz ekonomskih razloga;
2. Razvijanje raznovrsnih servisa i usluga prirodnoj porodici, posebno onima sa detetom u riziku, kako bi se smanjio pritisak na institucije;
3. Razvijanje poluinstitucionalnih oblika zaštite - dnevnih boravaka i sl;
4. Obezbeđivanje uslova centrima za socijalni rad koji omogućavaju stalno praćenje dece u sistemu socijalne zaštite;
5. Ubrzanje procedure utvrđivanja pravnog satusa dece u centrima za socijalni rad;
6. Stvaranje uslova da deca na najmlađem uzrastu ne budu u institucijama već u prirodnim porodicama.

Centar za prava deteta smatra da bi sledeći indikatori bili korisni za praćenje sprovođenja člana 25 Konvencije u Jugoslaviji: broj dece u institucijama, na porodičnom smeštaju i drugim alternativnim oblicima zaštite; dužina boravka dece u institucijama; učestalost kontakata organa starteljstva sa institucijama, odnosno hraniteljskim porodicama; učešće dece u donošenju odluka o merama njihove zaštite; broj dece u institucijama i drugim oblicima zaštite u odnosu na pol, veroispovest i pripadnost nacionalnim manjinama; stepen individualizacije planova zaštite; broj dece koja su vraćena prirodnoj porodici; broj zaposlenih u pojedinim oblicima zaštite i broj dece; broj dece koja su našla zaposlenje i obezbedila sebi uslove za samostalan život; dok bi indikatori koji se odnose na standare boravka u ustanovama bili: površina prostora po detetu za boravak, učenje, igru i sl.

O lečenju dece, periodičnoj proveri lečenja i ostalim aspektima više je rečeno u članu 24.

Pojedini podaci značajni za periodičnu proveru smeštaja u institucijama nalaze se i u obradi člana 20.

# *V*

# Osnovna zdravstvena i socijalna zaštita

# SOCIJALNA ZAŠTITA I USLUGE

### *Član 26. Konvencije o pravima deteta*

***1. Države ugovornice priznaju pravo svakog deteta na korišćenje socijalne zaštite, uključujući socijalno osiguranje, i preduzimaće potrebne mere za postizanje punog ostvarivanja ovog prava u skladu sa nacionalnim zakonom.***
***2. Ove mere, ako je to moguće, treba da se sprovode uzimajući u obzir sredstva i položaj deteta i osoba koje su odgovorne za izdržavanje deteta, kao i sve druge bitne okolnosti vezane za takve zahteve koje je dete ili neko u njegovo ime podneo.***

### *Član 18. (3) Konvencije o pravima deteta*

***Države ugovornice će preduzeti odgovarajuće mere da obezbede da deca zaposlenih roditelja koriste usluge i kapacitete dečje zaštite koje im pripadaju.***

## Propisi u SRJ i Republici Srbiji

U jugoslovenskom pravu predviđeno je *obavezno socijalno osiguranje* svih zaposlenih, koje obuhvata i članove njihovih porodica. Naime, članom 58 Ustava SRJ predviđeno je da obaveznim osiguranjem zaposleni obezbeđuju sebi i članovima svoje porodice sve oblike socijalnog osiguranja, a da država obezbeđuje materijalnu sigurnost građaninu koji je nesposoban za rad i nema sredstva za život, kao i građaninu koji nema sredstva za život, u skladu sa zakonom. Slične odredbe sadrži i republički Ustav (čl. 39 i 40 Ustava RS). Prava u oblasti socijalne zaštite preciznije su regulisana Zakonom o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti građana RS.

Tim Zakonom *socijalna zaštita* definisana je kao organizovana društvena delatnost koja ima za cilj pružanje pomoći građanima i njihovim porodicama, kada dođu u

stanje socijalne potrebe i preduzimanje mera za sprečavanje nastajanja ili otklanjanja posledica takvog stanja. Stanjem socijalne potrebe smatra se stanje u kojem je građaninu ili porodici neophodna društvena pomoć u cilju savladavanja socijalnih i životnih teškoća i stvaranju uslova za zadovoljenje osnovnih životnih potreba, ukoliko se te potrebe ne mogu na drugi način zadovoljiti (član 2 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS).

*Socijalna sigurnost* se obezbeđuje građanima koji su nesposobni za rad, a nemaju sredstva za izdržavanje, kao i građanima i porodici koja svojim radom i po osnovi rada, putem srodničke obaveze izdržavanja, po osnovi imovine i imovinskih prava, ili na drugi način, ne mogu da obezbede dovoljna sredstva za zadovoljenje osnovnih životnih potreba (član 3 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS). Prava u oblasti socijalne zaštite i socijalne sigurnosti su: materijalno obezbeđenje, dodatak za pomoć i negu drugog lica; pomoć za osposobljavanje za rad; pomoć u kući; dnevni boravak, smeštaj u ustanovu ili smeštaj u drugu porodicu; usluge socijalnog rada, oprema korisnika za smeštaj u ustanovu socijalne zaštite ili drugu porodicu i jednokratne pomoći (član 9 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS).

Prema odredbama kojima je regulisano ostvarivanje *prava na materijalno obezbeđenje*, članovima porodice smatraju se, između ostalog, i deca (bračna, vanbračna, usvojena i uzeta na izdržavanje) koja žive u zajedničkom domaćinstvu. Međutim, lice bez prihoda koje ne živi sa roditeljima smatraće se članom porodice do zasnivanja bračne ili porodične zajednice, a najduže do 27. godine života. Iste odredbe propisuju da će se nesposobnim za rad smatrati dete do navršene 15. godine, a ako je na redovnom školovanju u srednjoj školi, do kraja roka propisanog za to školovanje (čl. 13 i 14 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS). Pravo na pomoć za osposobljavanje za rad, imaju deca i omladina ometena u razvoju i odrasla invalidna lica koja se prema psihofizičkim sposobnostima i po godinama života mogu osposobiti za rad, a to pravo ne mogu da ostvare po nekom drugom pravnom osnovu (član 26 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS). Pravo na dnevni boravak, koje se ostvaruje upućivanjem korisnika u odgovarajuću ustanovu socijalne zaštite koja vrši usluge dnevnog zbrinjavanja ili vaspitnoobrazovnu ustanovu koja pruža takve usluge, ima dete ometeno u psihičkom i fizičkom razvoju, dete obolelo od autizma i dete sa poremećajima u društvenom ponašanju (čl. 33 i 34 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS). Pravo na smeštaj u ustanovu socijalne zaštite u kojoj se obezbeđuje zbrinjavanje, vaspitavanje i obrazovanje, osposobljavanje za određene radne aktivnosti i zdravstvena zaštita, ima: dete bez roditeljskog staranja

i dete čiji je razvoj ometen porodičnim prilikama; dete mentalno ometeno u razvoju stepena umerene, teže i teške ometenosti, višestruko ometeno u razvoju i dete sa smetnjama u telesnom razvoju koje nema uslova da ostane u svojoj porodici, dok ta potreba traje za ovim oblikom zaštite; dete sa poremećajima u ponašanju; trudnica i samohrana majka sa detetom do devet meseci života kojoj je, zbog materijalne neobezbeđenosti, nerešenog stambenog pitanja, poremećenih porodičnih odnosa i sličnih situacija, neophodno privremeno zbrinjavanje (čl. 36-39 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS). Pravo na usluge socijalnog rada (preventivna delatnost, dijagnostika, tretman i savetodavno-terapijski rad, zasnovan na primeni stručnih i naučnih saznanja u cilju pružanja stručne pomoći pojedincima, porodicama i društvenim grupama da rešavaju životne teškoće ili pomoć u organizovanju lokalnih i drugih zajednica da sprečavaju socijalne probleme i ublažavaju posledice) imaju svi građani, bez plaćanja, s tim što se može propisati učešće građana u troškovima određenih usluga koje pruža centar za socijalni rad (član 48 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS).

*Postupak ostvarivanja prava* je u nadležnosti centara za socijalni rad. Postupak se pokreće na zahtev lica, odnosno njegovog zakonskog zastupnika ili staraoca, po službenoj dužnosti ili povodom inicijative građana ili ovlašćenih organa i drugih organizacija, a vodi se po pravilama Zakona o opštem upravnom postupku. Ustanove socijalne zaštite, koje se osnivaju radi ostvarivanja prava na socijalnu zaštitu su centri za socijalni rad, ustanove za smeštaj korisnika (dom za decu i omladinu, centar za zaštitu odojčadi, dece i omladine, centar za porodični smeštaj, prihvatilište za decu i omladinu, dom za decu i omladinu ometenu u razvoju, dom za telesno invalidnu decu i omladinu sa očuvanim mentalnim sposobnostima, zavod za vaspitanje dece i omladine, prihvatne stanice, prihvatilišta), ustanove za dnevni boravak i pomoć u kući. Nadzor nad stručnim radom ovih ustanova vrši ministarstvo nadležno za socijalna pitanja, a sredstva za ostvarivanje prava obezbeđuju se u budžetu (čl. 49-116 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS).

Zakonom o društvenoj brizi o deci u Republici Srbiji i Zakonom o predškolskom vaspitanju i obrazovanju uređena su pitanja koja se tiču organizovanog smeštaja dece u predškolske ustanove, u cilju pomoći zaposlenim roditeljima.

U Republici Srbiji, *predškolsko vaspitanje i obrazovanje* deo je društvene brige o deci, pa je, shodno tome, ono predmet uređivanja istoimenog Zakona (član 2). Radi ostvarivanja prava utvrđenih ovim Zakonom, osnivaju se ustanove za decu (član 3). Roditelji plaćaju boravak dece u ustanovama za predškolsko vaspitanje, osim onih

kategorija kojima država regresira delimično ili u celosti troškove smeštaja i boravka dece u predškolskoj ustanovi (član 8).

Za decu predškolskog uzrasta koja ne ostvaruju pravo na celodnevni boravak, predškolska ustanova organizuje vaspitnoobrazovni program u godini pred polazak u osnovnu školu, u trajanju od 3 sata dnevno. Prostor za ostvarivanje ovog programa obezbeđuje opština (član 32).

U predškolskoj ustanovi se obezbeđuje dnevni boravak dece kroz organizovanje celodnevnih, poludnevnih, minimalnih, skraćenih, povremenih, petodnevnih i različitih oblika rada s decom do polaska u osnovnu školu (član 54).

Opštinama je dozvoljeno da u skladu sa svojim mogućnostima regresiraju troškove boravka dece u predškolskim ustanovama odmora i rekreacije (član 11).

## Ocena stanja i komentari

U ostvarivanju svih prava iz oblasti socijalne zaštite u prethodne dve godine došlo je do značajnog poboljšanja položaja korisnika. Naime, do 2001. godine kašnjenja u isplatama naknada, a time i njihovog obezvređivanja, bila su izuzetno velika - od 1 do 2,5 godine. Zahvaljujući donacijama i povećanim sredstvima iz budžeta Republike Srbije isplaćena su zaostala dugovanja i sada su primanja korisnika relativno urednija.

Po osnovu Zakona o socijalnoj zaštiti i obezbeđivanju socijalne sigurnosti građana nije došlo do značajnijeg povećanja broja korisnika ali je došlo do promena u oblasti prava iz domena dečje zaštite. Po osnovu zakona o socijalnoj zaštiti i obezbeđivanje socijalne sigurnosti građana nije došlo do značajnijeg povećanja broja korisnika. Prema podacima Ministarstva za socijalna pitanja RS, u Srbiji je pravo na materijalno obezbeđenje (MOP) koristilo 42.024 porodica sa 98.984 članova porodice/domaćinstva. Od ukupnog broja korisnika MOP-a, 35.833 su deca, pri čemu su 449 dece nosioci ovog prava.

Do značajnijih promena došlo je u oblasti prava iz domena dečje zaštite.Naime, aprila meseca 2002. godine Narodna skupština Republike Srbije je donela Zakon o finansijskoj podršci porodici sa decom. Ovaj Zakon donet je sa ciljem poboljšanja uslova za zadovoljenje osnovnih potreba dece, posebnog podsticanja rađanja dece, podrške materijalno ugroženim porodicama sa decom, porodicama sa decom ometenom u razvoju i deci bez roditeljskog staranja.

Poseban značaj donošenja ovog Zakona je što su u njemu, kao posebna grupa, obuhvaćena prava dece bez roditeljskog staranja i porodice sa decom ometenom u psihofičkom razvoju. Stavljanjem akcenta na porodice sa decom ometenom u razvoju potencira se porodica kao prirodno okruženje što može imati uticaja da ova deca ostaju u porodici, a ređe budu smeštana u institucije socijalne zaštite. Prava koja reguliše ovaj Zakon su: naknada zarade za vreme porodiljskog odsustva, odsustva sa rada radi nege deteta i odsustva sa rada radi posebne nege, roditeljski dodatak, dečji dodatak, naknada troškova boravka u predškolskoj ustanovi za decu bez roditeljskog staranja, naknada troškova boravka u predškolskoj ustanovi za decu ometenu u razvoju i regresiranje troškova boravka u predškolskoj ustanovi dece iz materijalno ugroženih porodica.

Iako je Zakon uticao na značajno poboljšanje uslova većeg broja korisnika naknada, iz prakse stižu upozorenja da će zbog uslova za priznavanje određenih prava pojedini korisnici biti dovedeni u nepovoljniji položaj. Ovo se posebno odnosi na decu teže i teško ometene u razvoju kada je reč o ostvarivanju prava na dečji dodatak, jer se u prihode koji su od uticaja na ostvarivanje ovog prava uračunavaju naknade za tuđu pomoć i negu, za telesno oštećenje i invalidnine. Stručnjaci centara za socijalni rad upozoravaju takođe da je izjednačavanje hraniteljskih porodica sa prirodnim porodicama, kada je reč o uslovima za ostvarivanje prava na dečji dodatak, posebno materijalni uslovi hraniteljske porodice, destimulativna mera za razvoj mreže hraniteljstva, odnosno porodičnog smeštaja, jer će jedan broj dece na porodičnom smeštaju ostati bez ovog ličnog prava. Ovo tim pre što je već u Zakonu utvrđeno da se u onim slučajevima kada se za dete obezbeđuje 50% i više sredstava iz javnih rashoda za njegovo obrazovanje ili rehabilitaciju, iznos dečjeg dodatka umanjuje za 30%.

Valja istaći da je u Zakonu posebno značajna mera koja se odnosi na pravo dece bez roditeljskog staranja i dece ometene u razvoju na besplatne usluge boravka u predškolskoj ustanovi, te da deca iz materijalno ugroženih porodica imaju pravo na regresiranje troškova boravka u predškolskoj ustanovi, koja se nalazi u mreži predškolskih ustanova, u zavisnosti od materijalnog položaja porodice.

Što se tiče ostalih prava iz Zakona o socijalnoj zaštiti i obezbeđivanju socijalne sigurnosti građana valja istaći nekoliko stvari koje karakterišu sadašnju praksu. Kada je reč o pravu na smeštaj u ustanovu socijalne zaštite ili na porodičan smeštaj, onda su procene stručnjaka da broj dece u institucijama nije u skladu sa međunarodnim standardima niti sa savremenim tokovima zaštite dece u socijalnoj zaštiti. Naime, u institucijama u Srbiji se nalazi oko 2.000 dece bez roditeljskog

staranja i oko 1.500 dece ometene u razvoju, kao i oko 180 dece u sukobu sa zakonom, dok se na porodičnom smeštaju nalazi oko 2.000 dece ili oko 40%. Ustanove za smeštaj dece ometene u razvoju su sa velikim brojem korisnika (čak do 600), deca su smeštena zajedno sa odraslim licima ometenim u razvoju, dominantna je nega bez individualnog pristupa u radu i podsticanja razvoja. Ustanove su često van većih naseljenih mesta što utiče na adekvatan izbor kadrova. Pravo na dnevni boravak ostvaruje mali broj korisnika u sistemu socijalne zaštite, iz jednostavnog razloga što je njihov broj izuzetno mali i pokrivaju samo decu ometenu u razvoju, dok za decu u sukobu sa zakonom ne postoji nijedan dnevni boravak u Srbiji. Kod prava na tuđu negu i pomoć treba istaći podatak da su korisnici ovog prava u sistemu socijalne zaštite u nepovoljnijem položaju od korisnika koji su ovo pravo ostvarili preko invalidsko-penzione zajednice po osnovu radnog odnosa roditelja. Neravnopravnost se ogleda u tome što korisnici u sistemu socijalne zaštite primaju značajno manji iznos ove naknade. Međutim, postoje najave da će korisnici ovog prava u sistemu socijalne zaštite biti izjednačeni u pogledu visine naknade sa ostalim korisnicima.

# ŽIVOTNI STANDARD

## *Član 27. (1-3) Konvencije o pravima deteta*

***1. Države ugovornice priznaju pravo svakog deteta na životni standard koji odgovara detetovom fizičkom, mentalnom, duhovnom, moralnom i socijalnom razvoju.***
***2. Roditelj(i) ili drugi odgovorni za dete imaju prvenstvenu odgovornost da osiguraju, u okviru svojih sposobnosti i finansijskih mogućnosti, uslove života potrebne za razvoj deteta.***
***3. Države ugovornice će, u skladu sa nacionalnim uslovima i u okviru svojih mogućnosti, preduzeti potrebne mere da pomognu roditeljima i drugim odgovornim za dete da ostvare ovo pravo i ako je potrebno, obezbediće materijalnu pomoć i programe, naročito u pogledu ishrane, odevanja i stanovanja.***

## Propisi u SRJ i Republici Srbiji

Pravo deteta na životni standard proklamovano ovom odredbom Konvencije, u našem zakonodavstvu je, uglavnom, regulisano propisima o odnosima roditelja i dece i propisima o socijalnom osiguranju. Detaljan pregled ovih propisa dat je uz odgovarajuće odredbe Konvencije, tako da će uslediti samo njihov kratki prikaz.

Porodičnopravni propisi predviđaju dužnost roditelja da izdržavaju svoju decu. Ako dete do 18 godine nije završilo školovanje, roditelji su dužni da ga prema svojim mogućnostima izdržavaju do isteka vremena trajanja školovanja u određenoj školi, odnosno fakultetu, a ako je školovanje iz opravdanih razloga produženo, najkasnije do 26. godine života (član 298 ZBPO RS). U slučaju da dete nema roditelje, ili oni nisu u mogućnosti da ga izdržavaju, zakoni predviđaju obavezu srodničkog izdržavanja (čl. 303–308 ZBPO RS).

Građanima i porodici koja svojim radom i po osnovu rada, putem srodničke obaveze izdržavanja, po osnovu imovine i imovinskih prava, ili na drugi način, ne mogu da obezbede dovoljna sredstva za zadovoljenje osnovnih životnih potreba,

obezbeđuje se socijalna sigurnost (član 3 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS). *Prava u oblasti socijalne zaštite i socijalne sigurnosti* su: materijalno obezbeđenje, dodatak za pomoć i negu drugog lica; pomoć za osposobljavanje za rad; pomoć u kući; dnevni boravak, smeštaj u ustanovu ili smeštaj u drugu porodicu; usluge socijalnog rada, oprema korisnika za smeštaj u ustanovu socijalne zaštite ili drugu porodicu i jednokratne pomoći (član 9 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti RS).

Pored toga, u Republici Srbiji su Zakonom o učeničkom i studentskom standardu uređena *prava učenika i studenata u oblasti učeničkog i studentskog standarda*, koji je definisan kao organizovana delatnost kojom se stvaraju materijalni i drugi uslovi za sticanje obrazovanja, i radi obezbeđenja kadrovskih potreba društva. S aspekta prava deteta na životni standard, na koje se odnosi ova odredba Konvencije, od značaja su, zbog uzrasta deteta, odredbe koje se odnose na učenički standard. Prema članu 2 navedenog Zakona, učenik ima pravo na smeštaj i ishranu u ustanovi za smeštaj i ishranu učenika, vaspitni rad, učenički kredit, učeničku stipendiju, kulturno-zabavne i sportsko-rekreativne aktivnosti i povlastice u međumesnom saobraćaju. Da bi se ostvarila ova prava osnivaju se ustanove učeničkog standarda, a sredstva za obavljanje njihove delatnosti obezbeđuju se u budžetu, kao i neposredno od korisnika, prodajom usluga na tržištu, donatorstvom i iz drugih izvora u skladu sa zakonom (čl. 4 i 6 ZUSS RS). Pravo redovnih učenika srednjih škola na smeštaj i ishranu ostvaruje se na osnovu konkursa koji se raspisuje pre početka školske godine, a redosled učenika po objavljenom konkursu utvrđuje se na osnovu uspeha učenika u prethodnom školovanju i prihoda porodice. U troškovima smeštaja i ishrane učenika učestvuju i njegovi roditelji, odnosno staratelji (čl. 8 i 9 ZUSS RS). Zakonom je propisano i pravo na učenički kredit redovnih učenika srednjih škola koji se školuju za deficitarna zanimanja. Ovo pravo se takođe ostvaruje putem konkursa, a na osnovu ugovora o korišćenju kredita sa preduzećima ili ustanovama. Utvrđeni iznos kredita isplaćuje se roditelju, odnosno staratelju, uz obavezu vraćanja kredita sa kamatom, u skladu sa uslovima utvrđenim konkursom (čl. 10 i 11 ZUSS RS). Pravo na učeničku stipendiju, bez obaveze vraćanja, imaju redovni učenici srednjih škola koji postignu odličan uspeh tokom školovanja. Po objavljenom konkursu redosled učenika se utvrđuje na osnovu uspeha u prethodnom školovanju i prihoda porodice (član 12 ZUSS RS).

## Ocena stanja i komentari

Period od početka devedesetih godina do 2000. godine obeležila je velika ekonomska kriza u zemlji.

Nacionalni dohodak po glavi stanovnika u 2000. godini, niži je za 43% od onog u 1990. godini. Stopa nezaposlenosti pokazuje stalnu tendenciju porasta pa se sa 19,7% u 1990. godini popela na 26,8% u 1998. godini, dok je stopa nezaposlenosti mladih značajno viša.[45] Na osnovu istraživanja Ekonomskog instituta iz 1998. godine procenjuje se da je oko milion i 200 hiljada ljudi vezano za sivu ekonomiju. Prema podacima Ministarstva za rad i zapošljavanje, u Srbiji je oko 900 000 nezaposlenih. Međutim, prema njihovim procenama, polovina nezaposlenih je uključena u sivu ekonomiju. U najavi je novi zakon o zapošljavanju koji predviđa restriktivniju politiku u oblasti kontrole nezaposlenosti.

Troškove potrošačke korpe (osnovne egzistencijalne potrebe) u 1998. godini nije moglo da pokrije 33% stanovništa, dok je prosečan neto lični dohodak krajem 2000. godine bio oko 80 DEM. Iako je situacija u poslednje dve godine bolja, kod stručnjaka ostaje dilema da li je potrošačka korpa pouzdan pokazatelj standarda stanovništva, jer porodice "ne kupuju ono što je propisano da ima u potrošačkoj korpi, već ono što im treba", kako je to prokomentarisao jedan ovdašnji analitičar. Domaćinstva sa decom su za 40% u nepovoljnijem položaju u odnosu na domaćinstva bez dece. Prema podacima Ministarstva za socijalna pitanja RS, oko 36.000 dece živi u porodicama koje primaju socijalnu pomoć.

Prema izveštaju Ministarstva za rad, boračka i socijalna pitanja RS, Sektor socijalne zaštite, za 1999. godinu, broj korisnika socijalne pomoći pokazuje tendenciju opadanja, ali samo kao rezultat smanjivanja fondova i pooštravanja kriterijuma za nadoknade (koje su kasnile i po 14 meseci). U poslednje dve godine u ovoj oblasti se situacija nešto popravila (videti član 26).

Istovremeno, u 1999. godini za preko 80% je porastao broj korisnika pomoći u naturi, subvencijama komunalnih troškova, ostvarivanju zdravstvene zaštite i u organizovanoj ishrani u narodnoj kuhinji (prema podacima Crvenog krsta broj korisnika usluga narodnih kuhinja u avgustu 1999. godine je dosegao brojku od 100.000).

Kao neposredna posledica svih pokazatelja tumači se i činjenica da 29,4% dece do pet godina starosti pokazuje znake pothranjenosti. Ova stopa porasla je od 1996. godine gotovo 4 puta.

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[45] *Statistički godišnjak Jugoslavije*, 1999.

*Kako životni standard izgleda iz ugla same dece, može se videti iz rezultata istraživanja Centra za prava deteta*[46] *iz 2001. godine.*

*Način na koji ispitana deca doživljavaju i ocenjuju materijalne uslove u kojima žive, prvenstveno se može oceniti kao rezultat dugogodišnjeg progresivnog osiromašenja i postepenog adaptiranja na nemaštinu.*

*Strategije preživljavanja izražene kroz spremnost na odricanja i odlaganja, skromnost u očekivanjima i neku vrstu mirenja sa "nema", gotovo da predstavljaju normalnost u ponašanju dece.*

*S druge strane, spremnost roditelja da potrebe dece stavljaju ispred ostalih potreba, jednim delom može biti objašnjenje nalaza da deca u porodicama (bez obzira da li je reč o opštoj populaciji ili posebno osetljivim grupama) u relativno manjem stepenu trpe posledice siromaštva nego deca u ustanovama socijalne zaštite i kolektivnim centrima za izbegle i raseljene.*

*Pa, ipak, šta konkretno znači "nemati"? Koji su to najupečatljiviji nalazi i odgovori?*

- *Trećina ispitane dece u porodicama smatra da nema dovoljno odeće, obuće i sredstava za higijenu, kao i da je ishrana jednolična;*
- *Procenat dece u ustanovama socijalne zaštite koji se žali na nedostatak hrane, odeće, obuće i higijenskih sredstava kreće se od 40%, pa čak do 80% (u zavisnosti od pojedine ustanove);*
- *Poražavajući je i podatak da pitanje: "Šta vam je najpotrebnije?" kod značajnog procenta izbegle i raseljene dece u kolektivnim centrima izaziva spontano nabrajanje osnovnih namirnica.*

*Ne samo da deca i mladi smatraju da nedostatak novca sužava mogućnosti za korišćenje slobodnog vremena, već prepoznaju siromaštvo i kao jedan od izvora diskriminacije.*

- *1/3 ispitanih smatra da težak materijalni status porodica bitno ograničava i mogućnosti za obrazovanje (izbor škole, nabavka udžbenika, troškovi prevoza);*
- *1/4 smatra da je materijalni status roditelja uzrok diskriminativnog ponašanja nastavnika prema učenicima.*

[46] *Agenda za budućnost*, (Jugoslovenski) Centar za prava deteta, Beograd, 2001.

Ekonomske i zakonodavne reforme koje su počele krajem 2000. godine, dovele su do blagog oporavka, međutim, ogroman deo stanovništva (oko 20%) živi ispod granice siromaštva. Ovakvo stanje negativno utiče na decu, posebno na onu koja su najosetljivija. Dalje ekonomske reforme mogu da dovedu do još ozbiljnijih problema jer će podrazumevati niža socijalna davanja kao i različito postavljeni zdravstveni i obrazovni sistem (s većim učešćem građana). Ono što bi se moglo očekivati kao pozitivan trend je veće ulaganje u obrazovanje, što bi poboljšalo bar jedan aspekt života dece. Nadalje, Ministarstvo za socijalna pitanja RS uz podršku Svetske banke i *DIFID*-a, započinje poseban projekat u oblasti uklanjanja siromaštva, koji u narednom periodu treba da se realizuje u 5 opština u Srbiji. Ministrastvo za socijalna pitanja RS takođe radi na strategiji smanjenja siromaštva i sačinjen je prvi polazni dokument.

O posebnim teškoćama vezanim za životni standard dece u Srbiji, videti u okviru relevantnih članova: pravo na obrazovanje, na zdravstvenu zaštitu, deca sa smetnjama u razvoju i pravo na socijalnu zaštitu i na socijalne usluge.

# DETE SA SMETNJAMA U RAZVOJU

***Član 23. Konvencije o pravima deteta***

***1. Države ugovornice priznaju da dete sa smetnjama u razvoju treba da uživa pun i kvalitetan život, u uslovima koji obezbeđuju dostojanstvo, unapređuju samopouzdanje i olakšavaju njegovo aktivno učešće u zajednici.***
***2. Države ugovornice priznaju pravo deteta sa smetnjama u razvoju na posebnu brigu i ohrabrivaće i obezbeđivati, prema raspoloživim sredstvima, detetu koje ispunjava uslove i onima odgovornim za brigu o njemu, pružanje pomoći koja se zahteva i koja je primerena stanju deteta i mogućnostima roditelja ili drugih koji se o detetu brinu.***
***3. Uvažavajući posebne potrebe deteta sa smetnjama u razvoju, pomoć koja se pruža u skladu sa stavom 2 biće besplatna, uvek kada je to moguće, uzimajući u obzir finansijske mogućnosti roditelja ili drugih koji brinu o detetu i biće osmišljena tako da obezbedi detetu sa smetnjama u razvoju delotvoran pristup i sticanje obrazovanja, obuke, zdravstvene zaštite, usluga rehabilitacije, pripremu za zapošljavanje i mogućnosti rekreacije na način koji vodi postizanju najveće moguće socijalne integracije i individualnog razvoja deteta, uključujući njegov kulturni i duhovni razvoj.***
***4. Države ugovornice će unapređivati, u duhu međunarodne saradnje, razmenu odgovarajućih informacija na polju preventivne zdravstvene zaštite i medicinskog, psihološkog i funkcionalnog lečenja deteta sa smetnjama u razvoju, uključujući i širenje i pristup informacijama o metodama rehabilitacije, obrazovanja i profesionalnih usluga, sa ciljem da omogući stranama ugovornicama da unaprede svoje sposobnosti i veštine i prošire iskustva u ovim oblastima. U tom smislu, posebno će se voditi računa o potrebama zemalja u razvoju.***

## Propisi u SRJ i Republici Srbiji

Pravo lica sa smetnjama u razvoju na posebnu zaštitu u skladu sa zakonom zajemčeno je članom 59 Ustava SRJ. Ustavom RS (član 28, st. 2) utvrđeno je da posebnu zaštitu uživaju lica koja nisu u mogućnosti da sama brinu o sebi i zaštiti svojih prava, kao i da se građanima delimično sposobnim za rad obezbeđuje osposobljavanje za odgovarajući posao i uslovi za njihovo zapošljavanje, u skladu sa zakonom.

Pravo deteta sa smetnjama u razvoju na posebnu brigu, vaspitanje, obrazovanje i obuku, sa ciljem da mu se pomogne da postigne najveću moguću socijalnu integraciju i način ostvarivanja ovog prava u Republici Srbiji preciznije su regulisani Zakonom o osnovnoj školi RS i Zakonom o srednjoj školi RS. Deca sa telesnim i čulnim smetnjama u razvoju (telesno invalidna, slepa, slabovida i gluva i nagluva), sa smetnjama u mentalnom razvoju (lako, umereno, teže i teško) i sa višestrukim smetnjama u razvoju (sa dve ili više smetnje, autističnost) upisuju se u školu na osnovu rešenja kojim se utvrđuje vrsta i stepen ometenosti. Vrsta i stepen ometenosti određuje se rešenjem nadležnog opštinskog organa na predlog lekarske komisije, kojim se utvrđuje i sposobnost za sticanje osnovnog obrazovanja i vaspitanja i škola koju će dete upisati. Propisana je i mogućnost ponovnog utvrđivanja stepena ili vrste ometenosti u razvoju, koje se može sprovesti u toku sticanja osnovnog obrazovanja na zahtev roditelja, škole ili zdravstvene ustanove (čl. 18, 19, 84 ZOŠ RS). Nastavni plan i program se donose za svaku vrstu i stepen smetnji u razvoju. Njime se bliže određuje cilj, zadatak obrazovanja i vaspitanja, trajanje obrazovanja, uzrast za upis, broj učenika u odeljenju, tj. grupi, nedeljni i godišnji broj časova nastave i drugih oblika vaspitnoobrazovnog rada, trajanje časa, profesionalno usmeravanje učenika (član 88 ZOŠ RS). Škola može da obavlja delatnost predškolskog vaspitanja i obrazovanja, osnovnog i srednjeg obrazovanja i vaspitanja za decu sa istom vrstom ometenosti u razvoju. Takođe, škola može da organizuje smeštaj i ishranu učenika i dece predškolskog uzrasta u domu učenika, a boravak može biti dnevni ili stalni (član 91 ZOŠ RS). Zakon o srednjoj školi RS predviđa osnivanje škole za učenike sa smetnjama u razvoju, a ova škola osim srednjeg obrazovanja može obavljati i delatnost osnovnog obrazovanja i vaspitanja (član 15 ZSŠ RS).
Deci sa smetnjama u razvoju garantovana su, pod određenim uslovima, prava u oblasti socijalne zaštite: materijalno obezbeđenje, dodatak za pomoć i negu drugog lica, pomoć za osposobljavanje za rad, pomoć u kući, dnevni boravak, smeštaj u ustanovu socijalne zaštite ili drugu porodicu, oprema za smeštaj u ustanovu socijalne zaštite ili drugu porodicu, kao i usluge socijalnog rada (čl. 9, 14, 23-25,

26-29, 30-47 i 48 Zakona o socijalnoj zaštiti i obezbeđenju socijalne sigurnosti građana RS). Zakon o finansijskoj podršci porodici sa decom RS predviđa posebnu zaštitu za porodice sa decom sa smetnjama u razvoju u pogledu uslova ostvarivanja dečjeg dodatka i korišćenja usluga predškolskih ustanova. Pored toga, Zakon o osnovama penzijskog i invalidskog osiguranja propisuje uslove za ostvarivanje porodične penzije, pomagala za čitanje i pisanje i zamrzava pravo na dodatak za pomoć i negu drugog lica. Deca vojnih osiguranika mogu ostvariti ova prava po Zakonu o vojsci Jugoslavije. Zakon o pravima civilnih invalida rata reguliše sva prava i povlastice ove kategorije invalida, uključujući i decu.

Ovoj deci takođe su garantovana *prava u oblasti zdravstvene zaštite*. Zdravstvena zaštita obuhvata: preventivne, dijagnostičke, terapijske i rehabilitacione zdravstvene usluge u zdravstvenoj ustanovi, uključujući prevoz u hitnim slučajevima, lekove, pomoćni materijal koji služi za primenu lekova i sanitetski materijal potreban za lečenje i ortopedska pomagala prema indikacijama. Sredstva za obezbeđenje zdravstvene zaštite, za lica koja nisu obuhvaćena obaveznim zdravstvenim osiguranjem, obezbeđuju se iz republičkog budžeta (član 7 ZZZ RS).

Postoji i *niz podzakonskih akata* koji se odnose na osobe sa smetnjama u razvoju, kao što je Pravilnik o uslovima za planiranje i projektovanje objekata u vezi sa nesmetanim kretanjem dece, starih, lica sa smetnjama u razvoju i pravilnici o vođenju evidencije za određena prava.

## Ocena stanja i komentari

Na osnovu detaljne analize pravnih propisa ukazano je na nužnost izrade antidiskriminacionog zakona. Stanje je ocenjeno ovako: »Ovim normama (ako se posmatraju kao jedan organizam u obrisima) nedostaje temelj; norme su u međusobnoj »blagoj zavadi«, neke od njih se prema nekim drugim ophode kao komšije koje nemaju najbolje komšijske odnose – ne razgovaraju ili jedan drugom ponekad tek nazovu »dobar dan«; kroz mnoge norme proističe stav njihovih tvoraca da su osobe sa smetnjama u razvoju objekti zaštite, dok se ne može videti celishodan pristup njima kao (potencijalno) samostalnim subjektima socijalnog života; norme su neharmonizovane sa relevantnim međunarodnim pravom...«.[47]

[47] Cucić i dr, *Osobe s invaliditetom i okruženje*, Centar za proučavanje alternativa i *Handicap International*, Beograd, 2001.

*Pravni aspekti invalidske zaštite u Srbiji* naziv je projekta i dvodnevne stručne konferencije, održane aprila 2002. u organizaciji Centra za unapređivanje pravnih studija i drugih partnera. Finalni deo projekta treba da bude Zakon o zaštiti lica sa posebnim potrebama. On bi bio temelj svih drugih zakonskih normi.

Ponekad se dešava da neki zakonski propisi svojom formulacijom mogu da podstaknu predrasude.

Na primer, u pokušajima da se dobiju podaci o deci sa smetnjama u razvoju do nedavno se redovno, a i sada još ponegde, dobija objašnjenje da je starosna granica za decu sa smetnjama u razvoju pomerena jer su zavisna od roditelja (npr. pravo na porodičnu penziju ima dete sa smetnjama u razvoju staro recimo 40 godina!).

Sistematizovani i precizni podaci o broju i strukturi dece/osoba sa smetnjama u razvoju još ne postoje, kao ni razvijeni mehanizmi praćenja njihovih prava. Sabiranje postojećih podataka je nemoguće zbog nepostojanja jedinstvenog sistema podataka koji se evidentiraju i kriterijuma za određivanje pripadnosti ovoj grupi. Stoga su pretpostavljene procene o broju osoba sa smetnjama u razvoju iz raznih izvora prilično neusaglašene. Po proceni Svetske zdravstvene organizacije, u našoj zemlji ima blizu 1.000.000 osoba sa smetnjama u razvoju, a po domaćim statistikama 350.000 do 900.000 osoba.

Prvo ozbiljno popisno istraživanje invalida obavljeno je u 12 (od ukupno 160) opština Srbije u periodu od 18. do 29. aprila 2001. godine, u okviru zajedničkog projekta *Handicap International* i Centra za proučavanje alternativa. Intervjuisano je 1.727 lica sa smetnjama u fizičkom razvoju, a kriterijumi za lica koja treba obuhvatiti bili su precizni. Ipak se dešavalo da se poneko izostavi jer ljudi iz okruženja neke nedostatke ne doživljavaju kao invalidnost, npr. umanjene sposobnosti (slabovidost, nagluvost) i prevladani nedostatak – »On nije kao ti koje tražite«. Projekat *Evidentiranje i analiza osnovnih podataka o telesnim invalidima koji žive na teritoriji Srbije*, podržan od *Handicap International*, završen je leta 2001. godine. Centralne evidencije sada postoje u svim organizacijama na republičkom nivou. U bazi podataka se nalaze podaci o 7.072 člana, od čega 698 dece mlađe od 18 godina. Poređenjem broja članova i broja registrovanih u medicinskim ustanovama dolazi se do razlomka 2/7. Evidencioni kartoni su skoro istovetni tako da su podaci uporedivi. No, ima i kartona koji nisu kompletno popunjeni jer, kako kažu odgovorni iz ovih organizacija, neki članovi ne žele da daju podatke (recimo o radnoj angažovanosti). Ovo bi se moglo otkloniti podsticajnim merama prema revnosnim podružnicama/članovima. Slična pojava primećena je u organizacijama osoba sa senzornim smetnjama koje nemaju bazu

podataka, a imaju najviše članova – slepih je 12.080 (Statistika RSSS, 1998). Ministarstvo za rad i socijalna pitanja Republike Srbije u saradnji s Penzijskim fondom za socijalno osiguranje, Zavodom za zdravstveno osiguranje i Zavodom za tržište rada radi na formiranju banke podataka o osobama sa smetnjama u razvoju. Ovo će omogućiti praćenje prava svakog deteta. Za svako dete postoji podatak i o tipu smetnji, što je dobro jer to uslovljava specifične potrebe. Ovim putem u Srbiji je evidentirano 3.517 dece sa smetnjama u razvoju mlađe od 18 godina. Od toga korisnici dodatka za negu i pomoć drugog lica su 3.370, uključujući decu sa smetnjama u mentalnom razvoju i hronično psihički obolelu, od koje su na porodičnom smeštaju 175, korisnici MOP 114, sa teškim telesnim i mentalnim smetnjama 2.313, sa višestrukim smetnjama u razvoju – teže i teško 177. Na porodičnom smeštaju je ukupno 1.625 dece od koje 175 sa smetnjama u razvoju, a od dece sa fizičkim i kombinovanim smetnjama: 2 deteta oštećenog sluha, 1 slepo, 3 sa teškim telesnim smetnjama, 5 sa višestrukim smetnjama i 122 ostalih kategorija. Na domskom smeštaju je ukupno dece do 18 godina (sa smetnjama u razvoju) 1.073 i to: oštećenog sluha 16, slepa 3, sa teškim telesnim smetnjama 48, sa višestrukim smetnjama 90, ostale kategorije 267 (podaci Ministarstva za rad i socijalna pitanja RS na dan 29. oktobra 2002). Kretanje broja korisnika u oblasti socijalne zaštite pratilo se i pre po godištima i ti podaci su u Republičkom zavodu za statistiku. Ovde iznosimo uporedo podatke za 1996. i 2001. godinu:

**Iz tabele 1:** *Stanje i kretanje korisnika socijalne zaštite – dece i omladine prema kategorijama starosti i polu*

| Šifra kategorija | 1996. godina | 2001. godina |
|---|---|---|
| **41** slabovida deca i omladina | 78 | 149 |
| **42** slepa deca i omladina | 109 | 129 |
| **43** nagluva deca i omladina | 190 | 178 |
| **44** gluva deca i omladina | 202 | 191 |
| **45** sa poremećajima u govoru i glasu | 150 | 157 |
| **46** telesno invalidna | 534 | 780 |
| **40** ukupno ometenih u fizičkom razvitku | 1.263 | 1.584 |
| **50** sa kombinovanim smetnjama | 612 | 925 |
| **Ukupno korisnika** | 60.305 | 65.361 |

U tabeli 2a kategorije korisnika su označene šiframa koje su date u tabeli 1. Vidimo da je porast ukupnog broja korisnika socijalne zaštite za 8%, ukupno sa smetnjama u fizičkom razvitku za 25%, a sa kombinovanim smetnjama za čak 51%. Upadljiv je porast pomoći u naturi, dodatka za tuđu negu i pomoć, starateljstava.

## **Iz tabele 2a**: *Oblici socijalne zaštite za maloletne korisnike*

| OBLIK ZAŠTITE I GODIŠTE | ŠIFRA KATEGORIJE | | | | | |
|---|---|---|---|---|---|---|
| | **41** | **42** | **43** | **44** | **45** | **46** |
| **Starateljstvo 1996. godine** | 2 | 5 | 7 | 7 | 3 | 4 |
| **Starateljstvo 2001. godine** | 7 | 6 | 9 | 10 | 6 | 22 |
| **Usvojenje 1996. godine** | - | - | - | - | - | - |
| **Usvojenje 2001. godine** | - | 1 | - | - | - | - |
| **Smeštaj u drugu porodicu 1996. godine** | - | 1 | - | - | 2 | - |
| **Smeštaj u drugu porodicu 2001. godine** | 2 | 1 | - | - | - | 1 |
| **Smeštaj u organizaciju socijalne zaštite 1996. godine** | 12 | 26 | 17 | 33 | 9 | 25 |
| **Smeštaj u organizaciju socijalne zaštite 2001. godine** | 5 | 14 | 33 | 23 | 14 | 42 |
| **Smeštaj u drugu organizaciju 1996. godine** | 4 | - | 14 | 14 | 4 | 3 |
| **Smeštaj u drugu organizaciju 2001. godine** | 3 | 3 | 11 | 17 | 1 | 2 |
| **Stalne novčane naknade 1996. godine** | 13 | 10 | 12 | 12 | 5 | 23 |
| **Stalne novčane naknade 2001. godine** | 10 | 1 | 5 | 4 | 4 | 23 |
| **Jednokratne novčane naknade 1996. godine** | 21 | 15 | 84 | 84 | 15 | 59 |
| **Jednokratne novčane naknade 2001. godine** | 53 | 12 | 52 | 40 | 48 | 222 |
| **Ostale pomoći u naturi 1996. godine** | 10 | 10 | 13 | 13 | 12 | 55 |
| **Ostale pomoći u naturi 2001. godine** | 308 | 212 | 221 | 178 | 95 | 1.295 |
| **Nega i druge usluge u stanu 1996. godine** | - | 1 | - | - | - | 4 |
| **Nega i druge usluge u stanu 2001. godine** | 3 | 2 | - | 3 | 2 | 21 |
| **Dodatak za tuđu negu 1996. godine** | 18 | 48 | 34 | 34 | 16 | 325 |
| **Dodatak za tuđu negu 2001. godine** | 55 | 93 | 23 | 36 | 28 | 504 |
| **Rehabilitacija 1996. godine** | 5 | 4 | 16 | 16 | 3 | 10 |
| **Rehabilitacija 2001. godine** | 6 | 7 | 7 | 13 | 3 | 8 |
| **Zapošljavanje u zaštitnim radionicama 1996. godine** | - | - | 5 | 5 | 4 | - |
| **Zapošljavanje u zaštitnim radionicama 2001. godine** | - | 1 | - | 1 | - | - |

Najisplativija investicija za državu - osposobljavanje za rad onih koji nisu prošli redovno školovanje i njihovo zapošljavanje je nesrazmerno mala. U periodu od 1994. do kraja 2000. godine, novčane isplate socijalne i dečije zaštite kasnile su i značajno je snižen njihov nivo, pa su ova prava potpuno izgubila svoj smisao. Na primer, dodatak za negu i pomoć drugog lica kasnio je 32 meseca. Posle političkih promena 2000. godine, Vlada Republike Srbije je to nadoknadila iz donacija. Redovnost u isplatama uticala je na povećanje broja korisnika, ali iznos sadašnje naknade daleko je od toga da posluži svojoj nameni – plaćanje raznih oblika pomoći i usluga tokom svakodnevnog života. Tako i dalje ostaje na porodicama da podnose i troškove i obaveze. Najveći broj domaćinstava čiji je član osoba sa smetnjama u razvoju (u popisnom istraživanju 79%) su ispod granice siromaštva, a od njih 26% je u izuzetno teškoj ekonomskoj situaciji. Uz to, u ovoj populaciji je veliki broj rastavljenih brakova roditelja. Kakav je položaj porodice srednjoškolca koji je u internatu, u čijim troškovima učestvuje (puna cena 8.400 dinara), plaća održavanje pomagala, itd? Nije izvršena precizna analiza ovih specifičnih troškova niti je utvrđeno u kojoj meri to utiče na prag socijalne izdržljivosti ovih porodica. U njima se neretko lišavanja shvataju kao normalna situacija, što ruši njihovo samopouzdanje i čini ih ili pasivnim ili agresivnim. Takvim porodicama potrebna je informativna i savetodavna pomoć koja nedostaje. Pored pomenutog, nema: servisa za adaptaciju i opravku aparata i specijalnih pomagala, službi prevodilaca znakovnog jezika za gluve, za osposobljavanje i angažovanje personalnih asistenata i sl. Ovakvi servisi bi vremenom rasteretili i institucije za smeštaj ove dece i omogućilo bi se njihovo vraćanje porodicama.

Studija *Položaj dece u ustanovama socijalne zaštite u Srbiji*[48] pokazala je da je »nedostatak sredstava doveo u pitanje, ne samo kvalitet života kod dece već, njihov opstanak i razvoj«. Uvid u postojeće stanje – ruiniranost objekata, kadrovski deficiti, nedostatak učila i obrazovnog materijala, lekova, itd. inicirao je nekoliko velikih humanitarnih akcija, no, do sada su zadovoljene samo najosnovnije potrebe.

U setu reformskih projekata Ministarstva za rad i socijalna pitanja RS je i rano otkrivanje i zaštita dece sa rizikom u razvoju, kao i postepeno restruktuiranje i smanjenje postojećeg stacionarnog kapaciteta u korist alternativnih oblika podrške i paralelno podrška institucijama da razvijaju otvorene oblike zaštite.

[48] (Jugoslovenski) Centar za prava deteta, Beograd, 2001.

*Iz podataka istraživanja Centra za prava deteta*[49] *vidimo da su se sama deca u ustanovama posebno osvrnula na teškoće i probleme koji prate život u uslovima institucionalnog smeštaja:*

- *neadekvatna priprema deteta prilikom smeštaja u ustanovu i podrška tokom adaptacionog perioda;*
- *vaspitnoobrazovni rad koji ne podstiče dete na usvajanje veština neophodnih za samostalan život nakon izlaska iz ustanove;*
- *bitno sužene mogućnosti za ostvarivanje prava na privatnost, teškoće u ostvarivanju kvalitetnijeg kontakta s vaspitačima.*

Većina dece sa smetnjama u fizičkom razvoju i dece s kombinovanim smetnjama godinama je u internatima zbog školovanja. Pohađanje redovne škole ometaju, pre svega, nedostupnost školskog prostora i predrasude. Nema propisa ni službi za tehničku podršku takvoj deci. Čak ne znamo ni koliko ih je. U organizacijama slepih nedavno su traženi ti podaci i dobijeni su za 25 takve dece. Pomoć toj deci do sada je bila nesistematska.

Nedostatak rane intervencije umanjuje šanse deteta da se uključi u redovnu školu. U školi za decu sa smetnjama u razvoju čula vida planira se skoro uvođenje ovog programa. Među projektima nevladinih organizacija svakako treba pomenuti projekte UNICEF i *Save the children* »Rehabilitacija u lokalnoj zajednici dece sa smetnjama u razvoju i njihovih roditelja« u okviru kojeg je, u gradovima Srbije, otvoreno 10 biblioteka igračaka i primenjeno uključivanje 19 dece sa različitim smetnjama u 10 predškolskih grupa počev od 2000. godine. Kao rezultat rada, ove školske godine je u redovnu školu upisano 5 dece stasale za školu.

U knjizi *Reforma stručnog obrazovanja – od razgovora ka realizaciji*, navode se podaci o školama za decu sa »posebnim potrebama«, rezultati anketiranja osoblja u nekima od njih i pravci reforme obrazovanja za ovu decu. Podaci dobijeni istraživanjem pokazuju da postoje problemi u opremljenosti škola. Po njihovim procenama najopremljenije škole zadovoljavaju tek 59% potrebnih uslova. Pri redovnim školama u kojima su planirana posebna odeljenja za učenike oštećenog sluha 7 takvih odeljenja pohađa 21 učenik. U posebnim odeljenjima redovnih škola nisu obuhvaćeni učenici sa smetnjama nastalim usled distrofije i drugih oblika telesne invalidnosti, autizma, niti slepi učenici.

[49] Agenda za budućnost, 2001.

O broju osnovnih škola dati su sledeći podaci (po tipu oštećenja):
- oštećenje sluha (gluvi i nagluvi) – 2,
- oštećenje vida (slepi i slabovidi) – 1,
- telesna invalidnost – 1,
- smetnje u mentalnom razvoju i telesna invalidnost – 2.

U školama za slabovide učenike, u 16 odeljenja osnovno obrazovanje stiče 140 učenika sa očuvanim intelektualnim sposobnostima, a u jednom odeljenju sa 8 učenika oni koji pored slabovidosti imaju smetnje u mentalnom razvoju. U školama za telesno invalidne učenike, u 25 odeljenja obrazovanje stiče 87 učenika sa očuvanom inteligencijom, a u 3 odeljenja 24 učenika sa kombinovanim mentalnim smetnjama.

Broj srednjih škola koje imaju i osnovnu školu, prema istom izvoru, izgleda ovako (po tipu smetnji u razvoju):
- oštećenje sluha (gluvi i nagluvi) – 4,
- oštećenje vida (slepi i slabovidi) – 1,
- oštećenje sluha i autizam – 1,
- smetnje u mentalnom razvoju, oštećenje vida, telesna invalidnost i autizam – 1.

Od ukupno 8 škola za učenike oštećenog sluha, u 4 se ostvaruju programi i osnovnog i srednjeg obrazovanja, u jednoj, pored učenika sa smetnjama u razvoju čula sluha, obrazuju se učenici sa lakom mentalnom ometenošu i učenici koji boluju od autizma. Za slepe i slabovide učenike nastava se organizuje u jednoj školi za srednje i osnovno obrazovanje, u kojoj ima učenika sa potpuno očuvanom inteligencijom za koje se nastava odvija po nastavnim planovima i programima redovnih škola. Učenici sa smetnjama u razvoju čula vida, što se u knjizi ne pominje, školuju se i u posebnim odeljenjima pri Medicinskoj školi.

Pregled podataka o strukturi i broju učenika srednjih škola od 1994/1995. do 2000/2001. godine pokazuje relativnu stabilnost od 1996/1997, a prethodnih godina je bilo nešto manje učenika. Broj učenika u školama za decu sa smetnjama u razvoju čula vida stalno se kreće između 40 i 50. Konstantan broj je i u školama za slušno oštećenu decu i odgovara njihovim prostornim kapacitetima. U školi za decu sa smetnjama u razvoju čula vida ukupno je njih 92 očuvane inteligencije u 13 odeljenja, a sa kombinacijom lake mentalne ometenosti njih 34 u 6 odeljenja. Učenika sa smetnjama u razvoju čula sluha je 174 u 25 odeljenja, a s dodatnim smetnjama u mentalnom razvoju 29 u 8 odeljenja. Sa telesnom invalidnošću uz

smetnje u mentalnom razvoju ih je 10 u 2 odeljenja.[50] Sve ove škole su u većim gradovima, te su deca odvojena od porodične sredine. Deci sa kombinovanim smetnjama u našem obrazovnom sistemu posvećuje se najmanje pažnje. Isti je slučaj na stručnim skupovima.

U Srbiji je bilo 750.971 dece osnovnoškolskog uzrasta, od čega je svim oblicima specijalnog obrazovanja i zbrinjavanja bilo obuhvaćeno 8.060 dece sa »posebnim potrebama«.[51] Ako je stopa učestalosti dece sa razvojnim teškoćama 7%, znači da ih je 52.568. To znači da je samo 15,33% obuhvaćeno specijalnim ustanovama. Ne zna se koliko ih je u redovnim školama, niti koliko van obrazovnog sistema. U praksi se toleriše nepoštovanje obaveznosti osnovnoškolskog obrazovanja za decu sa senzornim, telesnim i, pogotovu, višestrukim smetnjama. Ima i slučajeva zanemarivanja i zloupotreba ove dece, a zavisnost od roditelja/staraoca ih dodatno onemogućava da nešto preduzmu.

Poražavajući su i podaci da samo 13% osoba sa smetnjama u razvoju ima stalno zaposlenje i to 10% njih u nevladinom sektoru ili organizacijama invalida, a po 1% u zaštitnim radionicama, društvenoj ili privatnoj firmi, što je kontradiktorno njihovoj obrazovnoj strukturi koja odgovara onoj u opštoj populaciji.[52] Broj zanimanja je mali. Učenici sa smetnjama u razvoju čula vida školuju se za: telefoniste, birotehničare, pakere i fizioterapeute oštećenog vida, a učenici oštećenog sluha za: bravare, knjigovesce, frizere, krojače – konfekcionare, što su zanimanja koja ne omogućavaju prohodnost na više škole i fakultete.

*Iz rezultata istraživanja Centra za prava deteta[53], saznajemo da su deca sa smetnjama u razvoju, i ona koja žive u porodici i ona koja su smeštena u institucije, pokazala visok stepen kritičnosti u odnosu na:*

- *dostupnost obrazovanja i njegov kvalitet (nedovoljno praktične nastave, kriterijumi ocenjivanja nisu objektivni, itd). Po pravilu su svesni ograničenosti izbora i mogućih zanimanja i smatraju da ih diplome svojim nazivom vidno diskriminišu (npr. zvanje fizioterapeut oštećenog vida);*
- *nedovoljnu razvijenost službi za podršku deci i roditeljima (savetovališta, klubovi).*

[50] Podaci Ministarstva za prosvetu i sport Republike Srbije, 2001.

[51] Podaci UNICEF, 2001.

[52] Cucić i dr, *Osobe s invaliditetom i okruženje*, Centar za proučavanje alternativa i Handicap International, Beograd, 2001.

[53] Agenda za budućnost, 2001.

Studenata sa smetnjama u razvoju je jako malo. Po evidenciji republičkih organizacija MS ima 7 studenata, distrofičara 28, udruženja paraplegičara 16, slepih i slabovidih 25. Sem Beograđana, koji su u porodicama, svi studenti su smešteni u jednom studentskom domu. U Ministarstvu za prosvetu i sport Republike Srbije o njima i učenicima sa smetnjama u razvoju ne vode posebnu evidenciju (o broju, kreditima, stipendijama) »jer ih ni na koji način ne izdvajaju«. Imaju dobru saradnju sa Udruženjem studenata sa hendikepom, koje deluje dve godine i ima 203 člana, od kojih su 126 učenici ili studenti sa smetnjama u razvoju. Od njih smo dobili podatke da takvih studenata u pomenutom studentskom domu ima 45, i to 31 s motornim smetnjama, 10 slepih i 4 sa smetnjama čula sluha. Zahteve za studentske stipendije podnelo je njih 39 koji ispunjavaju uslove koji su isti u pogledu uspeha i imovinskog cenzusa kao i za ostale studente. Dakle, ni ovde se ne vodi računa o dodatnim troškovima koje imaju ovi mladi ljudi. Ovo Udruženje organizovalo je brojne tribine i kampanje u kojima artikuliše potrebe i probleme ovih studenata. Blagovremeno su podneli i amandmane na Zakon o univerzitetu ali, nažalost, oni nisu ni razmatrani pa su uslovi studiranja ostali isti. Zapravo, u programima se uopšte ne vodi računa o njihovim potrebama, načinu organizovanja ispita, nema udžbeničke literature na Brajevom pismu za slepe, tumača za gluve, itd. S druge strane, dosta toga im je obećano – postavljanje rampi za invalide na nekim fakultetima (sada su samo 2 dostupna) i studentskim domovima, smeštaj ovih studenata i u druge domove, itd.

U toku je izrada strateškog okvira za reformu obrazovanja dece i omladine sa posebnim potrebama pri Ministarstvu prosvete i sporta RS. Ekspertska grupa konsultuje stručnjake, invalide i roditelje. Oni će predložiti reformisane programe i oblike vaspitanja i obrazovanja prilagođene ovoj deci, obuhvatajući od predškolskog do visokoškolskog nivoa. Predviđaju se oblici integrativnog i inkluzivnog obrazovanja, gde god ih je moguće primeniti. Važan zadatak je omogućavanje dostupnosti visokoškolskom obrazovanju osobama sa smetnjama u razvoju koje imaju adekvatne sposobnosti za učenje. Vodiće se računa o politici osposobljavanja za rad, stvaranju novih zanimanja, omogućavanju vertikalne i horizontalne prohodnosti.

Nedostupnost običnog pisma slepima stavlja ih u poseban položaj. Specifična tehnika za čitanje i pisanje dovela je do formiranja ustanova u kojima se organizuje proizvodnja i distribucija knjiga i časopisa na Brajevom pismu i daleko više na audio-kasetama, a očekuje se prelazak na digitalnu tehniku. Postoji nekoliko dečjih časopisa. Što se tiče udžbenika, njih godinama štampa Zavod za udžbenike i nastavna sredstva. Godišnje izađe 5 do 6 udžbenika isključivo za potrebe škole za

decu oštećenog vida, što nije dovoljno. Finansijske prepreke ne omogućavaju više. Pre nekoliko godina započelo se sa štampanjem čitanki sa uvećanim slovima i urađene su samo za I i II razred. Pripremljena je i matematika, ali nikad nije izašla iz štampe. Našoj slepoj deci nisu dostupne reljefne slikovnice, atlasi, makete. Nema ni pozorišnih predstava, TV emisija i filmova koji su praćeni audiodeskripcijom, niti gestovnim govorom. Nema natpisa ili svetlosnih signala za gluve, niti informacija na Brajevom pismu za slepe, čak ni u ustanovama kulture. Ograničenja u komunikaciji mogu se prevazići na razne načine. To su povlastice u gradskom i međugradskom saobraćaju, koje postoje, ali se u vreme ekonomske krize nisu poštovale. Zatim povlastice u korišćenju telekomunikacionih uređaja, kao što su mobilni telefoni (slepi imaju beneficije). Personalni računari omogućavaju komunikaciju na daljinu, a slepima, uz dodatnu adaptivnu opremu, samostalno čitanje i pisanje, ali je to za pojedninca preskupo, a izgleda da je još uvek i za državu. To je neophodno pomagalo koje bi se moralo dobijati besplatno. Zasad su to Brajeva pisaća mašina i 4-kanalni kasetofon, mada se i oni nisu uvozili do 1995. godine. Zaključno s prošlogodišnjom isporukom podmireni su učenici i studenti koji su imali prioritet.

U daleko lošijem položaju su deca koja ova prava ostvaruju preko zdravstva. Ovde je teško bilo obezbediti materijalna sredstva. Tako se prava na ortopedska i tzv. očna pomagala ili nisu ostvarivala godinama, ili su se ostvarivala uz znatno odstupanje od propisanih uslova. Uslovi nabavke ortopedskih pomagala su neprimenljivi, rokovi za dobijanje predugački, kvalitet pomagala nestandardan. Ovo je delom kompenzovano preko humanitarne pomoći, koje su invalidske organizacije i pojedinci dobijali uglavnom od stranih donatora, što je bila jedna od faza u njihovom radu.

Uporedo sa smanjenjem mortaliteta beba povećava se broj dece sa smetnjama u razvoju. Zato se i Ministarstvo zdravlja RS uključilo u programe prevencije Svetske zdravstvene organizacije. Mada je sigurno da ovo jeste prioritetan zadatak, ne znači da deca koja su već rođena s lokomotornim smetnjama ne treba da se leče. No, šta reći ako je samo jedan dom zdravlja u Beogradu dostupan osobama u kolicima. Nema podataka o korišćenju zdravstvenih usluga. Takođe se osobe sa smetnjama u razvoju ne evidentiraju. Razlog je poznat – da ih ne bi obeležavali. Upravo pedijatrijske službe mogle bi da najefikasnije pomognu u otkrivanju ove dece i uspostavljanju liste praćenja.

Nije poznat nijedan slučaj kontrole izvođača radova da li na javnim objektima planiraju i postavljaju olakšice za kretanje invalida, što je propisano odgovarajućim

pravilnikom. Oni koji se teško kreću ne mogu da uđu u javni prevoz, u kome nema ni zvučne najave stanica. Kombiji Gradskog saobraćajnog preduzeća samo saniraju, a ne rešavaju problem.
Arhitektonske barijere prikazane su na tribini održanoj 24. maja 2002. godine, pod nazivom »Bele tačke Beograda« u organizaciji Centra za samostalni život invalida i partnerskih orgnizacija. Prikazivani su slajdovi s karakterističnim situacijama koje se odnose na: stambene objekte; pragove vrata; prekidače; dimenzije kuhinja i kupatila; uske ulazne hodnike, male liftove; nepristupačne javne toalete, itd. Predstavljena je i brošura »Bele tačke Beograda – vodič kroz Beograd za osobe sa invaliditetom«. Kroz praktični terenski rad došlo se do ovih podataka:

- Pristupačan ulaz (rampa i rukohvat), osnovni sadržaj objekta i toalet postoje u 2 hotela, 1 restoranu, 3 pozorišta, 3 bioskopa, 4 šetališta, 4 pošte, 2 tržna centra, 28 banki, 1 opštini, aerodromu Surčin;
- Pristupačan ulaz (rampa bez rukohvata), osnovni sadržaj objekta i nepristupačna kabina za toalet (moguć ulaz u predprostoriju) postoji na železničkoj stanici, u 10 hotela, 17 restorana, 1 pozorištu, 2 bioskopa, na jednom šetalištu, u 4 pošte, 9 tržnih centara, 7 opština, 2 stadiona, 5 sportskih dvorana;
- Najviše jedan stepenik na ulazu, sa ili bez rukohvata, pristupačni sadržaji objekta, nepristupačan toalet, postoje u 1 centru za socijalni rad, autobuskoj stanici, 15 restorana, 2 muzeja i 1 stadionu.

U Beovoz može se ući samo na stanici »Vukov spomenik«, a nigde se ne može izaći.[54] Udruženje studenata sa hendikepom je, od 15. februara ove godine, pokrenulo akciju uklanjanja arhitektonskih barijera u Beogradu. Planirano je na kojim sve kulturnim i javnim objektima treba postaviti rampu. Na ovu inicijativu reagovala su nadležna ministarstva i važne ustanove, tako da predstoji dalje zajedničko angažovanje. Projekti tipa *Grad pristupačan za sve* pokrenuti su i u drugim gradovima Srbije. Polovinom 90-ih godina XX veka, u Beogradu su postavljeni zvučni semafori na 22 raskrsnice i 52 pešačka prelaza. To je u daleko manjem broju učinjeno u drugim gradovima Srbije. Pre desetak godina postavljeni su prvi spušteni ivičnjaci. Veća akcija bila je 1995/1996, a od pre 18 meseci se počelo raditi planski. U isto vreme urađen je projekat *Parametri relevantni za*

[54] Maliković, Ivana, Bele tačke Beograda, *Moj MS Svet*, Društvo MS Srbije, septembar 2002, str. 16-17.

*izradu mreže za osobe sa invaliditetima – sistemi vođenja slepih*. U Ulici kralja Milana urađena je traka za vođenje slepih, a planirano je da i druge centralne ulice budu tako urađene.

Promene u praksi treba da pokrene veća svest o pravu svakog čoveka na jednakost i drugim ljudskim pravima. Pre 2000. godine, problemi invalida doživljavali su se kao nešto što se tiče veoma uskog kruga ljudi – porodica, njihovih udruženja i stručnjaka koji se bave njihovom rehabilitacijom, obrazovanjem i zapošljavanjem. Položaj im se drastično pogoršao usled 10-godišnje društvenoekonomske krize. Sada je uočena potreba za širom i konkretnom društvenom akcijom za stvaranje uslova koji bi omogućili potpuniju integraciju u zajednicu.

Poslednje dve godine ima dosta kampanja putem medija, džinglova, bilbordova čija je svrha uklanjanje socijalnih barijera s kojima se osobe sa smetnjama u razvoju svakodnevno sreću.

Posmatrano iz ugla same dece sa smetnjama u razvoju,[55] takva šira akcija trebalo bi da uzme u obzir i njihove konkretne preporuke:

- obezbediti veću podršku roditeljima radi pripreme dece za samostalan život, koja treba da počne na što ranijim uzrastima;
- stimulisati odgovorne da unose inovacije u svoj rad;
- obezbediti bolji pristup informacijama, bolju opremu, pomagala i rekvizite za ovladavanje veštinama;
- omogućiti nesmetan pristup programima koji su dostupni ostaloj deci.

[55] Agenda za budućnost, 2001.

# *VI*

# Obrazovanje, slobodno vreme i kulturne aktivnosti

# PRAVO NA OBRAZOVANJE

***Član 28. Konvencije o pravima deteta***

***1. Države ugovornice priznaju pravo na obrazovanje i u cilju postepenog postizanja ovog prava, a na osnovu jednakih mogućnosti, posebno će:***
***a) učiniti osnovno obrazovanje obaveznim i besplatnim za sve;***
***b) podsticati razvoj različitih oblika srednjeg obrazovanja, uključujući opšte i stručno obrazovanje, koje bi bilo na raspolaganju i dostupno svakom detetu i preduzimati pogodne mere kao što su uvođenje besplatnog obrazovanja i pružanje finansijske pomoći kada je to potrebno;***
***c) omogućiti, svim odgovarajućim sredstvima, da više obrazovanje bude dostupno svima u skladu sa sposobnostima;***
***c) omogućiti da obrazovne i stručne informacije i saveti budu dostupni svoj deci;***
***e) preduzimati mere za obezbeđenje redovnog pohađanja škole i smanjenja stope napuštanja škole.***
***2. Države ugovornice će preduzimati potrebne mere da se disciplina u školi sprovodi na način primeren ljudskom dostojanstvu deteta i u skladu sa ovom Konvencijom.***
***3. Države ugovornice će pokretati i podsticati međunarodnu saradnju po pitanjima obrazovanja, posebno u cilju doprinošenja iskorenjivanju neznanja i nepismenosti u svetu i olakšavanja pristupa naučnim i tehničkim saznanjima u modernim nastavnim metodima. U tom smislu, posebno će se voditi računa o potrebama zemalja u razvoju.***

## Propisi u SRJ i Republici Srbiji

Članom 62 Ustava SRJ utvrđeno je da je *školovanje* svakom dostupno pod jednakim uslovima, kao i da je osnovno školovanje obavezno, u skladu sa zakonom, i da se na njega ne plaća školarina. Dostupnost školovanja pod jednakim uslovima i obaveznost osnovnog školovanja predviđena je i Republičkim ustavom (član 32, st. 1 i 2 Ustava RS).

Ranijim Zakonom o društvenoj brizi o deci, bilo je predviđeno neobavezno, besplatno (finansirano iz republičkog budžeta) predškolsko vaspitanje i obrazovanje za decu bez roditeljskog staranja, decu sa „smetnjama u razvoju" i decu na dužem bolničkom lečenju, kao i „vaspitnoobrazovni program u godini pred polazak u školu u trajanju od 3 sata dnevno". U toku je izrada Zakona o predškolskom vaspitanju i obrazovanju (čime se prethodni u potpunosti stavlja van snage), a Nacrt tog Zakona zadržava i proširuje navedena „prava". Preciznije, program pred polazak u školu produžava se na 4 časa dnevno i proširuje na uzraste od 5 do 7 godina.

Ostvarivanje prava na *osnovno školovanje* regulisano je republičkim Zakonom o osnovnoj školi, koji određuje da osnovno vaspitanje i obrazovanje traje osam godina (član 8 ZOŠ RS). U prvi razred se upisuju deca koja do kraja kalendarske godine navršavaju sedam godina, ali dete koje zbog bolesti ili drugih razloga nije bilo upisano u školu na vreme može se upisati i nakon sedme godine. Izuzetno, na osnovu rešenja posebne komisije, u osnovnu školu se mogu upisati i fizički i psihički razvijena deca koja do kraja tekuće kalendarske godine navršavaju šest godina života (član 39 ZOŠ RS). Učeniku koji je navršio 15 godina prestaje obaveza pohađanja škole istekom te školske godine, ali škola može, po odluci direktora, da učeniku koji je navršio 15 godina, a nije stekao osnovno vaspitanje i obrazovanje, omogući školovanje do navršenih 17 godina života, ako to zahteva učenik ili njegov roditelj (član 44 ZOŠ RS). Učenik koji se ističe znanjem i sposobnostima može da završi školu i u roku kraćem od osam, ali ne kraćem od šest godina, s tim što u toku jedne školske godine može da završi najviše dva razreda (član 62 ZOŠ RS).

Za *upis deteta u prvi razred*, i za redovno pohađanje nastave i obavljanje drugih školskih obaveza učenika, odgovoran je roditelj, usvojilac, staratelj, odnosno organ starateljstva. Opština vodi evidenciju i obaveštava školu i roditelje o deci koja bi trebalo da se upišu u školu. Škola je, pak, dužna da obaveštava roditelje i opštinu o deci koja su prestala da pohađaju školu ili je redovno ne pohađaju, najkasnije 15

dana od dana proteka roka za upis, odnosno od dana prestanka redovnog pohađanja nastave u školi. Protiv roditelja čije dete nije blagovremeno upisano u prvi razred, odnosno čije dete ne pohađa redovno nastavu, nadležni opštinski organ podneće prijavu najkasnije u roku od 15 dana od dana kada je o tome obavešten (član 40 ZOŠ RS). Takođe, dete može da izostane iz škole samo u opravdanim slučajevima, a roditelj je dužan da najkasnije u roku od osam dana opravda ovaj izostanak (član 41 ZOŠ RS). Učenik ne može biti isključen iz osnovne škole. Izuzetno, ako učini težu povredu svojih obaveza, učenik od petog do osmog razreda može biti premešten u drugu školu po odluci nastavničkog veća škole (član 43 ZOŠ RS).

Za učenike od prvog do četvrtog razreda organizuje se razredna, a za učenike od petog do osmog razreda predmetna *nastava* (član 25 ZOŠ RS). Zakonom je regulisan broj časova nastave nedeljno, broj učenika u odeljenju, kao i trajanje školske godine (čl. 26-28 ZOŠ RS). Za učenike na dužem kućnom ili bolničkom lečenju škola može da organizuje obrazovnovaspitni rad kao poseban oblik rada (član 29 ZOŠ RS). Za učenike koji zaostaju u savlađivanju nastavnog plana i programa škola organizuje tokom godine dopunsku nastavu, dok se za učenike od četvrtog do osmog razreda sa posebnim sposobnostima i interesovanjima organizuje dodatni rad. Takođe je predviđen i korektivni pedagoški rad sa učenicima koji imaju manje smetnje u fizičkom i psihičkom razvoju (čl. 30 i 31 ZOŠ RS). Škola može ostvarivati i program ogleda radi provere vrednosti novih obrazovnih sadržaja, oblika, metoda i organizacije rada, novih nastavnih sredstava i opreme. Radi ostvarivanja programa ogleda mogu se osnivati i posebne škole (član 36 ZOŠ RS).

*Učenici* imaju pravo i obavezu da redovno pohađaju nastavu i izvršavaju školske obaveze (član 59 ZOŠ RS). Oni se ocenjuju iz svih nastavnih predmeta i iz vladanja (član 46 ZOŠ RS). Učenik ili njegov roditelj imaju pravo da direktoru škole podnesu prigovor na ocenu i na postupak ocenjivanja u određenom roku po prijemu đačke knjižice, odnosno svedočanstva, koji će, ako smatra da je prigovor osnovan, obrazovati komisiju za polaganje ispita (član 63 ZOŠ RS). Za povredu obaveza učenik može da odgovara disciplinski, i mogu mu se izreći sledeće vaspitno-disciplinske mere: opomena, ukor razrednog starešine i ukor nastavničkog veća (za lakšu povredu obaveza) i ukor direktora i strogi ukor nastavničkog veća (za težu povredu obaveza). Učenik ili njegov roditelj mogu u određenom roku da podnesu prigovor direktoru škole na izrečenu vaspitno-disciplinsku meru (čl. 64-66 ZOŠ RS). Takođe je predviđeno da roditelj učenika nadoknađuje materijalnu štetu koju učenik prouzrokuje namerno ili iz krajnje nepažnje (član 64 ZOŠ RS).

*Srednja škola* se osniva kao gimnazija, umetnička i stručna škola (član 3 ZSŠ RS). Kandidat za upis u gimnaziju ili stručnu školu polaže kvalifikacioni ispit, dok kandidat za upis u umetničku školu polaže prijemni ispit. Redosled kandidata za upis utvrđuje se na osnovu uspeha na kvalifikacionom, odnosno prijemnom ispitu i uspeha u prethodnom školovanju (član 42 ZSŠ RS). Zakonom su regulisani i uslovi pod kojima se škola može osnovati i obavljati delatnost, način donošenja i sadržaj nastavnog plana, način odvijanja obrazovnovaspitnog rada, zatim način ocenjivanja, prava, obaveze i odgovornosti učenika, uslovi koje treba da ispunjava nastavno osoblje, upravljanje školom, priznavanje stranog svedočanstva, kao i evidencija koja se vodi u školama i javne isprave koje škole izdaju. Sredstva za rad škola se obezbeđuju u budžetu Republike, a deo sredstava obezbeđuje i opština, odnosno grad. Školarinu, čiji iznos utvrđuje Ministarstvo obrazovanja i sporta Republike Srbije, plaćaju vanredni učenici, kao i strani državljani i lica bez državljanstva – osim ako je međunarodnim ugovorom drugačije određeno (čl. 105–107 ZSŠ RS).

Kada je o *univerzitetu* reč, zakon predviđa da se redosled kandidata za upis u prvu godinu studija utvrđuje na osnovu opšteg uspeha postignutog u srednjem obrazovanju i rezultata postignutih na kvalifikacionom ispitu, odnosno ispitu za proveru sklonosti i sposobnosti koji polaže svaki kandidat koji konkuriše za upis (član 34, st. 4 Zakona o univerzitetu RS). Prijemni ispit polažu svi kandidati, izuzev kandidata koji je kao učenik četvrtog razreda srednje škole osvojio jedno od prva tri pojedinačna mesta na republičkom, saveznom ili međunarodnom takmičenju iz nastavnog predmeta iz kojeg polaže prijemni ispit (član 34, st. 2 Zakona o univerzitetu RS). Vlada će, po pribavljenom mišljenju univerziteta, doneti odluku o broju studenata čije će se obrazovanje finansirati iz budžeta i o broju studenata koji plaćaju školarinu (član 32 Zakona o univerziteta RS).

## Ocena stanja i komentari

Sistem obrazovanja u Srbiji obuhvata predškolsko, osnovno, srednje i visoko obrazovanje. Uključujući decu, učenike, studente i zaposlene, formalni sistem obrazovanja angažuje preko 20% ukupne populacije u zemlji: oko 120 000 zaposlenih, oko 100 000 učitelja, nastavnika i profesora na svim nivoima u okviru 4.746 obrazovnih institucija.

Godine 2000. u Srbiji je bilo 1.239 centralnih osnovnih škola, 473 srednjih (126 gimnazija i 311 srednjih stručnih škola, sa 543 profila), 9 univerziteta sa 85 fakulteta i 49 viših škola izvan univerziteta.

Sistem je ocenjen kao uniforman, centralizovan i neefikasan, a usled ekonomske i političke krize, međunarodne izolacije i NATO bombardovanja, značajno degradiran tokom 90-ih godina tako da „...funkcioniše na nivou siromaštva" (podaci za 1999/2000. godinu).[56] Posebno su nerazvijeni i neefikasni: sistem planiranja, upravljanja i administracije i praćenja funkcionisanja i efekata (ne postoji integrisani informacioni sistem).

Formalni obrazovni sistem, sa donekle izuzetkom predškolskog vaspitanja, karakterišu preobimni programi usmereni na sadržaje i tradicionalne merode učenja i podučavanja.

Neformalno obrazovanje nije dovoljno razvijeno niti regulisano i podržano relevantnim zakonima. Postoje ozbiljni nedostaci obrazovnog zakonodavstva. Većina zakona koji regulišu oblast obrazovanja nasleđena je iz prethodnog perioda (pre 2000. godine), a jedino je donet novi, ali još uvek ne i reformski Zakon o univerzitetu (umesto ranijeg iz 1998, koji je potpuno ukidao autonomiju univerziteta), kao i Izmene i dopune Zakona o osnovnoj školi i Zakona o srednjoj školi. Izražen je nedostatak pravno regulisanih mehanizama i resursa koji bi obezbeđivali ostvarivanje javno deklarisanih ciljeva - opšte dostupnosti i kvaliteta obrazovanja.

Ukupna sredstva za obrazovanje varirala su tokom 90-ih godina od 3% do 4,5% BNP i generalno opadala sa povećanjem ekonomske krize, a rasla u periodima ekonomskog oporavka.[57] Tokom 2001. godine u Srbiji je procenat javne potrošnje za obrazovanje iznosio 6,3% i među najnižim je u ovom delu Evrope (polovina se finansira iz lokalnih izvora).

Početkom 2001. godine, započeta je sveobuhvatna reforma obrazovanja, zasnovana na preporukama međunarodnih izveštaja o stanju obrazovnog sistema u Srbiji,[58] čiji su osnovni ciljevi reorganizacija i osavremenjavanje školskog sistema:

- kao doprinos ekonomskom oporavku,
- kao suštinska podrška razvoju demokratije,
- kao podrška budućoj evropskoj integraciji zemlje.[59]

[56] Sveobuhvatna analiza sistema osnovnog obrazovanja, UNICEF, Beograd, 2001.

[57] Ibid.

[58] Izveštaje su sačinili OECD, UNICEF i Svetska banka.

[59] Kvalitetno obrazovanje za sve: put ka razvijenom društvu, MPS, Beograd, 2002, str 10.

Ciljevi reformisanog sistema obrazovanja definisani su kao:

- formiranje i razvoj generativnih i transfernih znanja, veština mišljenja i efikasnog rešavanja složenih problema,
- sticanje životnih veština i funkcionalne pismenosti,
- razvoj sistema vrednosti koji uvažava različitost i poštuje pravičnost, ljudska prava i najvrednije elemente nacionalne tradicije.[60]

Pravci reforme uključuju: decentralizaciju upravljanja i finansiranja, demokratizaciju sistema, škole kao institucije i samog nastavnog procesa i poboljšanje kvaliteta nastavnog procesa i učenja, sadržaja obrazovanja i obrazovnih ishoda.

Planirano je da od 2003. godine započne transformacija obrazovnog sistema, tako da obavezna osnovna škola traje 9 godina (tri ciklusa po tri godine), a srednje obrazovanje jednu do tri godine (srednje stručno 1 do 3, opšte stručno - gimnazije, 3 godine). Iste godine započinje i postepeno uvođenje kurikularne reforme koja treba da traje do 2010. godine. Kurikularna reforma podrazumeva da se školski program sastoji od "nacionalnog" i "školskog" kurikuluma. Nacionalni kurikulum čine bazični predmeti (srpski, matematika, strani jezik i maternji jezik nacionalnih manjina) sa definisanim ciljevima i ishodima, ciljevi i ishodi definisani po obrazovnim oblastima, ciklusima i nivoima i predmeti ili teme (obavezni, izborni ili fakultativni) sa ciljevima i ishodima. Školski kurikulum obuhvata sve aktivnosti kojima škola dopunjava, pojačava ili proširuje ukupan obrazovni program. U obaveznom obrazovanju, udeo nacionalnog kurikuluma ne može biti veći od 90%, niti manji od 70%; u opštem srednjem taj udeo ne može biti manji od 70%, a u srednjem stručnom 40%.

U prvi i drugi razred postojeće osnovne i srednje škole uveden je predmet „građansko vaspitanje", kao fakultativni (2001/2002. god.), odnosno izborni (2002/2003. god.) predmet, paralelno sa „verskom nastavom". Programe za ove nastavne predmete sačinio je ekspertski tim za demokratizaciju obrazovanja uz oslanjanje na već postojeće programe obrazovanja za prava deteta, toleranciju i miroljubivo rešavanje sukoba, nenasilnu komunikaciju i sl., nastale i testirane na među građanima u okviru nevladinog sektora. U prvoj godini, ovim nastavnim predmetima bilo je obuhvaćeno 20% dece prvog razreda osnovne i oko 10% učenika

[60] ibid.

prvog razreda srednje škole, a u tekućoj školskoj godini ti procenti iznose oko 40% za osnovnu i preko 50% za srednju školu. Konačno rešenje obrazovanja za ljudska prava, demokratiju i građansko društvo, planirano je kao deo kurikularne reforme i biće ostvareno kroz obavezne i izborne predmete, kros-kurikularno i u okviru vannastavnih aktivnosti.

Takođe, u toku je rad na postavljanju jedinstvenog informacionog sistema, uvođenje jedinstvene eksterne mature, razvoj objedinjenog i modernizovanog sistema stručnog usavršavanja i napredovanja prosvetnih radnika, kao i reforma višeg i visokog obrazovanja.

U toku je izrada Nacionalnog plana akcije za obrazovanje za sve, sa posebnim akcentom na sledećim ciljevima Dakarske konferencije:cilj 1. - povećanje obuhvata dece predškolskih uzrasta programima nege i vaspitanja, posebno za decu osetljivih i neprivilegovanih grupa; cilj 2. - posebno u odnosu na decu sa posebnim potrebama, decu nekih etničkih manjina (Romi) i cilj 4. - povećanje stope pismenosti odraslih. Ministarstvo prosvete i sporta je osnovalo posebnu Komisiju za izradu Nacionalnog plana akcije za obrazovanje za sve.

Konačno, u toku poslednje dve godine obnovljeno je članstvo naše zemlje u nizu evropskih i međunarodnih asocijacija i organizacija relevantnih za oblast obrazovanja, a reforma se odvija uz obimnu pomoć i intenzivnu međunarodnu saradnju.

***Ostvarenost prava na obrazovanje (čl. 28 i 29)***

Uprkos zakonskim rešenjima, puna dostupnost i obaveznost osnovnog obrazovanja nije ostvarena. Prema nekim podacima,[61] u 2000-oj godini je u osnovnu školu bilo upisano 97,4% dece, a 93,8% dece koja su upisala prvi razred, na kraju dođe do petog (92% u seoskim, a 95,4% u gradskim sredinama).

Situacija je međutim, daleko gora za decu iz posebno osetljivih i ugroženih grupa: Rome, decu sa posebnim potrebama i decu izbeglica i interno raseljenih lica.

Romi imaju najveći procenat nepismenih (prema popisu od 1991. godine, 27% u odnosu na 7% na nacionalnom nivou); preko 78% ne završava osnovnu školu, samo

[61] MICS, 2000.

4% ima srednje obrazovanje, a višu školu ili fakultet 0,2%. Kod ove populacije je takođe veoma visoka stopa osipanja (napuštanja škole) i to već posle 2-3 razreda.[62] Prema OECD-ovom izveštaju iz 2001. godine, oko 40% romske populacije čine deca ispod 14 godina, a njih oko 7.500 ne pohađa školu.

Posebno zabrinjava podatak da je procenat romske dece u specijalnim školama izuzetno visok (prema nekim podacima, čak 50-80%), što svedoči o krajnjoj manjkavosti sistema kategorizacije.[63]

Dostupnost osnovnog obrazovanja deci sa posebnim potrebama je takođe faktički izrazito nedovoljna. Procene eksperata govore da čak 85% ove dece koja žive sa svojim roditeljima, ne pohađa školu.[64] U mnogim sredinama ne postoje specijalne škole niti odeljenja, razvijena i razrađena praksa individualne podrške detetu u porodici i/ili u redovnoj školi, niti razrađen sistem inkluzivnog obrazovanja (tek su pokrenuti pojedini projekti inkluzivnog obrazovanja). Škole nemaju uslove za prijem invalidne dece (i to od vrtića do fakulteta).

Specijalne škole i odeljenja razvrstane su prema vrsti i stepenu razvojnih teškoća i neravnomerno su regionalno raspoređene (većina u centralnoj Srbiji i Beogradu). Ipak, 95% dece sa posebnim potrebama koja upišu specijalne škole ili odeljenja, završi osnovnu školu, ali samo oko 30% nastavlja srednje školovanje.

U srednje škole upisano je 1997/1998. godine 78,3% učenika (18,42% u opšte, a 59,88% u stručne škole) odgovarajućeg uzrasta (15 godina), a u više i visoko obrazovne ukupno 22,63% odgovarajuće kohorte (17,80% na univerzitete, a 4,83% na više škole izvan univerziteta).[65]

[62] Sveobuhvatna analiza sistema osnovnog obrazovanja u SRJ, UNICEF, 2001.

[63] U toku je izrada Strategije za osnaživanje i integraciju Roma na saveznom nivou, a formiran je na nivou Srbije i poseban tim koji razrađuje problematiku obrazovanja.

[64] Sveobuhvatna analiza sistema osnovnog obrazovanja u SRJ, UNICEF, 2001.

[65] *Statistical data - Support for OECD Thematic Review of Educational Policy in South East Europe,* Serbia, 2001.

# CILJEVI OBRAZOVANJA

## *Član 29. Konvencije o pravima deteta*

***1. Države ugovornice se slažu da obrazovanje deteta bude usmereno na:***
***a) razvoj detetove ličnosti, talenta i mentalnih i fizičkih sposobnosti do njihovih krajnjih mogućnosti;***
***b) razvoj poštovanja ljudskih prava i osnovnih sloboda i principa utvrđenih Poveljom Ujedinjenih nacija;***
***c) razvoj poštovanja detetovih roditelja, njegovog/njenog kulturnog identiteta, jezika i vrednosti, nacionalnih vrednosti zemlje u kojoj dete živi, zemlje iz koje potiče i civilizacija različitih od njegove/njene sopstvene;***
***d) pripremanje deteta za odgovoran život u slobodnom društvu, u duhu razumevanja, mira, tolerancije, jednakosti polova, prijateljstva među narodima, etničkim, nacionalnim i verskim grupama i sa licima domorodačkog porekla;***
***e) razvoj poštovanja prema prirodnoj okolini.***
***2. Nijedan deo ovog člana ili člana 28 neće biti tumačen tako da ograničava slobodu pojedinaca ili tela da ustanove ili upravljaju obrazovnim ustanovama, uvek u skladu sa poštovanjem principa utvrđenih u stavu 1 ovog člana i zahtevima da će obrazovanje koje se pruža u takvim ustanovama odgovarati minimalnim standardima koje država propisuje.***

## Propisi u SRJ i Republici Srbiji

Ranijim Zakonom o društvenoj brizi o deci predviđena je mogućnost organizovanja predškolskog vaspitanja i obrazovanja na jezicima etničkih i nacionalnih manjina (član 44). Isti stav postoji i u Nacrtu zakona o predškolskom vaspitanju i obrazovanju, a isto tako i stav: „Predškolsko vaspitanje ostvaruje se uz poštovanje

Konvencije UN o pravima deteta i u skladu sa razvojnim osobenostima dece i obrazovnim, socijalnim i kulturnim potrebama dece i roditelja" (član 3 Nacrta).

Republički zakoni o osnovnoj školi u osnovnim odredbama definišu *ciljeve obrazovanja*. Tako, prema članu 2 Zakona o osnovnoj školi RS, cilj osnovnog obrazovanja i vaspitanja je sticanje opšteg obrazovanja i vaspitanja, skladan razvoj ličnosti i priprema za život i za dalje stručno obrazovanje i vaspitanje. Ovim obrazovanjem ostvaruje se naročito: osposobljavanje za život, rad i dalje obrazovanje i samoobrazovanje; ovladavanje osnovnim elementima savremenog opšteg obrazovanja; osposobljavanje za primenu stečenih znanja i stvaralačkog korišćenja slobodnog vremena; razvijanje intelektualnih i fizičkih sposobnosti, kritičkog mišljenja, samostalnosti i zainteresovanosti za nova znanja; upoznavanje osnovnih zakonitosti razvoja prirode, društva i ljudskog mišljenja; sticanje i razvijanje svesti o potrebi uvažavanja zdravlja i zaštite prirode i čovekove sredine; razvijanje humanosti, istinoljubivosti, patriotizma i drugih etičkih svojstava ličnosti; vaspitanje za kulturne i humane odnose među ljudima, bez obzira na pol, rasu, veru, nacionalnost i lično uverenje; negovanje i razvijanje potrebe za kulturom i očuvanjem kulturnog nasleđa; sticanje znanja o lepom ponašanju u svim prilikama.

U pogledu *razvoja detetove ličnosti, talenata, mentalnih i fizičkih sposobnosti*, predviđeno je da škola prati razvoj učenika i pomaže mu u izboru daljeg obrazovanja i profesionalnog opredeljenja (član 32 ZOŠ RS). Za učenike od četvrtog do osmog razreda sa posebnim sposobnostima i interesovanjima za pojedine predmete, škola organizuje dodatni rad (član 30 ZOŠ RS). Učenik koji se ističe znanjem i sposobnostima može da završi školu i u roku kraćem od osam, ali ne kraćem od šest godina, s tim što u toku jedne školske godine može da završi dva razreda (član 62 ZOŠ RS). Takođe, deci sa posebnim talentima omogućeno je pohađanje osnovne muzičke, odnosno baletske škole (član 101 ZOŠ RS).

U srednjoj školi se stiču opšta i stručna znanja i sposobnosti za dalje školovanje, odnosno za rad, zasnovana na dostignućima nauke, tehnologije, kulture i umetnosti; stiče se vaspitanje, neguju moralne i estetske vrednosti; razvijaju fizičke i duhovne sposobnosti ličnosti; svest o humanističkim vrednostima; ličnoj i društvenoj odgovornosti i neguje zaštita zdravlja (član 2 ZSŠ RS). Zakon Republike Srbije predviđa da škola prati razvoj učenika i pomaže mu u izboru daljeg obrazovanja i profesionalnog osposobljavanja (član 35 ZSŠ RS). Škola može da se osnuje i za obrazovanje učenika sa posebnim sposobnostima, odnosno talentovanih učenika (član 14 ZSŠ RS). Takođe, u školi će se organizovati dodatni rad za učenika koji postiže izuzetne rezultate i pokazuje interesovanje za produbljivanje znanja (član 33 ZSŠ RS).

## Ocena stanja i komentari

Jedan od loših primera u vezi sa ciljevima obrazovanja je uvođenje veronauke u nastavu osnovnih i srednjih škola (od jeseni 2001. godine) i to na način i po sadržaju u dobrom delu u neskladu s ciljevima obrazovanja, odnosno razvoja poštovanja ljudskih prava i osnovnih sloboda (npr. devojčice i dečaci se ne tretiraju jednako), pripremanje deteta za odgovoran život u slobodnom društvu, u duhu razumevanja, mira, tolerancije, jednakosti polova, prijateljstva među narodima, etničkim, nacionalnim i verskim grupama. Centar nije zadovoljan odsustvom nezavisne evaluacije rezultata nastave predmeta veronauke u školama u Srbiji, što, samo po sebi, ukazuje na nespremnost za objektivno i otvoreno sagledavanje usklađenosti ovog predmeta sa opštim ciljevima obrazovanja. Osvrt na stanje u vezi sa članom 29 dat je delimično i u okviru člana 28 Konvencije.

# SLOBODNO VREME, REKREACIJA I KULTURNE AKTIVNOSTI

## *Član 31. Konvencije o pravima deteta*

***1. Države ugovornice priznaju pravo deteta na odmor i slobodno vreme, na učešće u igri i rekreativnim aktivnostima koje odgovaraju uzrastu deteta i na slobodno učešće u kulturnom životu i umetnosti.***
***2. Države ugovornice će poštovati i podsticati pravo deteta na puno učešće u kulturnom i umetničkom životu i podržaće pružanje odgovarajućih i jednakih mogućnosti za kulturne, umetničke, rekreativne i slobodne aktivnosti.***

## Propisi u SRJ i Republici Srbiji

Pravo deteta na odmor i slobodno vreme i na učešće u igri i rekreativnim aktivnostima, posredno je izraženo kroz propise i programe vaspitnog i obrazovnog rada u *predškolskim ustanovama i školama*. Republički zakon o osnovnoj školi sadrži odredbe o broju časova koji učenici imaju u toku nedelje, kao i o trajanju školske godine (čl. 26 i 28 ZOŠ RS). Osim toga, škola treba da obezbedi uslove za ostvarivanje društvenih, sportskih i kulturnih aktivnosti učenika koje doprinose razvoju njihove ličnosti (član 33 ZOŠ RS). Zakon o društvenoj brizi o deci RS predviđa pravo na odmor i rekreaciju dece do 15 godina starosti u dečjem odmaralištu, kao i regresiranje troškova boravka dece u predškolskoj ustanovi i njihovog odmora i rekreacije, u zavisnosti od materijalnog položaja porodice (čl. 11, 34 i 35). Odmor i rekreacija dece do 15 godina, kao i nadoknada troškova odmora i rekreacije dece u predškolskim ustanovama nisu predviđeni ni u Zakonu o finansijskoj podršci porodici, niti u Nacrtu zakona o predškolskom vaspitanju i obrazovanju. Predlog je da se to razmatra u okviru propisa o učeničkom i studentskom standardu. Zakon o srednjoj školi takođe reguliše broj časova koje učenici imaju u toku nedelje i trajanje školske godine, a škola obezbeđuje uslove za kulturne i sportske aktivnosti učenika (čl. 29, 30 i 35 ZSŠ RS).

U pogledu slobodnog učešća u kulturnom životu i umetnosti, treba navesti ustavne odredbe saveznog i republičkog Ustava o slobodi stvaranja i objavljivanja naučnih i umetničkih dela (član 53 Ustava SRJ, član 33 Ustava RS).

## Ocena stanja i komentari

U praksi, uslovi za učešće dece u igri i rekreaciji i smisaono korišćenje slobodnog vremena veoma su loši i zavise od ekonomske moći porodice, a ponuda organizovanih aktivnosti iz domena kulture i umetnosti skromna je i neravnomerno raspoređena.

Igračke i proizvodi kulture namenjeni deci (knjige, pozorišne i filmske predstave, itd), relativno su skupi i ne postoji dosledna poreska politika koja bi podržala kvalitetnu ponudu (na primer, stopa poreza na igračke ne prati ocenu kvaliteta već samo prirodu materijala od koga su napravljene).

Iako programi predškolskog vaspitanja ističu igru kao dominantnu i razvojno posebno vrednu aktivnost malog deteta, osiromašene predškolske ustanove i nedovoljna motivisanost zaposlenih u značajnoj meri su degradirali nekada veoma povoljne uslove za slobodnu igru predškolske dece obuhvaćene programima.

Najveći deo populacije dece predškolskog uzrasta, oko 70%, nije međutim, obuhvaćen redovnim vaspitnim programima i imaju malo mogućnosti za igru i rekreaciju izvan porodične sredine. Javna dečja igrališta su malobrojna i pretežno su u veoma lošem stanju, pa čak i opasna po bezbednost deteta, prostori za igru u dečjim ustanovama mahom su zatvoreni za decu koja ih ne pohađaju redovno, a specijalizovani programi retko se organizuju u postojećim ustanovama.

Tokom poslednjih nekoliko godina organizovani su, uz pomoć nevladinih organizacija (na primer, Fonda za otvoreno društvo), mobilne i trajne igraonice i igroteke, ali je njihova trajnost i održivost pod znakom pitanja bez sistematske podrške od strane države. Poslednjih godinu dana, relevantna ministarstva Republike Srbije ulažu značajne napore u obnavljanju igrališta i sportskih terena koja bi bila dostupna svoj deci. Nažalost, ovakva aktivnost, iako se njeni rezultati vide, odvija se samo u gradskim sredinama.

Iako zakoni o osnovnoj i srednjoj školi predviđaju obavezno organizovanje rekreativnih aktivnosti, školski prostori ne obezbeđuju uvek uslove za to (nedostatak fiskulturnih sala, izdavanje postojećih sala i nedostatak uređenih školskih dvorišta). Takođe, veoma je nezadovoljavajuća situacija sa organizovanim vanškolskim i vannastavnim aktivnostima, i to kako u pogledu postojeće ponude tako i u pogledu mogućnosti učenika da učestvuju u kreiranju i izboru onoga što će se organizovati u školi.

O ovome svedoče i podaci ispitivanja iskustava, mišljenja i stavova mladih, učenika srednjih škola iz Srbije i Crne Gore, o obrazovnom sistemu (ispitivanje je obavio Jugoslovenski centar za prava deteta, uz podršku Kancelarije *UNICEF* u Beogradu tokom 1999. godine[66]). Ukupnu opšteobrazovnu i kulturnu ponudu u svom mestu (uključujući i izbor vanškolskih aktivnosti) mladi su ocenili kao "osrednju", ali je svega 14% ispitanika izjavilo da je uključeno u postojeće, mahom tradicionalne kulturnoobrazovne programe (na primer, kulturnoumetnička društva); 20% ne poznaje ponudu, a 36% je zainteresovano da se uključi u savremenije programe. Prema podacima navedenog istraživanja, slobodno vreme mladi najviše koriste za "odlazak u diskoteke i kafiće", odlazak kod prijatelja i posete bioskopskim predstavama (povremeno do često), a daleko manje za posete institucijama kulture poput pozorišta, muzeja, izložbi i sl. (prosek odgovora je 1,23 do 2,12 gde 1 znači "nikad", a 2 "jedan do 2 puta godišnje").

[66] M. Pešić i dr V. Čok (ur), *Godišnjak 2000*, JCPD, Beograd, 2000.

# *VII*

# Dete u posebnim situacijama

# DETE IZBEGLICA

## *Član 22. Konvencije o pravima deteta*

***1. Države ugovornice će preduzeti odgovarajuće mere da se obezbedi da dete koje traži izbeglički status ili koje se smatra izbeglicom u skladu sa važećim međunarodnim ili nacionalnim zakonom i postupkom, bilo da je bez pratnje, bilo da je u pratnji roditelja ili neke druge osobe, dobije odgovarajuću zaštitu i humanitarnu pomoć u uživanju prava utvrđenih ovom Konvencijom i drugim međunarodnim instrumentima o ljudskim pravima ili humanitarnom pravu, čije su one ugovornice.***
***2. U tom cilju, države ugovornice će obezbediti, ukoliko smatraju za shodno, saradnju u svim naporima Ujedinjenih nacija i drugih nadležnih međuvladinih ili nevladinih organizacija koje sarađuju sa Ujedinjenim nacijama da zaštite takvo dete i da njemu/njoj pomognu da pronađe roditelje ili druge članove porodice, da bi se dobile informacije potrebne za ponovno sjedinjenje. U slučajevima kada roditelji ili drugi članovi porodice ne mogu biti pronađeni, detetu će biti pružena ista zaštita kao i svakom drugom detetu koje je stalno ili privremeno lišeno porodične sredine iz bilo kog razloga, kako je utvrđeno ovom Konvencijom.***

## Propisi u SRJ i Republici Srbiji

Član 66 Ustava SRJ predviđa da <u>*stranac*</u> u SR Jugoslaviji ima slobode, prava i dužnosti utvrđene Ustavom, saveznim zakonom i međunarodnim ugovorom. Stranac se može izručiti drugoj državi samo u slučajevima predviđenim međunarodnim ugovorima koji obavezuju SR Jugoslaviju. Takođe, Ustavom se jamči pravo azila stranom državljaninu i licu bez državljanstva koje se progoni zbog zalaganja za demokratske poglede i zbog učešća u pokretima za socijalno i

nacionalno oslobođenje, za slobodu i prava ljudske ličnosti, ili za slobodu naučnog ili umetničkog stvaranja.

*Status azilanata i izbeglica* u SR Jugoslaviji regulisan je Zakonom o kretanju i boravku stranaca. Azil u SR Jugoslaviji pružiće se strancu koji je progonjen zbog svog zalaganja za demokratske pokrete i poglede, za socijalno i nacionalno oslobođenje, za slobodu i prava ljudske ličnosti ili za slobodu naučnog i umetničkog stvaranja. O priznanju, odnosno oduzimanju prava azila odlučuje funkcioner koji rukovodi saveznim organom uprave nadležnim za unutrašnje poslove. Strancu kome je priznato pravo azila obezbediće se smeštaj, sredstva za izdržavanje i zdravstvena zaštita (čl. 44-46 ZKBS SRJ). Ovim Zakonom dalje je predviđeno da se status izbeglice u Jugoslaviji može priznati strancu koji je napustio državu čiji je državljanin ili u kojoj je bio stalno nastanjen kao lice bez državljanstva da bi izbegao proganjanje zbog svojih naprednih političkih stremljenja ili nacionalne, rasne ili verske pripadnosti (član 50 ZKBS SRJ). Deca stranaca kojima je priznat status izbeglice uživaju sva prava kao i njihov roditelj kome je priznat taj status (član 52 ZKBS SRJ). Strancima kojima je priznat status izbeglice obezbeđuje se nužni smeštaj, sredstva nužna za izdržavanje i zdravstvena zaštita do odlaska u drugu zemlju ili do sticanje uslova za samostalno izdržavanje, a najduže dve godine od dana podnošenja zahteva za priznanje statusa izbeglice (ograničenje u pogledu roka ne odnosi se na stranca koji je nesposoban za privređivanje i ne može samostalno da se izdržava). Pod nužnim smeštajem i sredstvima neophodnim za izdržavanje podrazumeva se novčana pomoć nužna za obezbeđivanje prostorija za stanovanje i izdržavanje stranca kome je priznat status izbeglice i njegove porodice. Iznos novčanih sredstava se određuje prema broju i uzrastu članova njegove porodice koji nisu državljani SRJ, imovnom stanju, sposobnosti za privređivanje, a zavisno od toga da li se stranac kome je priznat status izbeglice nalazi na stručnom osposobljavanju. Ako je strancu sa priznatim statusom izbeglice, usled starosti, samohranosti ili nesposobnosti za privređivanje, neophodan smeštaj u određenoj ustanovi za smeštaj takvih lica, pod nužnim smeštajem i sredstvima neophodnim za izdržavanje podrazumeva se i naknada troškova za takav smeštaj. Sredstva neophodna za izdržavanje i za nužan smeštaj stranaca kojima je priznat status izbeglice, kao i za naknadu troškova, obezbeđuju se u budžetu federacije (član 55 ZKBS SRJ).

Rat na području bivše SFRJ i veliki broj izbeglica uslovili su da se, pored Zakona o kretanju i boravku stranaca, kojim je na opšti način regulisano pitanje izbeglica, donese i niz posebnih propisa koji se odnose samo na *izbeglice sa teritorije bivše SFRJ*.

Zakon o izbeglicama, koji je donet u Republici Srbiji 1992. godine, reguliše status Srba i građana drugih nacionalnosti koji su usled pritiska hrvatske vlasti ili vlasti u drugim republikama, pretnje genocidom, kao i progona i diskriminacije zbog svoje verske i nacionalne pripadnosti ili političkog uverenja, bili prinuđeni da napuste svoja prebivališta u tim republikama i izbegnu na teritoriju Republike Srbije. Izbeglicama se, u skladu sa odredbama ovog Zakona, obezbeđuje zbrinjavanje radi zadovoljavanja osnovnih životnih potreba i omogućavanje socijalne sigurnosti, do sticanja uslova za njihov povratak na područja koja su napustili, odnosno do obezbeđivanja uslova za njihovu trajnu socijalnu sigurnost (član 1 Zakona o izbeglicama RS). Zbrinjavanje izbeglica obuhvata organizovani prihvat, privremeni smeštaj, pomoć u ishrani, odgovarajuću zdravstvenu zaštitu i materijalnu i drugu pomoć. Izbeglice, između ostalog, imaju i pravo na školovanje, u skladu sa zakonom, a ostvaruju ga prema svome boravištu u Republici Srbiji (član 2 Zakona o izbeglicama RS). Prava dece izbeglica detaljnije su uređena Uredbom o zbrinjavanju izbeglica RS. Deci izbeglica sa smetnjama u razvoju obezbediće se boravak u predškolskoj ustanovi ukoliko se u njoj organizuje takav rad (član 16 Uredbe o zbrinjavanju izbeglica RS). Izbeglicama učenicima i studentima pružiće se prema mogućnostima stručna pomoć u pripremi kvalifikacionih, dopunskih i drugih ispita radi uključivanja u redovno školovanje, kao i da ovu pomoć pružaju škole i fakulteti (član 17 Uredbe o zbrinjavanju izbeglica RS). Istom uredbom predviđena je i mogućnost pružanja finansijske pomoći učenicima i studentima za ishranu i smeštaj u učeničkim i studentskim domovima, nabavku udžbenika, školskog pribora i drugih nastavnih sredstava i za prevoz do škole, odnosno fakulteta (član 18 Uredbe o zbrinjavanju izbeglica RS). Predviđena su i posebna tela za pružanje pomoći radi nastavka prekinutog školovanja, odnosno uključivanja u školovanje, upućivanja u zdravstvene, socijalne i druge ustanove radi pružanja pomoći koja spada u njihovu nadležnost, kao i predlaganja načina obezbeđenja trajne socijalne sigurnosti izbeglica (član 3 Uredbe o zbrinjavanju izbeglica RS).

Zakonom je izričito propisano da neposrednu pomoć izbeglicama mogu pružati organizacija Crvenog krsta, druge humanitarne, verske i druge organizacije i građani (član 3 Zakona o izbeglicama RS). Komeserijat za izbeglice, kao posebna organizacija koja obavlja stručne i druge poslove koji se odnose na izbeglice, sarađuje sa ovim organizacijama i sa građanima. Takođe je propisano da Komesarijat, u skladu sa odredbama međunarodnih konvencija koje je ratifikovala Jugoslavija, a koje uređuju položaj i prava izbeglica, radi zbrinjavanja izbeglica na teritoriji Republike Srbije, pokreće inicijative za traženje međunarodne pomoći od institucija Ujedinjenih nacija i drugih organizacija za pružanje međunarodne pomoći (član 6 Zakona o izbeglicama RS).

Saveznim Zakonom o kretanju i boravku stranaca se izbeglički status deteta vezuje za status roditelja, ali nije posebno regulisano eventualno priznavanje statusa izbeglice detetu bez pratnje roditelja, kao ni zaštita deteta čija porodica ne bude pronađena, na koju obavezuje člana 22, st. 2 Konvencije. Dakle, u ovom delu savezno zakonodavstvo nije usklađeno sa obavezama koje Konvencija predviđa. Republičkim propisima, koji se odnose samo na izbeglice sa teritorije bivše SFRJ, regulisana su prava na dobijanje humanitarne pomoći i saradnja sa Ujedinjenim nacijama i drugim međunarodnim organizacijama, koja je utvrđena kao jedna od obaveza nadležnih državnih organa. Takođe, ti propisi sadrže i posebne odredbe koje se odnose na pomoć deci, posebno u vezi sa školovanjem.

## Ocena stanja i komentari

Prema izveštaju iz 1996. godine Visokog komesarijata za izbeglice Ujedinjenih nacija,[67] broj dece izbeglica (do 18 godina starosti) na teritoriji Jugoslavije i Srbije je sledeći: na teritoriji Jugoslavije taj broj je bio 170.755, a u Srbiji 161.930 (dok je ukupan broj izbeglica na teritoriji Jugoslavije iznosio 646.066, od koga je u Srbiji boravilo 617.728). Prema podacima iz 2001. godine,[68] broj dece izbeglica starosti od 5 do 18 godina iznosi 72.625, što je 19,26% od ukupnog broja izbeglica (registracijom izbeglica u Srbiji, registrovano je 451.980 lica, što je za 29,89% manje od poslednjeg popisa napravljenog 1996. godine); od tog broja 37.172 (51,18%) su muška deca, a 35.453 (48,82%) su ženska deca. Od ukupnog broja 348 dece su bez oba roditelja (184 dečaka i 164 devojčice), 3.439 dece su bez jednog roditelja (1.739 muške i 1.700 ženske, starosti od 5-18 godina). Potrebno je napomenuti da deca do 4 godine starosti rođena na teritoriji Republike Srbije nemaju formalno status izbeglice, iako su im roditelji izbeglice, dok njihov broj iznosi 8.429 (4.373 muška i 4.056 ženske, starosti od 0-4 godine), što je 2,24% od ukupnog broja izbeglica. Bez oba roditelja je devetoro dece (4 muške i 5 ženske), starosti od 0-4 godine, 184 muške i 164 ženske dece starosti od 5-18 godina, dok je bez jednog roditelja 67 muške i 62 ženske dece (starost od 0-4 godine) i 1.739 muške i 1.700 ženske dece (starost od 5-18 godina).

[67] *Popis izbeglica i drugih ratom ugroženih lica u Saveznoj Republici Jugoslaviji*, Beograd, 1996.

[68] *Registracija izbeglica u Srbiji, mart-april 2001*, Visoki komesarijat Ujedinjenih nacija za izbeglice i Komesarijat za izbeglice Republike Srbije, Beograd, 2001.

# PRAVO DETETA U ORUŽANIM SUKOBIMA, UKLJUČUJUĆI PRAVO NA FIZIČKI I PSIHIČKI OPORAVAK I REINTEGRACIJU

***Član 38. Konvencije o pravima deteta***

***1. Države ugovornice se obavezuju da poštuju i obezbeđuju poštovanje pravila međunarodnog humanitarnog prava koja su za njih obavezujuća u situacijama oružanih sukoba, a odnose se na dete.***
***2. Države ugovornice će preduzeti sve moguće mere da obezbede da osobe koje nisu navršile 15 godina direktno ne učestvuju u neprijateljstvima.***
***3. Države ugovornice će se uzdržati od regrutovanja u svoje oružane snage osoba koje nisu navršile 15 godina. U regrutovanju onih osoba koje su navršile 15 godina, ali koje nisu navršile 18 godina, strane ugovornice će nastojati da daju prednost onima koji su najstariji.***
***4. U skladu sa svojim obavezama po međunarodnom humanitarnom pravu da štite civilno stanovništvo u oružanim sukobima, države ugovornice će preduzeti sve moguce mere da obezbede zaštitu i brigu o deci koja su pogođena oružanim sukobom.***

***Član 39. Konvencije o pravima deteta***

***Države ugovornice će preduzeti sve odgovarajuće mere da podstiču fizički i psihološki oporavak i društvenu reintegraciju deteta žrtve: svakog oblika zanemarivanja, iskorišćavanja ili zlostavljanja; mučenja ili bilo kog drugog oblika okrutnog, nehumanog ili ponižavajućeg***

***postupanja ili kažnjavanja; ili oružanog sukoba. Takav oporavak i reintegracija će se vršiti u uslovima koji podstiču zdravlje, samopoštovanje i dostojanstvo deteta.***

## Propisi u SRJ i Republici Srbiji

Zakonom o vojsci Jugoslavije predviđeno je da regrutna obaveza nastaje početkom kalendarske godine u kojoj jugoslovenski državljanin navršava 17 godina života. U toku regrutne obaveze lice podleže lekarskim i drugim pregledima i psihološkim ispitivanjima koje vrše vojne zdravstvene ustanove, radi utvrđivanja sposobnosti za vojnu službu. Samo regrutovanje se vrši u kalendarskoj godini u kojoj vojni obveznik navršava 18 godina života. Izuzetno, vojni obveznik može biti regrutovan i u kalendarskoj godini u kojoj navršava 17 godina, na svoj zahtev ili ako, za vreme vanrednog stanja ili neposredne ratne opasnosti, to naredi Predsednik SRJ (čl. 288-291 ZVJ). Saveznim zakonom o odbrani propisana je i obaveza učešća u civilnoj odbrani i zaštiti, tj. obaveza izvršavanja određenih dužnosti u jedinicama i organima obrazovanim za zaštitu i spasavanje civilnog stanovništva i materijalnih dobara od ratnih razaranja i prirodnih i drugih nesreća i opasnosti. Ovu obavezu imaju svi građani - muškarci od 15 do 60 godina, a žene do navršenih 55 godina života. Od obaveze učešća u civilnoj odbrani i zaštiti oslobođene su trudnice i majke koje imaju dete mlađe od sedam godina, odnosno 2 deteta ili više dece mlađe od 10 godina, kao i lica nesposobna za učešće u jedinicama i organima civilne zaštite. Navedenim Zakonom je takođe predviđena radna obaveza, koja se sastoji u izvršavanju određenih zadataka i poslova za vreme ratnog stanja, stanja neposredne ratne opasnosti ili vanrednog stanja, a odnosi se na sve za rad sposobne građane koji su navršili 15 godina, a nisu raspoređeni na službu u Vojsci Jugoslavije (čl. 22 i 24 Zakona o odbrani SRJ).

SRJ je 2002. godine ratifikovala i Fakultativni protokol uz Konvenciju o pravima deteta o učešću dece u oružanim sukobima i time se dodatno obavezala da lica mlađa od 18 godina ne podležu obaveznoj regrutaciji i ne uzimaju direktna učešća u neprijateljstvima.

Dakle, u SRJ deca mlađa od 18 godina ne mogu se regrutovati, niti su za njih predviđene druge obaveze koje se odnose na odbranu i civilnu zaštitu. Deca se mogu regrutovati samo u izuzetnim, zakonom predviđenim slučajevima, u kalendarskoj godini u kojoj navršavaju 17 godina (član 291, stav 2, 3 ZVJ).

## Ocena stanja i komentari

Ratovi na teritoriji bivše SFRJ ostavili su velike posledice, ali svakako najveće po decu. Brojna preseljenja stanovništva, izbeglice, razdvojenost dece od roditelja, neadekvatna zdravstvena usluga, odsustvo kontinuiteta i kvaliteta u obrazovanju, kao i ogromni psihički i fizički stresovi, najviše su pogodili decu, a posledice se i sada, nekoliko godina po završetku ratova, osećaju. Na teritoriji SRJ nije bilo regrutovanja dece za vojne potrebe, po čemu se ovaj region i ratovi razlikuju od onih u drugim delovima sveta. To je, ujedno, i jedina povoljna okolnost po decu kada su u pitanju oružani sukobi.

U pogledu prakse, u poređenju sa periodom ratova na prostoru bivše Jugoslavije, situacija je u poslednje dve godine znatno bolja. Naravno, posledice ratnih dejstava su brojne i deca, kao posebno ugrožena kategorija u takvim okolnostima, najviše trpe. To se, pre svega, odnosi na decu izbeglice i njihovu reintegraciju u nove sredine. Od ukupnog broja izbeglica, više od 21% su deca do 18 godina starosti. Demografske karakteristike ratom ugroženih lica pokazuju da je procenat dece (od 0 do 18 godina) prilično veliki, gotovo 21%. Mladi koji su ugroženi ratom vrlo retko se izjašnjavaju za povratak (što je inače karakteristično i za čitavu ovu kategoriju). Tako, ukupno oko 300 lica do 18 godina (jedva 0,5%) izjasnilo se za povratak. Znatno veći broj se opredeljuje za neku vrstu lokalne integracije. Socijalna ugroženost je veliki problem, pre svega, među decom bez jednog roditelja. Čak četvrtina njih (24,36%) spada u kategoriju socijalno ugroženih. Ona se uglavnom i dalje nalaze u kolektivnim centrima za smeštaj ili kod prijatelja i rođaka (ukupno: više od polovine). U ovoj grupi nešto je više ugroženih dečaka nego devojčica. Podaci pokazuju da je među socijalno ugroženima više dece izbeglica iz Hrvatske. U periodu tokom i neposredno posle ratnih dejstava na području bivše Jugoslavije, nevladine organizacije su se mnogo više bavile decom u ovim, posebnim okolnostima.

Smatramo da su potrebni posebni i sveobuhvatniji programi psihosocijalne pomoći i žrtvama rata. Takođe, izbeglice, a samim tim i deca izbeglice, veoma često su izloženi diskriminaciji i bilo bi potrebno uložiti veće napore u razvijanje tolerancije, razumevanja i boljeg prihvatanja te populacije.

Centar i druge nevladine organizacije imaju mnogo primedaba na račun Zakona o Vojsci Jugoslavije, pre svega po pitanju civilnog služenja vojnog roka, za koji smatramo da nije regulisan u skladu sa međunarodnim standardima (vidi komentar uz Član 14 – prigovor savesti).

Bilo bi bitno da se na svim nivoima reformi preduzmu mere za društvenu reintegraciju i oporavak dece koja su bila neposredno pogođena oružanim sukobima. Takve programe su uglavnom sprovodile nevladine organizacije i Institut za mentalno zdravlje kroz svoju mrežu specijalizovanih savetovališta u Srbiji, a Vlada Republike Srbije se koncentrisala na materijalna davanja (pogledati i komentar uz član 22).

# PRAVO DETETA NA ZAŠTITU OD EKSPLOATACIJE U RADU

## *Član 32. Konvencije o pravima deteta*

***1. Države ugovornice priznaju pravo deteta da bude zaštićeno od ekonomskog iskorišćavanja i od obavljanja bilo kog posla koji bi mogao da bude opasan ili bi ometao školovanje deteta ili bi bio štetan po zdravlje deteta ili za fizički, mentalni, duhovni, moralni ili društveni razvoj deteta.***
***2. Države ugovornice će preduzeti pravne, administrativne, društvene i obrazovne mere da bi se obezbedila primena ovog prava. U tom cilju i u skladu sa važećim odredbama međunarodnih instrumenata, države ugovornice će posebno:***
***a) obezbediti minimalnu starosnu granicu ili granice za zapošljavanje;***
***b) obezbediti odgovarajuće regulisanje vremena i uslova zapošljavanja; i***
***c) obezbediti odgovarajuće kazne ili druge sankcije da bi se osigurala efikasna primena ovog člana.***

## Propisi u SRJ i Republici Srbiji

Pored opšte ustavne garancije koja se odnosi na zaštitu prava svih zaposlenih, članom 56, st. 3 Ustava SRJ proklamovana je i posebna zaštita na radu omladine, žena i invalida. Slične odredbe postoje i u republičkom Ustavu (član 38, st. 3 Ustava RS).

Najznačajnije garancije koje se odnose na prava zaposlenih sadržane su u saveznom Zakonu o osnovama radnih odnosa. Ovim Zakonom regulisano je da zaposleni mlađi od 18 godina uživaju posebnu zaštitu na radu. Donja starosna granica za zasnivanje radnog odnosa utvrđena je na 15 godina, pod uslovom da dete

ima opštu zdravstvenu sposobnost (član 7, st. 2 ZORO SRJ). Zakonom je predviđena i zabrana da zaposleni mlađi od 18 godina rade na radnim mestima na kojima se obavljaju naročito teški fizički poslovi, radovi pod zemljom ili vodom, kao i poslovi koji bi s obzirom na psihofizičke sposobnosti mogli štetno i sa povećanim rizikom da utiču na njihov život i zdravlje (član 35 ZORO SRJ). Zaposlenom mlađem od 18 godina takođe se ne može odrediti ni da radi duže od radnog vremena, niti da radi noću, ako je zaposlen u oblasti industrije, građevinarstva ili saobraćaja (član 41 ZORO SRJ). Izuzetno, zaposleni mlađi od 18 godina može biti raspoređen da radi noću kad je neophodno da se nastavi rad prekinut usled više sile, odnosno da se spreči šteta na sirovinama ili drugom materijalu (član 43 ZORO SRJ). Za postupanje suprotno ovim zakonskim odredbama predviđene su prekršajne kazne za poslodavca (član 79 ZORO SRJ).

Zakon o radu RS takođe utvrđuje donju starosnu granicu za zapošljavanje od 15 godina. Osim toga, on sadrži i gotovo identične garancije u pogledu dužine radnog vremena i rada na naročito teškim poslovima zaposlenih mlađih od 18 godina (član 34 ZOR RS). Republičko krivično zakonodavstvo predviđa delo povrede prava iz radnih odnosa, koje čini onaj ko se svesno ne pridržava zakona ili drugih propisa o pravima iz radnih odnosa i o posebnoj zaštiti na radu omladine, žena i invalida (član 86 KZ RS).

## Ocena stanja i komentari

Centar za prava deteta nije došao do tačnih podataka o praksi u sprovođenju obaveza proisteklih iz ovog člana Konvencije. Međutim, ono što je bilo predmet brige i zalaganja, brojnih protesta i saopštenja nevladinih organizacija i Centra, jeste položaj romske dece. Naime, u gradskim sredinama, položaj velikog broja romske dece blizak je ropskom. Ona su predmet iskorišćavanja svojih roditelja i rođaka. U velikom broju slučajeva deci se uskraćuje odlazak u školu i umesto toga prinuđena su da rade na ulicama (prosjače, peru automobile, itd). Bilo je slučajeva nasilnog odvođenja dece u inostranstvo radi prosjačenja, krađa, pa i seksualnog iskorišćavanja. Nadležni organi i centri za socijalni rad, zbog ograničenih zakonskih i materijalnih mogućnosti skoro su nemoćni da suštinski reše taj ogroman problem. Povremeno ta deca bivaju oduzeta roditeljima i smeštena u institucije koje su otvorenog tipa i neadekvatne, odakle ta deca odlaze, vraćaju se kod rođaka ili porodice i nastavljaju da rade i ne pohađaju školu.

U želji da otvori pitanje dečjeg rada u Srbiji, Centar za prava deteta je pokrenuo projekat u saradnji sa međunarodnom kampanjom *Global March Against Child*

*Labour*. U okviru projekta, Centar je preveo i predložio za ratifikaciju, Konvenciju 182 Međunarodne organizacije rada, objavio kratku informativnu brošuru o dečjem radu i započeo proces lobiranja za identifikaciju loše prakse u našoj zemlji. Ovaj projekat je uvod u dalje aktivnosti, koje uključuju povezivanje ove prakse sa regionalnim i svetskim problemom trgovine i prometa decom.

Pored toga, zajedno sa francuskom humanitarnom organizaciojm *Triangl* iz Liona, Centar za prava deteta već drugu godinu realizuje projekat namenjen deci koja su izvan obrazovnog sistema.

Ovaj projekat se realizuje u Školi za osnovno obrazovanje odraslih u beogradskoj opštini Zemun. Njeni polaznici su deca mlađa od 14 godina, uglavnom romskog porekla, a koja nisu na vreme pošla u školu ili su napustila školovanje. Ova deca su, za poslove sive ekonomije, često zloupotrebljavana od strane roditelja. Projekat ima za cilj da toj deci omogući produžen boravak u školi, da im pomogne u integraciji u lokalnu zajednicu, savlađivanju školskog gradiva, da ih zainteresuje za rad na kompjuterima, da im ojača lične kapacitete i da spreči njihovu zloubotrebu za poslove u sivoj ekonomiji.

# PRAVO DETETA NA ZAŠTITU OD SEKSUALNOG ISKORIŠĆAVANJA

## *Član 34. Konvencije o pravima deteta*

***Države ugovornice se obavezuju da štite decu od svih oblika seksualnog iskorišćavanja i seksualnog zlostavljanja. U te svrhe, države ugovornice će naročito preduzimati sve odgovarajuće nacionalne, bilateralne i multilateralne mere za sprečavanje:***
***a) navođenja ili prisiljavanja deteta na učešće u ma kojoj nezakonitoj seksualnoj aktivnosti;***
***b) iskorišćavanja dece za prostituciju ili druge nezakonite seksualne radnje;***
***c) iskorišćavanja dece u pornografskim predstavama i materijalima.***

## Propisi u SRJ i Republici Srbiji

Zaštita dece od seksualnog iskorišćavanja u jugoslovenskom pravu obezbeđuje se, pre svega, sankcionisanjem ovih aktivnosti kroz krivično zakonodavstvo, u saveznim i republičkim krivičnim zakonima.

Savezno krivično zakonodavstvo predviđa krivično delo posredovanja u vršenju prostitucije, koje čini onaj ko vrbuje, navodi, podstiče ili navodi ženska lica na prostituciju ili ko na bilo koji način učestvuje u predaji ženskog lica drugome radi vršenja prostitucije. Teža kazna predviđena je ako je delo učinjeno prema maloletnom ženskom licu (ili upotrebom sile, pretnje ili obmane). Takođe je kažnjivo ako se licu mlađem od 14 godina proda, prikaže, ili javnim izlaganjem ili na drugi način učini dostupnim spis, slika, audovizuelni ili drugi predmet pornografske sadržine ili prikaže pornografska predstava (čl. 251 i 252 KZ SRJ).

Republičkim krivičnim zakonima predviđena je grupa krivičnih dela protiv dostojanstva ličnosti i morala, koja obuhvata, kao posebna krivična dela, ili kao teže oblike osnovnih krivičnih dela, i različite oblike seksualne zloupotrebe i seksualnog nasilja prema deci. Tako, kao posebno krivično delo predviđena je obljuba ili

protivprirodni blud sa maloletnim licem koju čini onaj ko izvrši obljubu ili protivprirodni blud sa maloletnim licem koje nije navršilo 14 godina. Teža kazna predviđena je za onog ko ovo delo izvrši nad nemoćnim maloletnim licem koje nije navršilo 14 godina, ili upotrebom sile ili pretnjom da će neposredno napasti život ili telo tog ili njemu bliskog lica. Najteži oblici ovog dela postoje ako je nastupila teška telesna povreda ili teško narušavanje zdravlja maloletnog lica, ili je za posledicu imalo trudnoću ili težu zaraznu bolest, ili je delo izvršeno od strane više lica, ili na naročito okrutan ili ponižavajući način, kao i ako je nastupila smrt maloletnog lica (član 106 KZ RS). Osim toga, zakon predviđa kao posebno delo i delo obljube i protivprirodnog bluda zloupotrebom položaja, čiji teži oblik postoji kada nastavnik, vaspitač, staralac, usvojilac, očuh ili drugo lice zloupotrebom svoga položaja izvrši obljubu ili protivprirodni blud sa maloletnim licem starijim od 14 godina (član 107 KZ RS). U okviru ove grupe krivičnih dela predviđeni su i teži oblici osnovnih krivičnih dela, npr. silovanja (ako je učinjeno prema maloletnom ženskom licu), kao i prinude na obljubu i protivprirodan blud, obljube i protivprirodnog bluda nad nemoćnim licem, bludnih radnji i protivprirodnog bluda (ako su učinjeni prema maloletnom licu koje je napunilo 14 godina) (čl. 103-105, 108-110 KZ RS). Kao krivično delo predviđeno je i podvođenje maloletnog lica i omogućavanje vršenja bluda sa maloletnim licem, s tim što je teže kažnjavanje predviđeno za onog ko ovakvo iskorišćavanje maloletnog lica vrši radi sticanja koristi (član 111 KZ RS).

*Vanbračna zajednica sa maloletnim licem* takođe je zabranjena krivičnim zakonodavstvom, tako što je predviđeno kažnjavanje punoletnog lica koje živi u vanbračnoj zajednici sa maloletnim licem koje je navršilo 14 godina, kao i kažnjavanje roditelja, usvojioca ili staraoca koji maloletnom licu koje je navršilo 14 godina dopusti da živi u vanbračnoj zajednici sa drugim licem ili ga na to navede, s tim što je za ova lica predviđeno teže kažnjavanje ako je delo učinjeno iz koristoljublja. Međutim, u slučaju da se brak zaključi, gonjenje se neće preduzeti, a ako je preduzeto, obustaviće se (član 115 KZ RS).

U kontekstu zaštite dece od seksualne zloupotrebe treba pomenuti i krivično delo *rodoskrnavljenja*, tj. vršenja obljube sa srodnikom po krvi u pravoj liniji ili sa bratom ili sa sestrom (član 121 KZ RS).

## Ocena stanja i komentari

Kako prema informacijama kojima Centar raspolaže, tako i prema izveštajima drugih organizacija,[69] zvanični, sistematizovani podaci o broju dece žrtava

[69] Na primer, *Trafficking in Human Beings in Southeastern Europe*, UNICEF, UNOHCHR, OSCE-ODIHR, 2002.

seksualnog iskorišćavanja ne postoje. Jedan od zvaničnih izvora podataka, koji je Centaru bio dostupan, po pitanju kršenja člana 34 Konvencije, bili su podaci Ministarstva unutrašnjih poslova Republike Srbije, prema kojima broj podnetih krivičnih prijava za krivična dela na štetu maloletnika u periodu od 1. januara 1998. do 31. oktobra 2002. godine je sledeći:

| **Po članu KZ RS** | **1998.** | **1999.** | **2000.** | **2001.** | **2002.** | **Ukupno** |
|---|---|---|---|---|---|---|
| 103 | 66 | 47 | 40 | 32 | 27 | 212 |
| 104 | 3 | 1 | 1 | 2 | 1 | 8 |
| 105 | 1 | 3 | 3 | 6 | 2 | 15 |
| 106 | 46 | 43 | 32 | 42 | 37 | 200 |
| 107 | 4 | 14 | 6 | 4 | 2 | 30 |
| 108 | 55 | 49 | 73 | 88 | 75 | 340 |
| 110 | 7 | 14 | 8 | 14 | 12 | 55 |
| 111 | 3 | 1 | 5 | 2 | 4 | 15 |
| 115 | 34 | 35 | 27 | 26 | 28 | 150 |
| 121 | 3 | 4 | 4 | 3 | 2 | 16 |
| 251 | | | 1 | | | 1 |

Takođe, rađena su i pojedina istraživanja u koja je uključena i oblast seksualnog iskorišćavanja dece (Fakultet političkih nauka u Beogradu - 1998, Centar za prava deteta – Beograd, 2001, Viktimološko društvo Srbije - 2002), koja su nažalost samo parcijalna i daju jedino mogućnost procene određenih tendencija ove pojave, a u vezi su sa stvarnom zastupljenošću seksualnog iskorišćavanja dece. Inače, i prema kriminološkoj literaturi, seksualni delikti spadaju u red najmanje prijavljivanih krivičnih dela i u velikoj meri, u ovoj oblasti, nalazimo se na području tamne brojke.

Doduše, određeni podaci o seksualnom iskorišćavanju dece mogu se naći i u NVO *Incest trauma centar* iz Beograda i preko mreže registrovane kod organizacije Centar za razvoj neprofitnog sektora.

Više podataka o postojećoj praksi i problemima u ovoj oblasti videti kod člana 19. Takođe, važno je naglasiti da je SRJ potpisnica *Fakultativnog protokola uz Konvenciju o pravima deteta, o prodaji dece, dečjoj prostituciji i dečjoj pornografiji*. Fakultativni protokol SRJ je ratifikovala 10. oktobra 2002. godine. Iz ratifikacije naravno proizilazi i obaveza primene Protokola i njegovo usaglašavanje

sa nacionalnim zakonodavstvom. Imajući to u vidu, Centar je ukazao na potrebu izmena važećeg krivičnog zakonodavstva u Republici Srbiji, u smislu uvođenja novih i redefinisanja pojedinih inkriminacija sadržanih u materijalnom krivičnom pravu, odnosno jasnog definisanja bića pojedinih krivičnih dela u cilju obezbeđivanja zaštite dobara značajnih za život dece.

Naročitu pažnju, u skladu *sa Fakultativnim protokolom uz Konvenciju o pravima deteta, o prodaji dece, dečjoj prostituciji i dečjoj pornografiji*, i naravno imajući u vidu potrebe prakse u ovoj oblasti, posvetili smo glavi Krivičnog zakona Republike Srbije: "Krivična dela protiv dostojanstva ličnosti i morala". Ministarstvu pravde Republike Srbije predložili smo, pre svega, izmenu naslova ove glave: "Krivična dela protiv polnih sloboda i dostojanstva ličnosti", uvođenje novih inkriminacija poput: "seksualno nasilje nad maloletnim licem koje nije navršilo 14 godina", "seksualno nasilje nad maloletnim licem koje je navršilo 14 godina", "seksualno nasilje nad maloletnim licem zloupotrebom položaja", "posredovanje u prostituciji maloletnog lica", "korišćenje maloletnih lica za pornografiju", "proizvodnja i prikazivanje maloletničke pornografije", "upoznavanje maloletnih lica sa pornografijom" i redefinisali već postojeće inkriminacije iz ove glave Krivičnog zakona RS.

# PRAVO DETETA NA ZAŠTITU OD NEZAKONITE UPOTREBE NARKOTIKA I PSIHOTROPNIH SUPSTANCI

## *Član 33. Konvencije o pravima deteta*

***Države ugovornice će preduzeti sve odgovarajuće mere, uključujući pravne, administrativne, socijalne i obrazovne, da zaštite decu od nezakonite upotrebe narkotika i psihotropnih supstanci, kako je definisano odgovarajućim međunarodnim ugovorima i da spreče korišćenje dece u nezakonitoj proizvodnji i trgovini tim supstancama.***

## Propisi u SRJ i Republici Srbiji

U Saveznoj Republici Jugoslaviji proizvodnja i promet, kao i nadzor nad proizvodnjom i prometom opojnih droga regulisani su Zakonom o proizvodnji i stavljanju u promet opojnih droga SRJ. Prema ovom Zakonu, *opojnim drogama* smatraju se supstance prirodnog ili sintetičkog porekla čijom se upotrebom mogu stvoriti stanja zavisnosti koja mogu da izazovu oštećenja zdravlja ili da na drugi način ugroze ljudski integritet u fizičkom, psihičkom ili socijalnom smislu. Opojne droge utvrđuje savezni organ rešenjem koje se objavljuje u Službenom listu SRJ. *Prometom opojnih droga* smatra se uvoz, izvoz, tranzit, prodaja i svaki drugi način prometa opojnih droga (čl. 2 i 3 Zakona o proizvodnji i stavljanju u promet opojnih droga SRJ).

*Proizvodnja i promet opojnih droga* mogu se vršiti samo u medicinske, veterinarske, nastavne, laboratorijske i naučne svrhe na osnovu odobrenja, odnosno dozvole saveznog organa. Zakonom je zabranjena proizvodnja opijuma zarezivanjem čaura maka, gajenje koka-biljke, izrada pripravaka sa psihoaktivnim dejstvom iz biljke kanabis i proizvodnja i uvoz drugih opojnih droga koje rešenjem utvrdi nadležni savezni organ (čl. 4 i 6 Zakona o proizvodnji i stavljanju u promet opojnih droga SRJ). Zakon utvrđuje uslove za proizvodnju i promet droga i evidenciju koja se o tome vodi, kao i postupanje nadležnih organa sa oduzetom opojnom drogom.

*Zaštita od nezakonite upotrebe opojnih droga i psihotropnih supstanci* obezbeđuje se i u krivičnom zakonodavstvu (čl. 245 i 246 KZ SRJ), sankcionisanjem neovlašćene proizvodnje, prerade, prodaje ili nuđenja na prodaju, kupovine, držanja ili prenošenja radi prodaje, ili neovlašćenog stavljanja u promet na drugi način supstancija i preparata koji su proglašeni za opojne droge ili psihotropne supstancije. Teži oblik ovog krivičnog dela postoji ako je ono izvršeno od više lica koja su se udružila za vršenje tih dela, ili je učinilac organizovao mrežu preprodavaca ili posrednika, ili ako je delo učinjeno sa naročito opasnom drogom ili psihotropnom supstancijom. Kao krivično delo predviđeno je i navođenje drugog na uživanje opojne droge ili psihotropne supstancije, davanje istih drugom, stavljanje na raspolaganje prostorija ili omogućavanje na drugi način uživanja opojne droge ili psihotropne supstancije, s tim što je teža kazna za ovo delo, između ostalog, predviđena i za slučaj kada je ono učinjeno prema maloletnom licu.

Kada je reč o *alkoholnim pićima*, krivično zakonodavstvo Republike Srbije predviđa delo služenja alkoholnih pića maloletnim licima, koje čini onaj ko maloletno lice, koje nije napunilo 16 godina, posluži u ugostiteljskoj ili nekoj drugoj radnji u kojoj se prodaju alkoholna pića, žestokim ili drugim alkoholnim pićem u količinama koje mogu dovesti do opijanja (član 132 KZ RS).

## Ocena stanja i komentari

Opšta ocena primene i poštovanja člana 33 Konvencije je da su u Jugoslaviji (Srbiji) prava deteta u ovoj oblasti značajno ugrožena. Od sredine 70-ih godina XX veka, raširenost zloupotrebe psihoaktivnih supstanci (PAS) na ovim prostorima poprima sve izrazitije, skoro epidemijske razmere. Osnovne karakteristike aktuelne situacije bile bi sledeće:

1. Značajna raširenost problema;
2. Starosna granica prvog uzimanja se pomera kako ka sve mlađem, tako i starijem uzrastu;
3. Problem je prisutan u svim sredinama i regionima, svim društvenim slojevima i grupama (karakter decentralizacije i demetropolizacije);
4. U adolescentnom uzrastu izražena je kombinovana zloupotreba PAS ("politoksikomanija");
5. Najzastupljenije PAS su: od legalnih - alkohol i isparljivi rastvarači, a od ilegalnih, preparati kanabisa (marihuana i hašiš), heroin, "ekstazi", kokain, amfetamini (poslednjih nekoliko meseci se na "tržištu" pojavio *speed*). Zloupotreba sedativa, kao medicinskih preparata, je takođe izražena;
6. Još uvek nema konzistentnog i organizovanog odgovora društva na problem

zavisnosti od PAS. Kapaciteti za lečenje su nedovoljni, primenjuje se mali broj terapijskih modaliteta, mere u oblasti primarne prevencije su haotične, bez kontinuiteta, stereotipne i zastarele, pa nekada i u direktnoj suprotnosti sa pravima deteta i ljudskim pravima uopšte. Rehabilitacija i resocijalizacija su potpuno zanemarene od strane države i svode se na "eksperimentisanje" dve (koliko je autoru poznato) NVO. Što je najvažnije, nema ni naznaka stvaranju nacionalnog programa za rešavanje ovog problema.

U pogledu prijavljivanja slučajeva zavisnosti od PAS, Zakonom o zdravstvenoj zaštiti (iz 1996. godine), odnosno Zakonom o evidenciji u oblasti zdravstva (iz 1978. i 1986. godine) je regulisano/propisano prijavljivanje zaraznih i nezaraznih bolesti. Pored zakona nedavno je usvojen i Pravilnik o sredstvima za vođenje evidencije u zdravstvenim ustanovama. Po zakonskim propisima određeno je da svaka zdravstvena ustanova prijavljuje bolesnike obolele od bolesti od većeg socijalno-medicinskog značaja (gde spada i zavisnost od droga) regionalnom zavodu za zdravstvenu zaštitu, a regionalni zavod Republičkom zavodu. Trenutno se koriste prijavni listovi stari oko 30 godina, jer novi još uvek nisu zvanično ušli u upotrebu, niti postoje uputstva za njihovo popunjavanje.

Iako zakonski propisi određuju da su zdravstvene ustanove obavezne da vrše prijavljivanje, u praksi to nije slučaj. Može se reći da samo Zavod za zdravstvenu zaštitu iz Beograda ispunjava svoju obavezu prema Republičkom zavodu, odnosno da obavezu uglavnom ispunjavaju Zavod za bolesti zavisnosti i Institut za mentalno zdravlje u Beogradu, gde se ovi pacijenti leče. Primera radi, u Republičkom zavodu za zdravstvenu zaštitu je zaključno sa 2001. godinom, na području centralne Srbije prijavljeno 2.769 osoba, od toga 2.516 iz Beograda. Incidenca za centralnu Srbiju iznosi 425 slučajeva, od toga 397 se odnosi na Beograd. Za područje Kosova i Vojvodine ne postoje podaci.

Dakle, iako postoje zakonski propisi, većina zdravstvenih ustanova ih ne poštuje ili ne primenjuje, ili ako se prijavljivanje i vrši, ne postoje jasni i precizni kriterijumi za slanje prijava, te je svakoj ustanovi, tj. lekaru, prepušteno kako će popuniti prijavu. Takođe, postoji problem (ne)prijavljivanja slučajeva iz privatne lekarske prakse, gde se na lečenje javljaju osobe čiji broj nije zanemarljiv.

Zaštita od nezakonite upotrebe opojnih droga regulisana je krivičnim zakonodavstvom. Ova krivična dela su propisana u skladu sa međunarodnim konvencijama koje je SRJ ratifikovala. Kako MUP RS obrađuje slučajeve kršenja zakona, tu se vrši i evidencija broja i određenih karakteristika ovih slučajeva.

Podaci se zatim prosleđuju tužilaštvu koje pokreće krivični postupak pred sudom.

Podaci za 1996. i 2001. godinu su sledeći:
MUP RS – 1996. godina: količina zaplenjene droge je bila najveća u poslednjih 10 godina. U 1.003 (784) zaplene oduzeto je ukupno 1.369 kg različitih narkotika (1995. godine taj broj je iznosio 741 kg). Oduzeto je 651,999 kg heroina (devet puta više nego 1995. godine), 638,489 kg marihuane, 233,13 grama kokaina, 2.519 kg hašiša, 99 komada ekstazija, 53 kg kodeina. Podneto je 388 (417) krivičnih prijava protiv 483 (507) lica, 230 lica je zadržano u pritvoru.

Sekretarijat MUP RS u Beogradu :

| | **Broj zaposlenih** | **Heroin** | **Marihuana** | **Hašiš** | **Kokain** | **Ekstazi** | **Kodein i dr. droge** |
|---|---|---|---|---|---|---|---|
| **1996. godina** | 673 | 13,7 kg | 22,98 kg | 2,5 kg | 101 kg | 99 kom. | 53,07 kg |
| **2001. godina** | >1000 | 7 kg | ? | ? | ? | Povećanje | ? |

Sekretarijat MUP RS u Beogradu je do sada registrovao 11.000 lica zbog krivičnih dela vezanih za droge.

Sekretarijat MUP RS u Nišu :

| | **Heroin** | **Kokain** | **Marihuana** | **Hašiš** | **Ekstazi** |
|---|---|---|---|---|---|
| **2000. godina** | 1.972,42 g | 108,33 g | 102,203 kg | / | / |
| **2001. godina** | 1.237,80 g | / | 44,135 kg | 0,996 g | 155 kom. |

Godine 2000. podneto je 55 krivičnih prijava po osnovu čl. 245 i 246 KZ RS, a 2001. godine 67.

Ovi podaci su više internog karaktera i nisu u potpunosti dostupni široj javnosti, nisu potpuno sistematizovani i ne analiziraju se u širem kontekstu.

Sama zakonska regulativa je (potpuno) anahrona i može se reći da je više izvor problema u sprovođenju krivičnih postupaka. Takođe, nedostaju zakonski propisi koji bi određivali i druge oblasti ove problematike – npr. preciziranje tzv. *new designer drugs*, sticanje dobiti i "pranje novca".

Krivični zakon Republike Srbije određuje kao krivično delo služenje alkoholnih pića maloletnim licima (koja nisu navršila 16 godina starosti). Sam član 132 KZ RS je praktično neupotrebljiv, jer je neprecizan (po pitanju količine pića): *...ko posluži maloletno lice alkoholnim pićem...u količinama koje mogu dovesti do opijanja tog lica...* Koliko je autoru poznato, na osnovu podataka iz MUP-a RS, nijedno lice nije osuđeno po ovom osnovu.

Razlikuju se tri oblika kriminalnih radnji vezanih za zloupotrebu i zavisnost od droga (psihoaktivnih supstanci):

1. Kriminalne radnje nastale u cilju nabavke opojne droge;
2. Kriminalne radnje nastale pod dejstvom opojne droge;
3. Kriminalne radnje vezane za proizvodnju, rasturanje, prodaju i omogućavanje korišćenja opojnih droga.

Prva dva oblika sankcionišu drugi članovi KZ RS, a kao što je izneto treću oblast regulišu članovi 245 i 246.

Što se tiče krivičnih sankcija one se odnose na kaznu zatvora i mere bezbednosti obaveznog lečenja (ova mera ima medicinski aspekt i karakter dopunske sankcije jer se izriče isključivo uz kaznu, ili uslovnu osudu).

Zakonska rešenja koja se odnose na primarnu, sekundarnu i tercijalnu prevenciju (finansiranje, sprovođenje, evaluacija), modalitete mera bezbednosti obaveznog lečenja i prisilnog lečenja, utvrđivanje poslovne sposobnosti i sl, u potpunosti nedostaje ili je krajnje neprecizna. Legislativa koja se odnosi na terapijske modalitete (metadonski program i drugi programi supstitucije/održavanja, psiho i socioterapija, porodična terapija, metode detoksikacije i dr) ili je prevaziđena ili ne postoji. Poseban problem predstavljaju etička pitanja, a odnose se na određene terapijske metode koje se sada sprovode i nepostojanje licenciranja rada u oblasti bolesti zavisnosti (nema nikakvih stručnih provera lekara privatnika koji pružaju usluge i u ovoj oblasti).

U pogledu indikatora koje prate zvanične/javne službe i institucije, situacija je sledeća:

1. Broj osoba zavisnih od droga:

Ovi podaci se (isključivo) odnose na osobe koje su se javile na lečenje ili bile lečene usled akutne intoksikacije, čije prijavljivanje je obavezno prema zakonskim propisima. Sledeći podaci se odnose na zvanične podatke iz zdravstvenih ustanova iz Beograda (Zavod za bolesti zavisnosti, Institut za mentalno zdravlje), Niša,

Novog Sada, Republičkog zavoda za zdravstvenu zaštitu i Saveznog zavoda za zdravstvenu zaštitu. Takođe će, poređenja i preglednosti radi, ovde biti prikazani i rezultati anketa i ispitivanja koja su sprovedena u nekim gradovima u Srbiji, u organizaciji predstavnika lokalne zajednice i zdravstvenih ustanova. Rezultate pilot istraživanja republičke komisije za prevenciju bolesti zavisnosti, i pored metodoloških nepravilnosti (mali i heterogeni uzorak koji nije reprezentativni) i iznad svega etičke diskutabilnosti, ipak iznosimo radi poređenja sa drugim istraživanjima.

*Republički zavod za zdravstvenu zaštitu*
*Broj hospitalizacija sa osnovnom dijagnozom F10.2 i F11.2 (za područje centralne Srbije, bez Vojvodine i Kosova)*

| | **1996. godina** | **2000. godina** (za 2001. godinu podaci još nisu sistematizovani) |
|---|---|---|
| **F 10.2** | | |
| **Muški pol** | 2.550 | 4.210 |
| **Ženski pol** | 339 | 474 |
| **7 - 19 godina** | 22 | 174 |
| **Ukupno** | 2.889 | 4.684 |
| | | |
| **F 11.2** | | |
| **Muški pol** | 427 | Podaci nisu vođeni |
| **Ženski pol** | 52 | |
| **7 - 19 godina** | 47 | |
| **Ukupno** | 479 | |
| | | |
| **F 11.25** | 1997. Vojvodina | (Novi Sad) |
| **Muški pol** | 13 | 32 |
| **Ženski pol** | 3 | 10 |
| **Ukupno** | 16 | 42 |

Izveštaj o stanju bolesnika obolelih od bolesti od većeg socijalno-medicinskog značaja (šifra 304.0).[70]

[70] Za šifru 303 nije vođena evidencija – zakon nije regulisao prijavljivanje.

*Podaci iz službe za informatiku Republičkog zavoda za zdravstvenu zaštitu "Batut"*
*Prema podacima Gradskog zavoda za zaštitu zdravlja, Beograd, Službe za zdravstvenu statistiku i informatiku - Izvor podataka - populacioni registar narkomanija*

| **Region** | **1996. godina** | **1996. godina** | **2001. godina** | **2001. godina** |
|---|---|---|---|---|
| | Broj odbeglih | Broj novootkrivenih bolesnika | Broj obolelih | Broj novootkrivenih bolesnika |
| **Centralna Srbija** | 1.249 | 301 | 2.769 | 425 |
| **Beograd** | 1.180 | 297 | 2.516 | 397 |
| **Kolubarski region (Valjevo)** | Nema podataka | Nema podataka | 0 | 0 |
| **Podunavski okrug** | 7 | - | 15 | 5 |
| **Braničevski okrug** | - | - | 12 | 5 |
| **Šumadijski okrug (Kragujevac)** | 55 | 2 | 110 | 2 |
| **Pomoravlje (Ćuprija)** | 2 | 1 | 55 | 0 |
| **Moravički okrug (Čačak)** | - | - | - | - |
| **Raški okrug (Kraljevo)** | 4 | 0 | 25 | 9 |
| **Jablanički okrug (Leskovac)** | - | - | 13 | 7 |
| **Pčinjski okrug (Vranje)** | 4 | 4 | 23 | 7 |
| **Bor, Zaječar, Pirot** | 1 | 1 | | |

Incidenca i prevalenca registrovanih narkomana u Beogradu, u periodu 1996-2001. godine

| | Godina | 1996. | 1997. | 1998. | 1999. | 2000. | 2001. |
|---|---|---|---|---|---|---|---|
| **Incidenca** | **Broj** | 292 | 287 | 288 | 152 | 470 | 397 |
| | **Stopa**[71] | 17,94 | 17,6 | 17,61 | 9,28 | 28,75 | 24,24 |
| **Prevalenca** | **Broj** | 1459 | 1400 | 1633 | 1748 | 2173 | 2516 |
| | **Stopa**[72] | 89,62 | 85,84 | 99,88 | 10,72 | 132,66 | 153,6 |

Incidenca je porasla sa 18 na 24, odnosno za oko 30%, prevalenca je porasla sa 89 na 153, odnosno, za više od 40%. Na 1.000 stanovnika, trenutno je registrovano da boluje 1-2 lica, odnosno 0,15% populacije Beograda.

Prosečna starost registrovanih narkomana prema polu, u Beogradu za 1993, 1997, i 2001. godinu:

| Godina prijave | 1993. | 1997. | 2001. |
|---|---|---|---|
| **Muškarci** | 33,6 | 24,9 | 24,1 |
| **Žene** | 31,4 | 26,3 | 24,7 |
| **UKUPNO** | 32,9 | 25,2 | 24,2 |

Prosečno učešće registrovanih narkomana prema dobnim grupama, u Beogradu od 1997-2001. godine:

| | Godina prijave | | |
|---|---|---|---|
| **Procenat (%)** | **1997.** | **2000.** | **2001.** |
| **0-14** | 0 | 0 | 0 |
| **15-19** | 13,94 | 17,62 | 14,86 |
| **20-24** | 44,95 | 40,98 | 47,61 |
| **25-29** | 21,25 | 27,18 | 25,69 |
| **30-39** | 14,98 | 11,04 | 10,33 |
| **40+** | 4,88 | 3,18 | 4,03 |

[71] Stopa na 100.000 stanovnika Beograda.

[72] Stopa na 100.000 stanovnika Beograda.

Broj registrovanih narkomana u Beogradu prema godini prijave i dijagnozi, u periodu od 1996-2001. godine:

| | Dijagnoza prema MKB-9 | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Godina prijave** | **304** | **304.1** | **304.2** | **304.3** | **304.4** | **304.6** | **304.7** | **304.8** | **304.9** | **SUMA** |
| **1996.** | 256 | 5 | 1 | 0 | 0 | 2 | 17 | 6 | 5 | 292 |
| **1997.** | 119 | 3 | 0 | 1 | 2 | 0 | 0 | 3 | 159 | 287 |
| **1998.** | 152 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 133 | 288 |
| **1999.** | 77 | 40 | 0 | 1 | 0 | 1 | 9 | 2 | 22 | 152 |
| **2000.** | 318 | 50 | 0 | 0 | 0 | 0 | 14 | 2 | 86 | 470 |
| **2001.** | 245 | 119 | 1 | 2 | 0 | 0 | 12 | 1 | 17 | 397 |

U Zavodu za bolesti zavisnosti godišnje se na lečenje javi 382 pacijenta (1996. godine – 450 pacijenata, 2001. godine – 846 pacijenata). Zavod za bolesti zavisnosti je tokom 2001. godine, u okviru programa prevencije Skupštine grada Beograda, sproveo istraživanje na 1.843 učenika II razreda srednjih škola:

Pušenje: 55,6% probalo, prva cigareta – 54% pre 15. godine, a 25% pre 13. godine; 25,5% svakodnevno puši; 57% pušača koristi preko 10 cigareta dnevno.

| | Alkohol | Lepak |
|---|---|---|
| Probalo | 91,0% | 2,1% |
| Do 10. godine | 18,6% | do 13. godine 50% |
| Do 12. godine - | >25% | |
| Do 14. godine | - >50% | Marihuana |
| Svakodnevno pije | - 3,2% | probalo 16,1% |
| Pije više puta sedmično | -7,1% | prvo uzimanje najčešće u 15-16 godina |
| Pije jednom sedmično | -18% | |
| Nikada nije bilo pijano | - 47% | nastavilo da uzima 7,4% |
| Jedno pijanstvo | - 20,3% | |
| Preko 10 pijanstava | | |

| | **Heroin** | **Ekstazi** | **Kokain** | **Sedativi** | **LSD** | **Tramadol** |
|---|---|---|---|---|---|---|
| **Probalo** | 0,69% | 0,53% | 0,53% | 0,53% | 0,37% | 0,32% |

Svakodnevno neku drogu koristi 0,4% ispitanika.

U okviru projekta "Zdravstveno ponašanje studentske i srednjoškolske populacije" koji je realizovala Studentska poliklinika 1999. godine, dobijeni su i podaci o korišćenju droga među srednjoškolcima:

*"Da li si barem jednom uzeo/la marihuanu?"*

| | **Muški pol** | **Ženski pol** | **UKUPNO** |
|---|---|---|---|
| **DA** | 176 - 6,75% | 71 - 2,81% | 247 - 4,81% |
| **NE** | 2.379 - 91,25% | 2.438 - 96,36% | 4.817 - 93,77% |

Starost pri prvom uzimanju marihuane:

| | **Muški pol** | **Ženski pol** | **UKUPNO** |
|---|---|---|---|
| **12 godina** | 6 - 3,68% | 0 | 6 - 2,59% |
| **13 godina** | 35 - 21,47% | 13 - 18,84% | 48 - 20,69% |
| **14 godina** | 63 - 38,65% | 27 - 39,13% | 90 - 38,79% |
| **15 godina** | 53 - 32,52% | 25 - 36,23% | 78 - 33,62% |

Srednja vrednost X = 13,96 godina. Zabeleženo je i prvo uzimanje marihuane sa 7 godina.

*"Koliko često sada uzimaš marihuanu?"*

| | **Muški pol** | **Ženski pol** | **UKUPNO** |
|---|---|---|---|
| **Nikad** | 101 - 44,30% | 38 - 41,30% | 48 |
| **Svake sedmice** | 23 - 10,09% | 12 - 13,04% | 35 |
| **Svaki dan** | 15 - 6,58% | 4 - 4,35% | 19 |
| **Svakog meseca** | 30 - 13,16% | 12 - 13,04% | 42 |

*"Gde si prvi put uzeo marihuanu?"*

| | **Muški pol** | **Ženski pol** | **UKUPNO** |
|---|---|---|---|
| **Na žurci** | 50 - 21,93% | 17 - 18,48% | 67 - 20,94% |
| **U školi** | 25 - 10,96% | 9 - 9,78% | 34 - 10,63% |
| **Na ekskurziji** | 8 - 14,53% | 2 - 11,11% | 10 - 13,70% |
| **U parku** | 12 - 21,82% | 5 - 27,78% | 17 - 23,19% |

Ovim istraživanjem dobijeni su i podaci da je kokain probalo 0,25%, lepak 1,5%, a neku drugu drogu 1,23% srednjoškolaca. Najčešća kombinacija je bila alkohol sa sedativima (19,51%).

Novi Sad – broj klinički registrovanih slučajeva :
1997. godina - 45;
1998. godina – 56;
1999. godina – 49;
2000. godina – 81.

Istraživanje na uzorku od po 300 učenika osnovnih i srednjih škola u Novom Sadu (Prof. dr N. Vučković):

| | **Heroin** | **Ekstazi** | **Marihuana** | **LSD** |
|---|---|---|---|---|
| **Osnovna škola** | 0,5% | 0,8% | 15,8% | 0,3% |
| **Srednja škola** | 1,2% | 1,7% | 21% | 0,4% |

Sekretarijat MUP RS u Novom Sadu je u periodu od 1985. do 1996. godine zabeležio porast od 300% broja osoba privedenih zbog posedovanja i preprodaje droga. NVO "Emprona" iz Novog Sada procenjuje da u tom gradu ima preko 10.000 osoba koje zloupotrebljavaju psihoaktivne supstance.

U Nišu je od 1990. (1991) godine dispanzerski lečeno 700 pacijenata zbog zloupotrebe i zavisnosti od droga.

Istraživanjem koje je sprovedeno u Pančevu juna 2002. godine, na uzorku od 594 učenika II razreda srednjih škola, u organizaciji lokalnog stručnog tima za prevenciju bolesti zavisnosti, a realizovala omladina JAZAS-a, dobijeni su sledeće rezultati :

- 63,3% ispitanika puši cigarete, 29% svakodnevno;
- preko 50% ispitanika je imalo više od jedne epizode pijanstva, 20% više od 4 epizode;
- mladići se češće opijaju (72%), ali i preko 50% devojaka je imalo barem jedno pijanstvo;
- marihuanu je probalo 15,7% učenika (20% mladića i 14% devojaka), od toga njih 2% koristi marihuanu svakodnevno;
- marihuanu su po prvi put najčešće probali na otvorenom prostoru (33%), žurci (28,4%), školi (17,4%) i to prosečno sa 15 godina;
- druge droge koristi 4,6% učenika, uglavnom samo jednom;

- sa veličinom džeparca i brojem večernjih izlazaka raste i broj opijanja i korišćenja marihuane.

Anketa odbora za prevenciju bolesti zavisnosti iz Dimitrovgrada na uzorku od preko 200 učenika osnovnih i preko 300 učenika srednjih škola, pokazala je da samo 13 učenika nema iskustva sa psihoaktivnim supstancama. Njih 87% je probalo marihuanu, a 78% alkohol, prosečno sa 15 godina prvi put.

Prosečna starost pri prvom uzimanju droge:[73] Novi Sad - 15,4 godina, Kragujevac - 16,1 godina, Beograd - 16,2 godina, Niš - 16,8 godina.

Pilot istraživanje Republičke komisije za prevenciju bolesti zavisnosti sprovedeno je tokom maja 2002. godine, u 6 okruga u Srbiji (gradovi: Jagodina, Leskovac, Pirot, Šabac, Zaječar, Bajina Bašta) na uzorku od ukupno 1.459 učenika VII i VIII razreda osnovne škole i sva četiri razreda srednje škole. Odnos polova je bio približno isti. Korišćen je test za detekciju droga u urinu (metamfetamin, benzodiazepini, kanabis, opijati) i modifikovani upitnik ESPAD.mod.I.D./2002 koji se sastojao od 47 pitanja.

Rezultati upitnika :

| **Supstanca** | Cigarete | Alkohol | Marihuana | Heroin | Kokain | Ekstazi |
|---|---|---|---|---|---|---|
| **Probalo je** | 47,3% | 76,7% | 8,4% | 0,7% | 0,4% | 0,6% |
| **Godina prvog uzimanja** | 13,71 godina | Oko 13 godina | 15,31 godina | 16 godina | 16,33 godina | 15,45 godina |

Važno je napomenuti da je 17,1% učenika navelo da uopšte nije bilo iskreno odgovarajući na pitanja u vezi marihuane, a 16,4% u vezi heroina. Takođe, metodološki je problematično nerazdvajanje učenika po starosnim grupama, odnosno razredima.

Prikaz rezultata urin-testova: od 66 pozitivnih nalaza (4,88%), najčešće je otkrivan metamfetamin u 59% slučajeva, benzodiazepini u 18,18%, marihuana u 16,67% i opijati u 6,06% slučajeva. Po gradovima, najviše pozitivnih nalaza je bilo u

[73] Izvor: *RAR* projekat UNICEF, Beograd.

Jagodini (6,96%), a najmanje u Šapcu (2,71%). Pažnju izaziva veliki broj pozitivnih nalaza na metamfetamin, što predstavlja ili veoma zabrinjavajući nalaz (i pretpostavku da se upotreba amfetamina veoma brzo raširila po celoj Srbiji) ili da su testovi nevalidni, odnosno da daju veliki broj lažno pozitivnih rezultata na metamfetamin. Takođe, ovaj nalaz je u suprotnosti sa rezultataima upitnika.

Sigurno je da postoje istraživanja i u drugim gradovima, ali je do rezultata veoma teško doći. Ovde se postavlja i problem metodologije koja je korišćena u ispitivanjima i sa velikom verovatnoćom se može tvrditi da se rezultati ne mogu upoređivati zbog različitih metodologija (pitanje validnosti rezultata je takođe sporno).

Može se reći da još uvek postoje problemi u ažuriranju prijava. Jedino se na nivou Beograda ažurirano vodi evidencija, dok je na nivou Republike (pa samim tim i SRJ), evidencija nevalidna i pored spremnosti Republičkog zavoda da ažurira podatke – regionalni zavodi jednostavno ne šalju prijave. Čak i površna analiza podataka iz regiona ukazuje na zanemarivanje ovog problema. Nameće se zaključak da je neophodno poštovati pravne propise, kako bi se (barem) stekla prava slika o broju lečenih osoba. Takođe, potrebno je podatke iz ove oblasti izdvojiti iz "šume" ostalih podataka jer je aktuelno do njih teško doći (ovim poslom bi trebalo da se bavi specijalizovana služba, odnosno komisija na nivou Republike). Ovde vredi istaći i da "centralni registar bolesti zavisnosti" ne postoji, a da se već godinama vodi "borba" između pojedinih zdravstvenih ustanova gde će on biti smešten – pretpostavlja se da bi to bio način dobijanja primata u ovoj oblasti.

Po pitanju morbiditeta i mortaliteta usled (zlo)upotrebe droga, u statističkim godišnjacima o narodnom zdravlju i zdravstvenoj zaštiti u SR Jugoslaviji Saveznog zavoda za zaštitu i unapređenje zdravlja, i pored velikog broja podataka iz zdravstva, ima veoma malo korisnih podataka iz oblasti bolesti zavisnosti. U godišnjaku iz 1997. godine (sa podacima za 1996. godinu), u listi umrlih prema uzroku smrti, polu i starosti, nema podataka o mortalitetu zbog bolesti zavisnosti, već samo generalno za mentalne poremećaje (F00-F99). U listi utvrđenih oboljenja, stanja i povreda prema grupama oboljenja u vanbolničkim službama, iako postoji "rubrika" 113 (alkoholizam – F 10) i "rubrika" 114 (narkomanije – F 11-F 19), nema nijednog podatka (nisu ažurirani iz zdravstvenih ustanova). Lista lečenih u bolnicama daje samo zbirne podatke o lečenim od duševnih poremećaja i poremećaja ponašanja (39.889). U godišnjaku iz 1999. godine dati su sledeći podaci:

Neuropsihijatrijska vanbolnička služba - duševni poremećaji i neurološka oboljenja:

| | 1989. | 1990. | 1991. | 1992. | 1993. | 1994. | 1995. | 1996. | 1997. | 1998. | 1999. |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Neuroze i poremećaji ličnosti** | # | # | # | # | # | # | # | # | # | # | # |
| **Alkoholizam** | 47 | 43 | 39 | 32 | 25 | 25 | 25 | 25 | 17 | 12 | 12 |

# Podaci su dati samo zbirno tako da su neupotrebljivi po grupama. Podaci su dati u hiljadama poseta.

Neuropsihijatrijska bolnička služba - lečeni u bolnicama od duševnih poremećaja i neuroloških oboljenja:

| | 1988. | 1990. | 1993. | 1995. | 1996. |
|---|---|---|---|---|---|
| **Alkoholizam F 10** | 11.200 | 9.238 | 3.494 | 4.446 | 4.194 |
| **Narkomanija F 10 - 19** | 452 | 569 | 381 | 405 | 543 |

Statistički godišnjak za 2000. godinu (štampan 2002. godine) daje podatak da Jugoslavija (Srbija) raspolaže sa 74 postelje za lečenje bolesti zavisnosti: bilo je 2.512 registrovanih bolesnika sa 46.254 bolesničkih dana. U vanbolničkih službama u Srbiji je utvrđeno 10.027 slučajeva alkoholizma (u centralnoj Srbiji 6.196, a u Vojvodini 3.617) i 2.247 slučajeva "narkomanija" (dg. F 11 – F 19) – od toga 1.583 u centralnoj Srbiji, a 571 u Vojvodini.

Neregistrovanje smrtnih slučajeva usled upotrebe droga je u nesrazmeri sa nezvaničnim podacima sa terena koji ukazuju na to da je prisutan zabrinjavajući broj smrtnih slučajeva. Tako, Zavod za hitnu pomoć Beograda daje podatak o 16 smrtnih slučajeva u 2001. godini na teritoriji Beograda uz ukupno 320 hitnih intervencija na terenu (najčešće tokom noći i to u stanovima, zatim na ulicama, parkovima, ugostiteljskim objektima i drugim mestima). Na Vojnomedicinskoj akademiji tokom 2001. godine zbog akutnih intoksikacija lečeno je 242 osobe uglavnom iz Beograda, u 140 slučajeva u pitanju je bila intoksikacija heroinom. Beogradski odsek MUP-a procenjuje da u Beogradu godišnje ima 23-37 smrtnih slučajeva usled intoksikacije drogama. Podaci iz Niša ukazuju na prosečno 3 smrtna slučaja godišnje prvenstveno zbog nečistoće "uličnog" heroina (oko 3%). I ovde je potrebno sistematski obraditi ovu oblast i pronaći mehanizme za objektivizaciju situacije.

Iz prethodnog teksta je jasan trend porasta zaplena, i uopšte krivičnih dela vezanih za zloupotrebu droga, što pokazuje porast ove problematike. Ostaje komentar o nepotpunoj sistematičnosti ovih izveštaja MUP-a.

Zvanični podaci o broju krivičnih prijava ne postoje. Nezvanično, iz MUP-a RS nisu mogli da potvrde da je podneta ijedna krivična prijava. Istovremeno, poznato je da ni u jednom ugostiteljskom objektu i prodavnici ne traže ličnu kartu ili drugu potvrdu (makar usmenu) o starosti pri naručivanju, odnosno kupovini alkoholnih pića, niti je na bilo koji način istaknuto da se maloleltnicima ne služi alkohol. Problem predstavlja i pitanje nadležnosti provere kršenja propisa – da li to treba da radi MUP RS ili inspekcijske službe ili neko treći.

Iako je Ministarstvo za obrazovanje i sport Republike Srbije zaduženo za izradu programa nastave te postoji preporuka da se ova problematika obrađuje, a u planu je jasno definisanje obrade ove oblasti, trenutno ne postoje mehanizmi za proveru sprovođenja. Dodatno, nema jasnih i detaljnih uputstava za organizovanje ovih aktivnosti. Brošura koju je izdalo Ministarstvo pre nekoliko godina je opšteg karaktera bez konkretnih praktičnih uputstava za vođenje ovih aktivnosti (kreativne radionice, predavanja i dr.). Metodologija koja se preporučivala je prevaziđena i ne daje dobar okvir za programski rad. Koliko je poznato, nema evaluacije realizacije i prihvaćenosti od strane učenika.

U nekim osnovnim i srednjim školama u Srbiji se tokom 2001. i delom 2002. godine sprovodio preventivni program u okviru akcije Direkcije za sport Ministarstva za obrazovanje i sport *Igraj za život – droga NE* i *Igraj za život – bez alkohola*. Aktivnosti su se odigravale kroz kreativne radionice (obuhvaćeno 2.000 učenika) i predavanja kao i sportske manifestacije, uz distribuciju propagandnog materijala (posteri i lifleti, brošure) i medijsku prezentaciju akcije. Sprovedeno je i istraživanje o zloupotrebi droga među mladima na uzorku od 7.200 učenika u 120 škola u 6 okruga Srbije (rezultati nisu poznati). Ukupno je realizovana 61 akcija kojim je bilo obuhvaćeno 25.000 dece (podaci iz saopštenja za štampu tima kampanje). U Beogradu je oko 100 prosvetnih radnika (školskih psihologa, pedagoga, nastavnika i profesora) tokom 2000. i 2001. godine prošlo obrazovne programe za realizaciju preventivnih aktivnosti u školama u organizaciji NVO "Duga", a NVO "Korak po korak" je u Beogradu i nekim gradovima Srbije sprovela obrazovanje mladih za vršnjačku edukaciju.

Ohrabruje rad Ministarstva za obrazovanje i sport Republike Srbije na pravljenju tzv. "plave knjige" - kalendara programa (uključujući i programe prevencije bolesti

zavisnosti) koji će biti preporučeni školama. Ipak, može se reći da školama nedostaju kontinuirani preventivni programi, savremeno koncipirani, koji će biti ako ne obavezni, onda barem stimulisani od strane Ministarstva (ne samo verbalno).

Ovde je neophodno spomenuti i kontraverznu akciju testiranja učenika na prisustvo droga u organizaciji republičke komisije. Dugo medijski najavljivana i nedosledno obrazlagana, izazvala je negodovanje stručnjaka i odobravanje roditelja, uz podeljena mišljenja učenika i strah od mogućih posledica. Akcija je ipak sprovedena na 1.500 učenika u šest gradova u Srbiji, o rezultatima je već bilo govora.

Formalno posmatrano, postoji veći broj organizacija koje su zadužene za prevenciju bolesti zavisnosti. Skoro svaki grad u Srbiji ima koordinacioni odbor za prevenciju bolesti zavisnosti, formirana je republička komisija za prevenciju, pojedina ministarstva sprovode ili planiraju akcije, nekoliko domaćih NVO uz pomoć UNICEF i drugih međunarodnih humanitarnih organizacija sprovodi određene akcije i programe, mediji otvorenije pišu o ovom problemu. Međutim, iole ozbiljnija analiza kvaliteta i efekata većine ovih aktivnosti i programa ukazuje na ozbiljne nedostatke:

- za sprovedene aktivnosti evaluacija ili nije rađena ili je nevalidna te se ne zna ni efekat istih;
- akcije su uglavnom diskontinuirane, bez dugoročne i jasne strategije;
- akcijama je obuhvaćen mali broj mladih;
- akcije su uglavnom bile generalnog karaktera, bez fokusiranja na pojedine grupacije mladih (onih pod posebnim rizikom, marginalizovane, izbeglice i dr);
- roditelji su uglavnom zaobilaženi ili se nisu uključivali u akcije;
- akcije su bile jednodimenzionalne, bez sinhronizovanih aktivnosti u više oblasti (zdravstvo, prosveta, pravosuđe, policija, centri za socijalni rad i dr);
- akcije su rađene uglavnom sa skromnim sredstvima, uz puno improvizacija.

Nažalost, za realizaciju preventivnih aktivnosti, jedino je dostupan budžet koordinacionog odbora za prevenciju zloupotrebe psihoaktivnih supstanci izvršnog odbora Skupštine grada Beograda. Za program "Prevencija zloupotrebe droga u lokalnoj zajednici" koji sprovodi Zavod za bolesti zavisnosti, a koji još uvek nije završen, grad Beograd je izdvojio oko 1,500.000 dinara. Za obeležavanje 26. juna, Svetskog dana protiv zloupotrebe droga, iz budžeta grada za 2002. godinu izdvojeno je oko 180.000 dinara, a obeležavanje je pomogla i beogradska kancelarija UNICEF sa 30.000 dinara. Za jednogodišnju kampanju protiv marihuane, čiji je početak predviđen za decembar 2002.- januar 2003. godine,

predviđena je suma od oko 2,500.000 dinara, koju treba da odobri Izvršni odbor Skupštine grada Beograda. I pored više pokušaja, budžet kampanja "Igraj za život - droga NE" i "Igraj za život - bez alkohola" ostao je nepoznat kao i sredstva utrošena na testiranje urina učenika na prisustvo droga.

I pored postojanja barem dve zdravstvene (psihijatrijske) ustanove koje zbrinjavaju maloletna lica, nailazi se na velike teškoće kada treba da se maloletni zavisnik hospitalizuje. Ustanove se često proglašavaju nenadležnim i upućuju pacijenta u drugu ustanovu. Kada je u pitanju ambulantno lečenje, situacija je nešto bolja, lekari i zdravstveni saradnici uglavnom prihvataju da maloletnika uključe u tretman. Generalno, kapaciteti za lečenje osoba koje imaju problem korišćenja droga (bilo da je u pitanju zloupotreba ili zavisnost) su nedovoljni, kako za Beograd tako i za celu Srbiju. Zavod za bolesti zavisnosti u Beogradu ima 16+8+20 kreveta za lečenje ovih osoba (uključujući i alkoholizam). Već duže vreme, zbog prokišnjavanja krova, 20 kreveta nije u funkciji. Oko polovine pacijenata koje zbrinjava Zavod su iz unutrašnjosti. Na hospitalizaciju se, zbog većeg broja prijavljenih pacijenata, čeka i 2-3 sedmice. U Institutu za mentalno zdravlje u Beogradu se na kliničko odeljenje za alkoholizam unazad 4-5 godina primaju i osobe zavisne od droga. Zbog otvorenosti odeljenja i drugih objektivnih ograničenja, kao i iskustva da se problemi tretmana usložnjavaju ako na odeljenju ima više mladih, stav tima odeljenja je da istovremeno na odeljenju ne bude više od 5-8 mladih (kapacitet odeljenja je 28 kreveta). U Institutu je planirano otvaranje dnevne bolnice za lečenje mladih sa ovim problemom, pripreme za otvaranje su u toku. Situacija je posebno problematična kada maloletnici (i zavisnici uopšte) imaju ozbiljne psihijatrijske poremećaje (psihozu, izraženu depresiju sa suicidalnim tendencijama i sl.) te je neophodna hospitalizacija. Ustanove koje se bave lečenjem zavisnosti prioritet daju lečenju psihijatrijskog poremećaja te pacijenta upućuju u opšte psihijatrijske ustanove, a ove pak prioritet daju lečenju zavisnosti i tu se krug zatvara, pacijent je na ulici, pruža mu se samo najneophodnija ambulantna pomoć. Inače, u 7 zdravstvenih ustanova u Beogradu (Zavod za bolesti zavisnosti, Institut za mentalno zdravlje, Vojnomedicinska akademija, Institut za infektivne i tropske bolesti, Studentska poliklinika, Urgentni centar, Institut za psihijatriju) u 2001. godini je lečeno 1.635 osoba sa problemima vezanim za korišćenje droga (zavisnost, intoksikacije, psihijatrijske komplikacije. Iz svega navedenog želeli bismo da damo sledeće zaključke:

1. Deca i njihova prava iz člana 33 Konvencije o pravima deteta su u znatnoj meri zanemarena, iako (barem) formalno postoji zakonski okvir;

2. Deca nisu zaštićena od korišćenja alkoholnih pića jer ih mogu nabaviti svuda, bez ikakvih ograničenja. Iako zakonska ograničenja postoje (član 132 KZ RS), ona su neprecizna i lako oborljiva. Ni u jednom slučaju nije pokrenut krivični, niti prekršajni postupak po ovom članu;
3. Ne postoji nacionalni/državni program sa jasnom strategijom za suzbijanje i prevenciju zloupotrebe droga. Akcije države su sporadične, parcijalne, privremene, nekada ishitrene i kontraproduktivne;
4. Podaci iz ove oblasti su nesistematični, često metodološki diskutabilni, neažurirani, teže dostupni a nekada čak i proizvoljni. Ne postoji centralni registar i baza podataka, protok informacija je otežan. Primera radi, ne može se iz zvaničnih podataka videti koja je starosna struktura dece sa problemom;
5. Zbrinjavanje dece sa ovim problemom je krajnje otežano, nema ustanove koja bi se specifično bavila ovim problemom;
6. Iako trenutno postoji više preventivnih programa, nijedan nije specifično fokusiran na decu, odnosno na predškolski i rani školski period gde bi efekti bili i najispoljeniji, s obzirom na to da stavovi na tim uzrastima još nisu formirani;
7. Ma koliko bili (metodološki) diskutabilni, raspoloživi podaci ukazuju da je problem zloupotrebe i zavisnosti od droga raširen među mladima i da poprima krajnje zabrinjavajuće razmere. Pušenje duvana i pijenje alkoholnih pića je široko rasprostranjeno (kod velike većine mladih), a zloupotreba marihuane im se sve više približava;
8. Deca ni na jedan način nisu zaštićena od (štetnih) uticaja reklama za duvan i alkoholna pića. Postoje primeri gde su alkoholna pića i cigarete reklamirani na velikim bilbordima na nekoliko metara od ulaza u školu.

Stoga je neophodno:

- osavremeniti zakonske propise i izgraditi mehanizme da se oni poštuju i sprovode;
- obezbediti uslove za sprovođenje savremenog, adekvatnog i kontinuiranog preventivnog programa;
- povećati kapacitete za tretman mladih koji već imaju ovaj problem.

# PRAVO DETETA NA ZAŠTITU OD OTMICE I TRGOVINE

## *Član 35. Konvencije o pravima deteta*

***Države ugovornice će preduzimati sve odgovarajuće nacionalne, bilateralne i multilateralne mere da spreče otmicu, prodaju ili trgovinu decom u bilo koju svrhu ili u bilo kojoj formi.***

## Propisi u SRJ i Republici Srbiji

Na nacionalnom planu, mere za sprečavanje otmice, prodaje ili trgovine decom sastoje se, pre svega, u propisivanju krivičnih dela kojima se sankcionišu ovakva postupanja. Krivično delo otmice propisano je republičkim krivičnim zakonima, a čini ga onaj ko silom, pretnjom, obmanom ili na drugi način odvede ili zadrži neko lice sa namerom da ga ne pusti na slobodu dok od njega ili drugog lica ne iznudi novac ili kakvu drugu imovinsku korist, ili da njega ili koga drugoga prinudi da nešto drugo učini, ne učini ili trpi. Teži oblik ovog dela postoji ako je ono učinjeno uz pretnju ubistvom ili teškom telesnom povredom otetom licu, ili ako je delo učinjeno prema maloletnom licu (član 64 KZ RS).

Što se tiče *prodaje ili trgovine decom* i drugih oblika iskorišćavanja dece, kažnjavanje za ovakve radnje predviđeno je u okviru dela koja se odnose na seksualno i drugo iskorišćavanje maloletnika, kao i na njihovo zapuštanje i zanemarivanje od strane lica koja su dužna da se o njima brinu. Pored toga, u skladu sa međunarodnim konvencijama koje se odnose na ukidanje ropstva, trgovine robljem i postupaka analognih ropstvu, Krivičnim zakonom SRJ predviđeno je kažnjavanje za stavljanje drugog lica u ropski odnos, trgovanje licima koja se nalaze u ropskom odnosu, podsticanje drugog da proda svoju slobodu ili slobodu lica koje izdržava, kao i prevoz lica koja se nalaze u ropskom odnosu. Teži oblik ovog dela postoji u slučaju kada je ono učinjeno prema maloletnom licu (član 155 KZ SRJ).

## Ocena stanja i komentari

Za ovaj član, kao i kada je u pitanju član 34 Konvencije, ne postoje sistematizovani i pouzdani podaci o broju dece žrtava trgovine ljudima. Ova tema je svakako goruća na Balkanu i mnoge organizacije, vladine i nevladine, domaće i strane, pokušavaju da doprinesu u rešavanju ovog problema. Međutim, jedna od prepreka sa kojom se suočavaju u stvaranju strategije za rešenje ovog pitanja je nepostojanje podataka. Možda situaciju najbolje opisuje najnoviji izveštaj UNICEF-a, UNOHCHR-a i OSCE-a u kome se kaže da "Praktično ne postoje informacije o trgovini ljudima i komercijalnom seksualnom iskorišćavanju dece. Anegdote o dečjoj prostituciji na autobuskim i voznim stanicama, naročito romske dece, uobičajene su. Postoje pretpostavke da se romska deca, devojčice, prodaju u Italiji za seksualnu industriju i prosjačenje..." [74] Svesna ozbiljnosti ovog problema, Savezna i Republička vlada preduzele su, uz pomoć međunarodnih organizacija (OSCE) neke korake u cilju rešavanja ovog problema i stvaranja Nacionalnog plana akcije.

Ministarstvo unutrašnjih poslova Republike Srbije raspolaže podatkom da je u periodu od 1. januara 1998. do 31. oktobra 2002. godine, na štetu maloletnog lica, po članu 64 KZ RS, učinjeno 16 krivičnih dela, i to: u 1998. godini – 5, 1999. godini - 1, 2000. godini - 2, 2001. godini – 5 i 2002. godini -3.

Centar za prava deteta, u saradnji sa *Save the Children UK*, započeo je pripremu projekta vezanog za trgovinu i promet decom, tako da će u izveštaju za 2003. godinu biti više podataka.

[74] Na primer, *Trafficking ni Human Beings in Southeastern Europe*, UNICEF, UNOHCHR, OSCE-ODIHR, 2002.

# PRAVO DETETA NA ZAŠTITU OD DRUGIH OBLIKA ISKORIŠĆAVANJA

## *Član 36. Konvencije o pravima deteta*

## *Države ugovornice će štititi decu od svih drugih oblika iskorišćavanja štetnih po bilo koji vid detetove dobrobiti.*

## Propisi u SRJ i Republici Srbiji

Ovaj član Konvencije o pravima deteta odnosi se, pre svega, na mere koje se preduzimaju da bi se sprečili *svi oblici iskorišćavanja*. Iako to podrazumeva i zakonske mere, nismo u mogućnosti da identifikujemo relevantne odredbe koje već nisu navedene u okviru analize usklađenosti sa ostalim članovima Konvencije o pravima deteta koji se odnose na eksploataciju deteta.

# PRAVO DETETA U SISTEMU MALOLETNIČKOG PRAVOSUĐA

***Član 40. Konvencije o pravima deteta***

***1. Države ugovornice priznaju pravo svakom detetu za koje se tvrdi, koje je optuženo ili za koje je utvrđeno da je prekršilo krivični zakon, na postupak usklađen sa unapređivanjem detetovog osećaja dostojanstva i vrednosti, koji njega/nju podstiče na poštovanje ljudskih prava i osnovnih sloboda drugih i koji uzima u obzir uzrast deteta i činjenicu da je poželjno zalagati se za njegovu/njenu reintegraciju i preuzimanje konstruktivne uloge u društvu.***
***2. U tom cilju i imajući u vidu sve bitne odredbe međunarodnih instrumenata, države ugovornice će posebno obezbediti:***
***a) da se ni za jedno dete neće tvrditi, niti će biti optuženo ili utvrđeno da je prekršilo krivični zakon, činjenjem ili propuštanjem koji u vreme izvršenja nisu bili zabranjeni unutrašnjim ili međunarodnim pravom;***
***b) da se svakom detetu koje je osumnjičeno ili optuženo da je prekršilo krivični zakon, garantuje najmanje:***

***I) pretpostavka nevinosti dok se krivica ne dokaže po zakonu;***
***II) da bude odmah i neposredno obavešteno o optužbama protiv njega/nje, a ako je primereno preko njegovih/njenih roditelja ili zakonskih staratelja, i da ima pravnu ili drugu odgovarajuću pomoć u pripremi i iznošenju svoje odbrane;***
***III) da nadležan, nezavisan i nepristrasan organ ili sudsko telo bez odugovlačenja donese odluku, u***

***pravičnom postupku u skladu sa zakonom, uz prisustvo pravnog ili drugog odgovarajućeg zastupnika i njegovih/njenih roditelja ili zakonskih staratelja, osim ukoliko se ne smatra da to nije u najboljem interesu deteta, posebno uzimajući u obzir njegove godine ili položaj;***
***IV) da ne bude prisiljeno da svedoči ili da prizna krivicu; da ono ispita ili da budu ispitani svedoci druge strane i da se obezbedi učešće i saslušanje njegovih/njenih svedoka pod jednakim uslovima;***
***V) da, ukoliko se smatra da je prekršilo krivični zakon, takvu odluku i svaku dosuđenu meru koja iz toga proizilazi, ponovo razmatra viši, nadležni, nezavisni i nepristrasni organ ili sudsko telo u skladu sa zakonom;***
***VI) da ima besplatnu pomoć prevodioca ukoliko dete ne može da razume ili ne govori jezik koji se koristi;***
***VII) da se poštuje njegova privatnost u svim fazama postupka.***
***3. Države ugovornice će nastojati da podstiču stvaranje zakona, postupaka, organa i ustanova koji se izričito odnose na decu i bave decom za koju se tvrdi, koja su optužena ili za koju je utvrđeno da su prekršila krivični zakon, a posebno:***
***a) utvrđivanje najniže starosne granice ispod koje deca ne mogu biti smatrana sposobnom za kršenje krivičnog zakona;***
***b) donošenje mera, kadgod je moguće i poželjno, za postupanje sa takvom decom, bez pribegavanja sudskom postupku, s tim da budu u potpunosti poštovana ljudska prava i zakonska zaštita.***
***4. Biće stavljen na raspolaganje širok spektar mera, kao što su briga, usmeravanje, nadzor; pravna pomoć; uslovno kažnjavanje; prihvat; obrazovanje i programi***

***stručne obuke i druge alternative institucionalnoj brizi kako bi se obezbedilo da se s decom postupa na način koji odgovara njihovoj dobrobiti i koji je srazmeran kako okolnostima tako i učinjenom delu.***

## Propisi u SRJ i Republici Srbiji

Ustav SRJ (čl. 23-29) obezbeđuje neka od prava garantovanih ovim članom Konvencije. Ustavnim odredbama je, između ostalog, predviđeno da:

- svako ko je lišen slobode mora biti odmah na svom, ili jeziku koji razume, obavešten o razlozima lišenja slobode i ima pravo zahtevati od organa da o lišenju slobode obavesti njegove najbliže;
- lice koje je lišeno slobode istovremeno mora biti upoznato da nije dužno ništa da izjavi;
- lice koje je lišeno slobode ima pravo da uzme branioca koga izabere;
- licu koje je pritvoreno mora se uručiti obrazloženo rešenje u času pritvaranja ili najdocnije u roku od 24 časa od pritvaranja;
- se jamči poštovanje ljudske ličnosti i dostojanstva u krivičnom i svakom drugom postupku, u slučaju lišenja, odnosno ograničenja slobode, kao i za vreme izvršenja kazne;
- je zabranjeno i kažnjivo svako nasilje nad licem lišenim slobode, odnosno kome je sloboda ograničena, kao i svako iznuđivanje priznanja i izjava;
- niko ne sme biti podvrgnut mučenju, ponižavajućem kažnjavanju i postupanju;
- se svakome jamči pravo na žalbu ili drugo pravno sredstvo protiv odluke kojom se rešava o njegovom pravu ili na zakonu zainteresovanom interesu;
- niko ne može biti kažnjen za delo koje, pre nego što je učinjeno, nije bilo predviđeno zakonom ili propisom zasnovanim na zakonu kao kažnjivo delo, niti mu se može izreći kazna koja za to delo nije bila predviđena;
- niko ne može biti smatran krivim za krivično delo dok to ne bude utvrđeno pravosnažnom odlukom suda;
- se svakom jamči pravo na odbranu i pravo da uzme branioca pred sudom ili drugim organom nadležnim za vođenje postupka;
- niko ko je dostižan sudu ili drugom organu nadležnom za vođenje postupka ne može biti kažnjen ako mu, u skladu sa saveznim zakonom, nije bilo omogućeno da bude saslušan i da se brani;
- svako ima pravo da njegovom saslušanju prisustvuje branilac koga izabere, a saveznim zakonom se određuje u kojim slučajevima okrivljeni mora imati branioca.

Osim toga, svakome se jamči da u postupku pred sudom ili drugim državnim organom koji rešava o njegovim pravima i dužnostima upotrebljava svoj jezik i da se u tom postupku sa činjenicama upoznaje na svom jeziku (član 49 Ustava SRJ).

Odredbe republičkog Ustava takođe sadrže slične garancije (čl. 22-26 Ustava RS).

Krivičnim zakonom SR Jugoslavije bliže je regulisan poseban *krivičnopravni status učinilaca krivičnih dela koji su mlađi od 18 godina*. Ove odredbe su izdvojene u posebnu glavu i primenjuju se na decu – učinioce krivičnih dela zajedno sa odgovarajućim odredbama republičkih krivičnih zakona, a ostale krivičnopravne odredbe sadržane u saveznim i republičkim zakonima primenjuju se samo ako nisu u suprotnosti sa posebnim odredbama koje se odnose na maloletnike (član 71 KZ SRJ).

Prema detetu koje u vreme izvršenja krivičnog dela nije navršilo 14 godina ne mogu se primeniti *krivične sankcije*. Detetu koje je u vreme izvršenja krivičnog dela navršilo 14 godina, a nije navršilo 16 godina (mlađi maloletnik) mogu se izreći samo vaspitne mere, dok se detetu koje je u vreme izvršenja krivičnog dela navršilo 16, a nije navršilo 18 godina (stariji maloletnik) mogu izreći vaspitne mere, a izuzetno mu se može izreći i kazna zatvora (u slučaju da je izvršilo krivično delo za koje je propisana kazna teža od 5 godina zatvora, a zbog teških posledica dela i visokog stepena krivične odgovornosti ne bi bilo opravdano izreći kaznenu meru). Prema zakonu, *svrha vaspitnih mera i maloletničkog zatvora*, u okviru opšte svrhe krivičnih sankcija (suzbijanje društveno opasnih delatnosti kojim se povređuju ili ugrožavaju društvene vrednosti zaštićene krivičnim zakonodavstvom), jeste da se pružanjem zaštite i pomoći deci – učiniocima krivičnih dela, vršenjem nadzora nad njima, njihovim stručnim osposobljavanjem i razvijanjem njihove lične odgovornosti, obezbedi njihovo vaspitanje, prevaspitavanje i pravilan razvoj. Pored toga, svrha maloletničkog zatvora je vršenje pojačanog uticaja na decu – učinioce da ubuduće ne vrše krivična dela, kao i na drugu decu da ne vrše krivična dela. Zakonom su predviđene tri vrste vaspitnih mera: disciplinske mere (ukor i upućivanje u disciplinski centar za maloletnike), mere pojačanog nadzora (pojačani nadzor od strane roditelja ili staraoca, pojačani nadzor u drugoj porodici i pojačani nadzor organa starateljstva) i zavodske mere (upućivanje u vaspitnu ustanovu, upućivanje u vaspitnopopravni dom i upućivanje u specijalnu ustanovu). Takođe, predviđeni su i uslovi za izricanje svake od ovih mera, kao i mogućnost da sud obustavi izvršenje vaspitne mere ili da je zameni drugom, adekvatnijom vaspitnom merom. Vaspitne mere predviđene saveznim Krivičnim zakonom, detaljnije su uređene republičkim krivičnim zakonima i zakonima o izvršenju krivičnih sankcija (čl. 72-75 KZ SRJ).

Što se tiče *krivičnog postupka prema deci – učiniocima krivičnih dela*, na njih se primenjuju odredbe posebnog poglavlja Zakonika o krivičnom postupku SRJ, u daljem tekstu ZKP SRJ (XXIX – čl. 464–504), a ostale odredbe tog Zakonika - ukoliko nisu u suprotnosti sa ovim odredbama. S aspekta obaveza države iz ovog člana Konvencije, biće navedena rešenja ZKP SRJ od posebnog značaja.

U skladu sa odredbom Krivičnog zakona SRJ po kojoj se prema detetu koje nije navršilo 14 godina ne mogu primeniti krivične sankcije, ZKP SRJ predviđa da će se, kada se u toku postupka utvrdi da dete u vreme izvršenja krivičnog dela nije navršilo 14 godina, krivični postupak obustaviti i o tome će biti obavešten organ starateljstva (član 465 ZKP SRJ).

*Državni tužilac može odlučiti da ne zahteva pokretanje krivičnog postupka* iako postoje dokazi da je dete starije od 14 godina učinilo krivično delo za koje je propisana kazna zatvora do 3 godine, ako smatra da vođenje postupka ne bi bilo celishodno s obzirom na prirodu krivičnog dela i okolnosti pod kojima je učinjeno, kao i raniji život deteta i njegova lična svojstva. Radi utvrđivanja ovih okolnosti, državni tužilac može zatražiti obaveštenja od roditelja, odnosno staraoca, drugih lica i ustanova. O celishodnosti pokretanja postupka prema maloletniku državni tužilac može zatražiti mišljenje i organa starateljstva (član 480 ZKP SRJ).

*Zakonik sadrži izričitu zabranu da se detetu sudi u odsustvu*. Organi koji učestvuju u postupku, pri preduzimanju radnji kojima prisustvuje dete, a naročito pri njegovom ispitivanju, dužni su da postupaju obazrivo, vodeći računa o duševnoj razvijenosti, osetljivosti i ličnim svojstvima deteta, kako vođenje postupka ne bi uticalo na njegov razvoj, s tim što će se u isto vreme sprečavati pogodnim merama svako nedisciplinovano ponašanje deteta (član 466 ZKP SRJ).

Ako se vodi postupak za krivično delo za koje je propisana kazna zatvora preko 3 godine, dete mora imati *branioca* od početka pripremnog postupka, a za krivična dela za koja je propisana blaža kazna, u slučaju da sudija proceni da je detetu potreban branilac. Branilac deteta može biti samo advokat (član 467 ZKP SRJ).
Izuzetno od odredaba ZKP SRJ o *oslobađanju od dužnosti svedočenja*, predviđeno je da niko ne može biti oslobođen od dužnosti da svedoči o okolnostima potrebnim za ocenjivanje duševne razvijenosti deteta, upoznavanja njegove ličnosti i prilika u kojima živi (član 468 ZKP SRJ). U odredbama o pripremnom postupku, posebno je naglašena obaveza da se, pored činjenica koje se odnose na krivično delo, utvrde godine deteta, okolnosti potrebne za ocenu njegove duševne razvijenosti, da se ispita sredina u kojoj i prilike pod kojim dete živi i druge okolnosti koje se tiču njegove

ličnosti. Radi utvrđivanja tih okolnosti saslušavaju se roditelji deteta, njegov staralac i druga lica koja mogu pružiti potrebne podatke, po potrebi će se zatražiti izveštaj organa starateljstva, a ako je prema detetu već bila primenjena vaspitna mera, pribaviće se izveštaj o primeni te mere. Podatke o ličnosti deteta pribavlja sudija za maloletnike, koji može zatražiti da podatke pribavi i određeni stručni radnik (socijalni radnik, defektolog i dr.) ako ga ima u sudu, a može njihovo pribavljanje poveriti organu starateljstva. Kada je za utvrđivanje zdravstvenog stanja deteta, njegove duševne razvijenosti, psihičkih svojstava ili sklonosti potrebno da ga pregledaju veštaci, za ovaj pregled odrediće se lekari, psiholozi ili pedagozi, a ovakva ispitivanja se mogu izvršiti i u zdravstvenoj ustanovi (član 483 ZKP SRJ).

*Ako je dete izvršilo krivično delo zajedno sa odraslim licem*, postupak prema njemu će se po pravilu izdvojiti, a slučajevi kada će se sprovesti zajedno sa postupkom protiv odraslog lica i pravila koja će se u takvom postupku primenjivati, takođe su regulisani Zakonikom (član 469 ZKP SRJ).

O svakom *pokretanju postupka prema detetu* državni tužilac će obavesti organ starateljstva (član 471 ZKP SRJ). Dete se poziva preko roditelja, odnosno zakonskog zastupnika, osim ako to nije moguće zbog potreba hitnog postupanja ili drugih okolnosti. U odnosu na dostavljanje odluka i drugih pismena, izričito je predviđeno da se detetu pismena ne mogu dostavljati isticanjem na oglasnoj tabli suda (član 472 ZKP SRJ). Takođe, tok postupka prema detetu ne može se objaviti bez dozvole suda, a i u slučaju kada je ta dozvola data, ne smeju se navesti ime deteta i drugi podaci na osnovu kojih bi se moglo zaključiti o kome je reč (član 473 ZKP SRJ). Sa suđenja detetu uvek će se isključiti javnost (član 494 ZKP SRJ).

Zakonik posebno predviđa obavezu svih organa koji učestvuju u postupku prema detetu, kao i od drugih organa i ustanova od kojih se traže obaveštenja, izveštaji ili mišljenja, da najhitnije postupe kako bi se postupak što pre završio (član 474 ZKP SRJ). *U cilju što bržeg završavanja postupka* predviđeno je i skraćivanje određenih rokova u odnosu na one koji važe u postupku prema odraslim licima, kao i obaveza sudije za maloletnike da obaveštava predsednika suda svakih mesec dana koji predmeti nisu okončani i o razlozima zbog kojih je po pojedinim predmetima postupak još u toku. Obaveza predsednika suda je da, po potrebi, preduzme mere da se postupak ubrza (član 491 ZKP SRJ).

Sudija za maloletnike može narediti da se dete *u toku pripremnog postupka* smesti u prihvatilište, vaspitnu ili sličnu ustanovu, da se stavi pod nadzor organa starateljstva ili da se preda drugoj porodici, ako je to potrebno radi izdvajanja iz sredine u kojoj

je živelo ili radi pružanja pomoći, zaštite ili smeštaja (član 485 ZKP SRJ). Izuzetno, sudija za maloletnike može odrediti da se dete stavi u pritvor, koji se izdržava odvojeno od odraslih lica, osim sko bi usamljenje deteta trajalo duže, a postoji mogućnost da bude smešteno u prostoriju sa odraslom osobom koja ne bi na njega štetno uticala (član 487 ZKP SRJ).

Postupak prema detetu vode *sudije za maloletnike*, odnosno veća za maloletnike, a može se odrediti i jedan sud koji će u prvom stepenu biti nadležan za sve krivične predmete dece sa područja više sudova. Sudije porotnici, koji učestvuju u suđenju u predmetima koji se tiču dece, biraju se iz redova profesora, učitelja, vaspitača i drugih lica koja imaju iskustvo u vaspitanju dece (član 475 ZKP SRJ).

Zakonik predviđa i *obavezu ustanove u kojoj se izvršava vaspitna mera* da svakih šest meseci dostavi sudu, koji je meru izrekao, izveštaj o vladanju deteta, a o izvršenju ostalih vaspitnih mera obaveštenja se pribavljaju preko organa starateljstva ili putem stručnog radnika (socijalnog radnika, defektologa), ako ga ima u sudu (član 503 ZKP SRJ).

Kada su ispunjeni uslovi predviđeni u Zakoniku za *izmenu odluke o izrečenoj vaspitnoj meri*, odluku o tome donosi sud koji je u prvom stepenu doneo rešenje o vaspitnoj meri - ako sam nađe da je to potrebno, ili na predlog državnog tužioca, upravnika ustanove ili organa starateljstva kojem je poveren nadzor nad detetom. Pre donošenja takve odluke, sud će saslušati državnog tužioca, dete, roditelje ili staraoca i druga lica, a pribaviće i potrebne izveštaje od ustanove u kojoj dete izdržava zavodsku meru, od organa starateljstva ili drugih organa i ustanova. U skladu sa ovim pravilima donosi se i odluka o obustavljanju ili izmeni vaspitne mere. Ovu odluku donosi veće za maloletnike (član 504 ZKP SRJ).

## Ocena stanja i komentari

Već površna analiza položaja maloletnika u sukobu sa zakonom u Republici Srbiji pokazuje da u ovoj oblasti postoje značajni problemi na koje stručnjaci ukazuju dugi niz godina. Navešćemo samo neke najznačajnije.

Najpre, to su prevaziđena zakonska rešenja koja i dalje predviđaju isključivu primenu "zaštitničkog modela" u krivičnopravnom tretmanu maloletnika. U tako ustanovljenom modelu dva polarizovana oblika zaštite maloletnika su dominantna: institucionalna zaštita i mere iz otvorene zaštite. Između ova dva oblika ne postoje nikakvi drugi modeli, niti programi. Tu pre svega mislimo na programe intezivnog

rada sa decom u krizi, programe podrške porodici i detetu, programe namenjene osamostaljivanju dece koja izlaze iz institucija (»kuće na pola puta«), a koji mogu biti namenjeni i deci sa problemima u ponašanju i u tom smislu biti u funkciji sprečavaju institucionalnog zbrinjavanja, poluinstitucionalni oblici zaštite (dnevni boravci za decu sa asocijalnim ponašanjem), programi i modeli koji omogućavaju skretanje sa klasičnog krivičnog postupka (diverzioni programi) i drugi. Značaj ovih konstatacija ne umanjuje činjenica da je bilo pokušaja uvođenja novih sadržaja i programa u radu sa ovom grupom maloletnika. Međutim, oni su brzo bili ugušeni jer nisu imali podršku države, niti lokalne zajednice, pa ni pojedinih profesionalaca u sistemu. No, stečena iskustva u primeni ovih programa mogu biti korisna jer, ako ništa drugo, ne moramo svuda počinjati od početka, samo treba da se osvrnemo unazad i preispitamo ta iskustva u sklopu novih okolnosti.

S aspekta kršenja prava maloletnika neophodno je, takođe, istaći i da u krivičnom zakonodavstvu Republike Srbije postoje odredbe koje predviđaju određene oblike zaštite koji nikada nisu zaživeli, kao što je mera upućivanja u disciplinski centar ili mera pojačanog nadzora u drugoj porodici. Neobezbeđivanje uslova da ove mere budu i primenjene u praksi nesumnjivo predstavlja kršenje prava dece u sukobu sa zakonom od strane države.

Pored ove dve mere iz otvorene zaštite i ostale mere vaninstitucionalnog karatera često se nalaze na meti kritike stručne javnosti, posebno pravosuđa. Ocene stručnjaka se svode na mišljenje da su ove mere neefikasne, posebno mera pojačanog nadzora od strane roditelja. Takođe, ukazuje se da centri za socijalni rad ne predlažu kontrolu mera, i ne prate promene u ponašanju maloletnika, tako da se one u preko 90% slučajeva okončavaju istekom vremena na koje su izrečene. Nepostojanje individualnog planiranja rada sa decom i ovde je najznačajnija manjkavost u radu centara za socijalni rad, u većini slučajeva.

Statistički posmatrano, institucionalne mere u SRJ izriču se u 3-4% slučajeva, a maloletnički zatvor do 1,7% u periodu od 1996-2001. godine. Iako izrečene u procentualno malom broju slučajeva, i u njihovom izvršenju prisutne su brojne slabosti. Odsustvo individualnog rada, problemi u školovanju i profesionalnom obrazovanju, donošenje planova zaštite bez učešća maloletnika, čime je povređeno njihovo pravo na participaciju i iznošenje mišljenja, nepostojanje programa i institucija za rad sa decom sa kombinovanim smetnjama, bilo da je reč o mentalnim problemima ili je poremećaj u ponašanju kombinovan sa drogom i alkoholom samo je deo problema koji su prisutni u zaštiti dece u institucijama ovakvog tipa. Za ovakvu situaciju snose odgovornost i država i institucije i centri za socijalni rad.

Inače, u Republici Srbiji, deca i mladi koji svojim ponašanjem narušavaju opšte prihvaćena društvena pravila ponašanja u određenim situacijama, po odluci centra za socijalni rad (i uz mišljenje nadležnog ministarstva do 14 godina), ili na osnovu sudske odluke, upućuju se u odgovarajuće vaspitne ustanove. Upućivanje u vaspitnu ustanovu je mera koja ima dva osnovna polazišta: krivičnopravni osnov, odnosno socijalni i porodičnopravni osnov. Po prvom osnovu, ova mera se može izreći krivičnoodgovornim maloletnicima kojima je potreban stalni nadzor od strane stručnih lica. Po drugom osnovu, daje se mogućnost organima starateljstva da i decu do 14. godine života koja nisu krivično odgovorna, a koja su izvršila krivična dela, kao i decu i omladinu čiji je život i razvoj već godinama ugrožen i devijantan, smeste u ovakav tip ustanova. Ovakva mogućnost daje velike mogućnosti za zloupotrebe i može predstavljati kršenje prava deteta.

U pravnom sistemu Republike Srbije ovakav tip ustanova nosi naziv: »Zavodi za vaspitanje dece i omladine« i trenutno se u funkciji u Srbiji nalaze tri takve ustanove: u Beogradu, Nišu i Knjaževcu. U toku realizacije projekta Centra »Položaj i stanje dece u institucijama«, tokom 2001. godine članovi ekspertskog tima obišli su i ove ustanove, koje se inače, nalaze pod nadležnošću Ministarstva za socijalna pitanja Republike Srbije (trenutno, u jednoj od njih, u Beogradu se takođe, realizuje projekat Centra »Transformacija ustanova za smeštaj dece i omladine i razvoj alternativnih oblika zaštite«). Cilj nam je da model transformacije ove ustanove posluži i za ostale ustanove sličnog tipa i namene. Postojeća organizaciono-funkcionalna forma Zavoda datira od 1991. godine. Korisnici »usluga« Zavoda su deca kojima je u skladu sa posebnim propisima izrečena vaspitna mera upućivanja u vaspitnu ustanovu, zatim deca koja su usled poremećaja u društvenom ponašanju po odluci organa starateljstva upućena u Zavod, kao i ona koja su nađena u skitnji, prosjačenju ili drugim slučajevima usled kojih im je neophodno obezbediti prihvat i neophodan kratkotrajan smeštaj.[75] Kapacitet Zavoda koji iznosi 96 postelja, retko je popunjen. Tome doprinose mnogobrojni faktori, među kojima treba istaći karakteristike tzv. »otvorenih ustanova« i odsustva intenzivnih i osmišljenih vaspitnoobrazovnih i zabavnorekreativnih sadržaja. Posledica ovoga je stalna fluktacija dece, usled čega broj evidentiranih i prisutnih dnevno varira. U trenutku ispitivanja (avgust 2002. godine) u Zavodu je boravilo 41

[75] U sastavu Zavoda za vaspitanje dece i omladine "Beograd" nalazi se i Prihvatilište za decu i omladinu sa poremećajima u ponašanju.

dete. Od toga njih 14 (34%) je sa izrečenim vaspitnim merama, a ostatak (66%) na smeštaju po odluci organa starateljstva. U strukturi maloletnika sa izrečenim vaspitnim merama, visok je procenat dece sa dijagnostikovanim psihijatrijskim smetnjama (njih 31%), odnosno lako ometene u razvoju (25%). Takođe, evidentirana je 1/4 zavisnika od psihoaktivnih supstanci. U grupi maloletnika bez izrečenih vaspitnih mera broj onih sa psihijatrijskom dijagnozom, odnosno lakom ometenošću, još je izraženiji (84%). Može sa s pravom pretpostaviti da osnovni razlog njihovog upućivanja u Zavod leži u činjenici da na teritoriji Republike Srbije i pored predviđenosti u zakonu ne postoji ustanova specijalizovanog tipa koja bi na adekvatan način tretirala ovu populaciju. Problematika u radu sa kojom se susreće ova ustanova, kao uostalom i sve ovoga tipa, nametnula je neophodnost njene tansformacije, koja je u toku. Nadamo se da ćemo odgovoriti potrebama dece koja su u njoj smeštena.

U toku realizacije projekta, pored zavoda, članovi ekspertskog tima posetili su i dve ustanove koje se nalaze pod nadležnošću Ministarstva pravde Republike Srbije: vaspitnopopravni dom u Kruševcu i maloletnički zatvor u Valjevu. U ovim ustanovama realizuje se zavodski tretman upućivanja u vaspitnopopravni dom, odnosno kazna maloletničkog zatvora. Na ovom mestu smatramo važnim da istaknemo da i podeljena zakonodavna nadležnost dva ministarstva u pogledu ovih ustanova ne predstavlja najbolje rešenje, u smislu njihovog efikasnog funkcionisanja. Ovde takođe iznosimo i neke od ocena štićenika ovog vaspitnopopravnog doma koje je Centar za prava deteta prikupio i analizirao početkom 2000. godine, a objavljene su zajedno s drugim rezultatima u publikaciji 'Agenda za budućnost'.

> *Iako u oceni opšteg stanja prava deteta uglavnom dele mišljenje sa svojim vršnjacima, deca u sukobu sa zakonom susreću se i sa vrlo specifičnim problemima koji ukazuju na ozbiljno kršenje nekih posebnih prava.*
> *Bilo da su im izrečene vaspitne mere pojačanog nadzora (u porodici), ili da se nalaze u vaspitnopopravnim zavodima, maloletni prestupnici saglasni su u oceni da:*
> - *nisu imali pravedan istražni postupak (u 42%, odnosno 68% slučajeva),*
> - *nisu imali pravedan sudski postupak (u 32%, odnosno 30% slučajeva).*
>
> *Mogućnost ostvarivanja redovnog kontakta s porodicom jedan je od gorućih problema na koji ukazuju deca pod zavodskim vaspitnim merama. Iako saglasni da to pravo imaju, izražavaju apsolutno nezadovoljstvo pravilom kojim se propisuju dva telefonska razgovora mesečno s roditeljima.*
> *Zakonski dozvoljena upotreba palice od strane stražara prećutno se čak i*

*prihvata kao vaspitna mera od strane maloletnih prestupnika, ali ocenjuju da su prekoračenja službenih ovlašćenja (u broju udaraca) mnogo češća od njihovog poštovanja.*
*Ono što takođe uliva zabrinutost jeste ocena dece u vaspitnopopravnim zavodima da je stepen nezaštićenosti od fizičkog i seksualnog zlostavljanja od strane vršnjaka koji s njima izdržavaju meru čak veći nego od strane stražara.*
*Ako se uzme u obzir opšta slika koja se vezuje uz situaciju u institucijama (loši materijalni i higijenski uslovi, teškoće u vaspitnoobrazovnom i rehabilitacionom radu), kao i ovi specifični pokazatelji, onda ne može da nas ne iznenadi podatak da čak 93% ispitanih smatra da im boravak u zavodu pomaže. Ako je to stvarno tako, pitamo se u ime dece, kakvi bi tek efekti mera bili kada bi one bile prilagođene standardima?*

Što se tiče postupka prema maloletnicima koji su u sukobu sa zakonom, on je regulisan, kao što je već rečeno, odredbama Zakonika o krivičnom postupku SRJ, tačnije rečeno glavom XXIX ovog Zakonika. Kao najčešći problemi u primeni ovog Zakonika ističe se da branioci u ovim postupcima često ne pružaju svom klijentu najbolje zastupanje – delimičan razlog za to je i što nisu posebno specijalizovani u ovoj oblasti. U praksi postoje slučajevi da se uopšte ne uloži pravni lek protiv osuđujućih presuda čak i kad je izrečena kazna maloletničkog zatvora, ili da se ne odgovara na žalbu državnog tužioca kojom ovaj traži težu sankciju.

Neefikasnost je još jedan od problema. Postupci traju i po par godina, spisi se žalbenom sudu šalju sa zadrškom, odugovlači se izvršenje. Na ovo se naslanja i ugrožavanje prava na privatnost deteta - maloletnika. U medijima se često navode imena roditelja, konkretni detalji događaja i pravi se čitava medijska priča što najgrublje ugrožava pravo na privatnost.

Postoji problem s nepostojanjem posebnih sudova za maloletnike. Ono što je dobro jeste to da je obezbeđena sudska zaštita maloletnih učinilaca krivičnih dela za razliku od prekršajnog postupka gde postupaju sudije i veća za prekršaje kao organi uprave. Definisana je donja starosna granica od 14 godina za izricanje krivičnih sankcija. Ima predloga da se ova granica snizi uz nekoliko alternativa: apsolutno sniženje, samo za pojedina dela ili uz prethodno sagledavanje duševne razvijenosti konkretnog maloletnika.

Državni tužilac, koji kod krivičnih dela za koja je zaprećena novčana kazna ili kazna zatvora od tri godine, odlučuje po principu oportuniteta, nema uvek adekvatnu saradnju centara za socijalni rad i drugih nadležnih institucija.

Uslovni otpust kod vaspitne mere upućivanja u vaspitnopopravni dom nije zaživeo u praksi zato što se uglavnom preklapa sa revizibilitetom vaspitne mere, odnosno mogućnošću obustave ili izmene odluke o izrečenoj vaspitnoj meri ili odluke da se izrečena mera ne izvrši.

Stručno osposobljavanje i obrazovanje maloletnika prema kojima je izrečena vaspitna mera nije na zadovoljavajućem nivou. Postoje problemi s obrazovnim programima i profilima, verifikacijom diploma, zaintersovanošću polaznika, materijalnim sredstvima i obrazovanjem kadrova.

Obrazovanje kadrova iz sistema maloletničkog pravosuđa odvijala se kroz nekoliko seminara i to uglavnom vezano za novi Zakonik o krivičnom postupku. Centar za prava deteta organizovao je niz seminara na kojima su učestvovali sudije za maloletnike, sudije za prekršaje, javni tužioci, predstavnici policije i centara za socijalni rad.

Imajući u vidu celokupnu problematiku, predstavnici Centra za prava deteta i ekspertski tim oformljen u okviru projekta »Prava deteta i maloletničko pravosuđe«, koji je počeo sa realizacijom 2001. godine, sačinio je *Nacrt zakona o pravosuđu za mlade*, koji u sebi, u cilju ukazivanja na značaj krivičnopravnog položaja maloletnih i mlađih punoletnih lica, sadrži i materijalne i procesne krivične odredbe svrstane u jedan predlog zakonskog akta. Takvo rešenje smatrali smo logički i opravdanim, takođe, funkcionalno povezanim sa potrebom posebne zaštite maloletnih lica, bilo da se ona pojavljuju kao lica prema kojima se vodi krivični postupak, bilo kao oštećeni u krivičnom postupku. Ovaj model zakona zasniva se na savremenim uporednopravnim rešenjima i potrebom za doslednim usklađivanjem nacionalnog zakonodavstva sa odredbama članova 37 i 40 Konvencije o pravima deteta, kao i drugih međunarodnih dokumenata koji se tiču položaja dece u sistemu maloletničkog pravosuđa.

Na kraju dodajemo predloge koje su sami maloletnici (štićenici vaspitnopopravnog doma u Kruševcu) uputili odlučiocima u ovoj oblasti:

- *specijalizacija i adekvatan izbor sudija za maloletnike;*
- *obavezno prisustvo roditelja pri saslušanju dece u toku istražnog postupka,*
- *snimanje svakog saslušanja;*
- *poštovanje propisa i 'pravila službe' i skraćivanje istražnog postupka;*
- *obuka inspektora, policajaca i sudija za ophođenje s detetom-prekršiocem;*
- *osnivanje nezavisnog tela za kontrolu rada policije i suda;*
- *kazne za policijsku brutalnost.*

# DETE PRIPADNIK MANJINSKE GRUPE

## *Član 30. Konvencije o pravima deteta*

***U onim državama u kojima postoje etničke, verske ili jezičke manjine ili lica domorodačkog porekla, detetu koje pripada takvoj manjini ili je domorodac, neće biti uskraćeno pravo, u zajednici sa drugim članovima njegove grupe, da uživa svoju kulturu, da ispoveda ili manifestuje svoju veru ili da koristi svoj jezik.***

## Propisi u SRJ i Republici Srbiji

Osnovnim odredbama Ustava SRJ proklamovano je da SR Jugoslavija priznaje i jamči *prava nacionalnih manjina* na očuvanje, razvoj i izražavanje svoje etničke, kulturne, jezičke ili druge posebnosti, kao i na upotrebu nacionalnih simbola, u skladu sa međunarodnim pravom (član 11 Ustava SRJ). U odredbama koje se odnose na slobode, prava i dužnosti čoveka i građanina, pored ustavne garancije slobode izražavanja nacionalne pripadnosti i kulture, kao i upotrebe svog jezika i pisma (član 45, st. 1 Ustava SRJ), utvrđeno je i pravo pripadnika nacionalnih manjina na školovanje na svom jeziku, u skladu sa zakonom, kao i na javno obaveštavanje na svom jeziku (član 46 Ustava SRJ). Pripadnici nacionalnih manjina takođe imaju pravo da, u skladu sa zakonom, osnivaju prosvetne i kulturne organizacije ili udruženja, koji se finansiraju na načelu dobrovoljnosti, a država ih može pomagati (član 47 Ustava SRJ). Od značaja je i pravo pripadnika nacionalnih manjina da uspostavljaju i održavaju nesmetane međusobne odnose u Jugoslaviji i van njenih granica sa pripadnicima svoje nacije u drugim državama, i da učestvuju u međunarodnim nevladinim organizacijama, ali ne na štetu SRJ ili republike članice (član 48). Ustav takođe garantuje slobodu verovanja, javnog i privatnog ispovedanja vere i vršenja verskih obreda (član 43 Ustava SRJ).

Garancija *slobode izražavanja nacionalne pripadnosti i kulture* i sloboda upotrebe svog jezika i pisma, kao i pravo na obrazovanje na svom jeziku u skladu sa zakonom, garantovano je i Ustavom RS (čl. 49, st. 1 i čl. 32, st. 4). Ustav takođe jamči slobodu verovanja, ispovedanja vere i vršenja verskih obreda, i predviđa da su verske zajednice odvojene od države i da mogu osnivati verske škole (član 41 Ustava RS).

*Pravo dece - pripadnika nacionalnih manjina na obrazovanje na svom jeziku* preciznije je regulisano republičkim propisima o obrazovanju.

Tako član 5 Zakona o osnovnoj školi Republike Srbije određuje da će se za pripadnike nacionalnih manjina nastavni plan i program ostvarivati i na maternjem jeziku, ili dvojezično, ako se za upis u prvi razred prijavi najmanje 15 učenika. Međutim, uz saglasnost ministra prosvete, škola može ostvarivati nastavni plan i program i na jeziku nacionalnih manjina ili dvojezično i za manje od 15 učenika upisanih u prvi razred. Kada se nastavni plan i program ostvaruje na srpskom jeziku, učenicima pripadnicima nacionalnih manjina obezbeđuje se savlađivanje nastavnog plana i programa maternjeg jezika sa elementima nacionalne kulture. Osim toga, u kaznenim odredbama ovog Zakona predviđeno je da će direktor škole udaljiti iz nastave, do donošenja odluke u disciplinskom postupku, nastavnika, stručnog saradnika i predavača koji, između ostalog, dovodi u pitanje moralne vrednosti i ravnopravnost naroda i nacionalnih manjina ili svojim ponašanjem ili organizovanjem učenika u političke svrhe izaziva nacionalnu ili versku netrpeljivost (član 73 ZOŠ RS). Zakon o srednjoj školi takođe predviđa mogućnost održavanja nastave na jeziku nacionalnih manjina, odnosno dvojezično, ako se za to izjasni najmanje 15 učenika u odeljenju prvog razreda. Uz saglasnost Ministarstva prosvete, nastava sa može održavati na jeziku nacionalnih manjina ili dvojezično i za manje od 15 učenika. Kada se učenik pripadnik nacionalne manjine školuje na srpskom jeziku imaće pravo da uči maternji jezik sa elementima nacionalne kulture (član 5 ZSŠ RS).

U novoj zakonodavnoj delatnosti država ulaže napore da ugradi *princip tolerancije i poštovanja manjinskih prava*. Dobar primer je Zakon o zaštiti prava i sloboda nacionalnih manjina, donet na saveznom nivou 2002. godine, koji je ocenjen veoma povoljno od strane Saveta Evrope.[76]

## Ocena stanja i komentari

Prema podacima iz popisa stanovništva 2002. godine na teritoriji Srbije,[77] bez Kosova, žive pripadnici 19 nacionalnih manjina i etničkih zajednica. Ukupan broj pripadnika nacionalnih manjina i etničkih zajednica koji žive na teritoriji Srbije, bez

[76] Ovim Zakonom Romi su prvi put stekli status nacionalne manjine u Jugoslaviji.

[77] *Prvi rezultati popisa po opštinama i naseljima Republike Srbije*, Savezni zavod za statistiku i Republički zavod za statistiku Srbije, Beograd, 2002.

Kosova, je 928.982. Od tog broja najveći je broj Mađara - 293.299 stanovnika (ili 31,57% od ukupnog broja), zatim Bošnjaka - 136.087 (ili 14,65%), Roma - 108.193 (ili 11,65%), Hrvata - 70.602 (ili 7,60%), Albanaca - 61.643 (ili 6.64%), Slovaka - 59.201 (ili 6,37%), dok ostatak čine pripadnici drugih nacionalnih manjina ili etničkih zajednica (Vlasi, Bugari, Makedonci, Rusini, Bunjevci, Muslimani, Rumuni, Rusi, Česi, Ukrajinci, Slovenci, Goranci i Nemci). Međutim, prema mišljenju stručnjaka, broj Roma je daleko veći i veliki broj pripadnika romske manjine iz raznih razloga nije popisan. Prema proceni *UNDP*-a, na teritoriji Srbije živi preko 400.000 Roma.

Ako primenimo procenat od 22%, koliko je učešće dece i omladine stare do 19 godina u ukupnoj populaciji stanovništva u Srbiji, možemo zaključiti da je oko 204.000 od ukupnog broja pripadnika nacionalnih manjina mlađe od 19 godina (broj pripadnika romske manjine iz popisa).

Međutim, neophodno je istaći da položaj pripadnika nacionalnih manjina i etničkih zajednica nije isti.

Prema mišljenju stručnjaka u najtežem položaju su pripadnici romske manjine. Mada su podaci koji se tiču položaja romske populacije oskudni, te ne postoje podaci novijeg datuma, navešćemo neke podatke, koji ukazuju na položaj romskih porodica, a time indirektno i na položaj dece, i analize UNDP-a o položaju Roma u Jugoslaviji u poređenju sa Romima u centralnoj i istočnoj Evropi.[78]

Prema ovoj analizi, 80,9% Roma je bez formalnog zaposlenja, 27,4% bez stalnog zaposlenja, 7,9% prima redovno platu iz radnog odnosa, 42,6% ostvaruju dodatni prihod od skupljanja »sekundarnih sirovina«.[79] Prema mišljenju autora Analize, osnovni uzroci nepovoljnog položaja Roma su:

- nizak nivo obrazovanja i stručnosti;
- diskriminacija od strane jednog broja poslodavaca;
- povećanje opšte stope nezaposlenosti.

[78] »Položaj Roma u Jugoslaviji u poređenju sa Romima u centralnoj i istočnoj Evropi«, UNDP, Brisel, 2002.

[79] Život Roma u Beogradskim naseobinama, istraživanje »Argumenta«, Beograd 2001.

O nivou obrazovanja romske populacije možemo se osloniti samo na podatke iz popisa 1991. godine. Naime, prema tim podacima 47,3% Roma je bilo neobrazovano ili je imalo od 1-3 godine osnovnog obrazovanja, 27,4% 4-7 godina osnovnog obrazovanja, 17,2% je imalo završenu osnovnu školu, 4,6% srednju, a samo 0,2% je imalo više ili visoko univerzitetsko obrazovanje.

Romska deca u velikom procentu ne pohađaju školu ili je napuštaju u trećem ili četvrtom razredu osnovne škole. Devojčice su u još težoj situaciji, odnosno one u još većem broju ne pohađaju školu. Roditelji ih povlače iz škole i kada počnu da je pohađaju i pripremaju ih za ranu udaju ili preuzimanje domaćih poslova. Prema navodima pomenute Analize *UNDP*-a, od ukupnog broja dece koja pohađaju »specijalne škole« 80% su romska deca.

Neadekvatna ishrana i glad su izraženi kod 47,2% dece romske populacije (UNDP). Neodgovoran stav prema sopstvenom zdravlju i zdravlju dece, nedostatak sistematskih pregleda, problematičan pristup zdravstvenim institucijama (participacija, restriktivna lista lekova koji se mogu dobiti na recept i sl.) utiču na veoma loše zdravlje romske dece. Ona najčešće nisu imunizovana od dečjih i zaraznih bolesti, preventivnih pregleda ove dece skoro i da nema. Rano počinjanje biološke reprodukcije mladih Romkinja je opšta pojava.

Kada je reč o diskriminaciji, sudeći po medijima i izveštajima nevladinih organizacija država nije sprovodila niti podsticala diskriminaciju ali ju je tolerisala, neefikasnim gonjenjem i kažnjavanjem počinilaca.[80] Najčešće žrtve diskriminacije na osnovu nacionalne pripadnosti su Romi – kako odrasli, tako i deca, a zabeležene su pojave antisemitizma i netrpeljivosti prema Kinezima (Centru nisu poznati podaci o zastupljenosti lica mlađih od 18 godina u ovoj populaciji).

Prema anketi koju je sprovelo Savezno ministarstvo za nacionalne i etničke zajednice o etničkoj netrpeljivosti, 3% ispitanika pokazalo je ekstremnu etničku distancu, 58% umerenu, a svega 10% njih nema distancu prema pripadnicima drugih nacionalnih, verskih i etničkih zajednica.

[80] Vidi *Ljudska prava u Jugoslaviji 2002*, Beogradski centar za ljudska prava, Beograd, 2003.

Iako je pomenutim saveznim Zakonom o zaštiti prava i sloboda nacionalnih manjina (član 9) priznato pravo pripadnika nacionalnih manjina »na slobodan izbor i korišćenje ličnog imena i imena svoje dece, kao i pravo na upisivanje ovih ličnih imena u sve javne isprave, službene evidencije i zbirke ličnih podataka *prema jeziku i pravopisu pripadnika nacionalne manjine*« (kurziv naš), zabeleženi su slučajevi odbijanja upisa imena novorođene dece prema tradiciji manjinskih naroda.[81]

Centar smatra da je neophodno pomenuti još dve važne stvari – jedna je da je jula 2002. godine, prvi put u domaćoj sudskoj praksi (jednom presudom Opštinskog suda u Šapcu) nedvosmisleno utvrđeno da rasna diskriminacija predstavlja povredu prava ličnosti, a druga da su nevladine organizacije, pre svega Fond za humanitarno pravo iz Beograda, u svojim saopštenjima više puta ukazale da su, pored pojedinaca, i državni organi (pripadnici Ministarstva unutrašnjih poslova Republike Srbije) maltretirali, šamarali i vređali maloletne Rome.

Zaključak Centra za prava deteta bio bi da se napori u zakonodavnoj delatnosti veoma cene, ali da je praksa daleko od zadovoljavajuće i da tu država mora da uloži dodatne napore u poboljšanju.

[81] Alternativni izveštaj FHP o primeni Okvirne konvencije, 2002, u *Ljudska prava u Jugoslaviji 2002*, Beogradski centar za ljudska prava, Beograd, 2003.

*SPISAK PROPISA I SKRAĆENICA*

KZ RS – Krivični zakon Republike Srbije, *Sl. glasnik RS 16/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 80/02*

KZ SRJ – Krivični zakon Savezne Republike Jugoslavije, *Sl. list SRJ 35/92, 16/93, 37/93, 24/94, 61/01*

ZKP SRJ – Zakonik o krivičnom postupku, *Sl. list SRJ 70/01*

ZON RS – Zakon o nasleđivanju, *Sl. glasnik RS 46/95*

ZPP SRJ – Zakon o parničnom postupku, *Sl. list SRJ 27/92, 31/93, 24/94, 12/98, 15/98, 3/02*

ZBPO RS – Zakon o braku i porodičnim odnosima Republike Srbije, *Sl. glasnik RS 22/80, 11/88, 22/93, 25/93,35/94, 46/95, 29/01*

ZJD – Zakon o jugoslovenskom državljanstvu, *Sl. list SRJ 33/96, 9/01*

ZZZ RS – Zakon o zdravstvenoj zaštiti Republike Srbije, *Sl. glasnik RS 17/92, 26/92, 50/92, 52/93, 25/96, 18/02, 29/01*

Zakon o postupku prekida trudnoće u zdravstvenoj ustanovi, *Sl. glasnik RS 16/95*

ZOŠ RS – Zakon o osnovnoj školi, *Sl. glasnik RS 50/92, 53/93, 67/93, 48/94, 66/94, 22/02*

ZSŠ RS – Zakon o srednjoj školi, *Sl. glasnik RS 50/92, 53/93, 67/93, 48/94, 24/96, 23/02, 25/02*

ZORO SRJ – Zakon o osnovama radnih odnosa, *Sl. list SRJ 29/96, 51/99*

ZDOU RS – Zakon o društvenim organizacijama i udruženjima građana, *Sl. glasnik SRS 24/82, 39/83, 17/84, 50/84, 45/85, 12/89, 53/93, 67/93, 48/94*

ZOR RS – Zakon o radu, *Sl. glasnik RS 70/01, 73/01*

Zakon o zaštiti prava i sloboda nacionalnih manjina, *Sl. list SRJ 11/02*

Zakon o proizvodnji i prometu opojnih droga, *Sl. list SRJ 46/96, 37/02*

ZUGUO SRJ – Zakon o udruživanju građana u udruženja, društvene organizacije i političke organizacije koje se osnivaju za teritoriju SFRJ, *Sl. list SRJ 16/93, 31/93, 41/93, 50/93, 24/94, 28/96, 73/00*

ZVJ – Zakon o Vojsci Jugoslavije, *Sl. list SRJ 43/94, 28/96, 44/99, 74/99, 3/02, 37/02*

Zakon o odbrani SRJ, *Sl. list SRJ 43/94, 44/99, 3/02*

ZMK RS – Zakon o matičnim knjigama, *Sl. glasnik SRS 15/90*

Zakonu o zaštiti životne sredine, *Sl. glasnik RS 66/91, 83/92, 53/93, 67/93, 48/94, 44/95, 53/95*

ZJMB RS – Zakon o jedinstvenom matičnom broju građana, *Sl. glasnik RS 53/78, 5/83*

Zakon o rešavanju sukoba zakona sa propisima drugih zemalja, *Sl. list SFRJ 43/82, 72/82, 46/96*

ZOPMK SRJ – Zakon o osnovnim podacima za matične knjige, *Sl. list SFRJ 6/73*

ZZZ RS – Zakon o zdravstvenoj zaštiti, *Sl. glasnik RS 17/92, 26/92, 50/92, 52/93, 25/96, 18/02*

Zakon o sahranjivanju i grobljima, *Sl. glasnik SRS 20/77, 53/93, 67/93*

Zakon o osnovama sistema javnog informisanja, *Sl. list SFRJ 84/90, 11/93, 16/93, 31/93, 41/93, 50/93, 24/94, 28/96*

Zakon o prestanku važenja zakona o javnom informisanju, *Sl. glasnik RS 11/01*

Zakon o društvenim organizacijama i udruženjima građana Republike Srbije, *Sl. glasnik SRS, br. 24/82, 39/83, 17/84, 50/84, 45/85, 12/89, Sl. glasnik RS, 53/93, 67/93, 48/94*

Zakon o izvršnom postupku, *Sl. list SRJ 28/00, 73/00, 71/01*

ZZO RS – Zakon o zdravstvenom osiguranju, *Sl. glasnik RS, br. 18/92, 26/93, 53/93, 67/93, 48/94, 25/96, 46/98, 54/99, 29/01, 18/02*

ZZZ RS – Zakon o zdravstvenoj zaštiti, *Sl. glasnik RS, br. 17/92, 26/92, 50/92, 52/93, 53/93, 67/93, 48/94, 25/96, 18/02*

ZSZ RS – Zakon o socijalnoj zaštiti i obezbeđivanju socijalne sigurnosti građana, *Sl. glasnik RS 36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/01*

ZUP – Zakon o opštem upravnom postupku, *Sl. list SRJ 33/97, 31/01*

ZUS RS – Zakon o uređenju sudova, *Sl. glasnik RS 63/01, 42/02*

ZIKS RS – Zakon o izvršenju krivičnih sankcija, *Sl. glasnik RS, br. 16/97, 34/01*

Pravilnik o načinu i postupku za utvrđivanje vremena i uzroka smrti, za obdukciju leša, kao i za postupanje sa odstranjenim delovima ljudskog tela, *Sl. glasnik RS 9/99, 10/99*

Uredba o organizovanju i ostvarivanju verske nastave i nastave alternativnog predmeta u osnovnoj i srednjoj školi, *Sl. glasnik RS 46/01*

Ustav SRJ – Ustav Savezne Republike Jugoslavije, *Sl. list SRJ 1/92, 34/92, 29/00*

Ustav RS – Ustav Republike Srbije, *Sl. glasnik RS 1/90*

ZKBS SRJ – Zakon o kretanju i boravku stranaca, *Sl. list SFRJ 56/80, 53/85, 30/89, 26/90, 53/91, Sl. list SRJ, br. 16/93, 31/93, 41/93, 53/93, 24/94, 28/96*

Zakon o izbeglicama, *Sl. glasnik RS 18/92*

Zakon o finasijskoj podršci porodici sa decom, *Sl. glasnik RS 16/02*

Zakon o učeničkom i studentskom standardu, *Sl. glasnik RS 81/92, 49/93, 53/93, 67/93, 48/94*

Uredba o načinu zbrinjavanja prognanih lica, *Sl. glasnik RS 47/95*

Zakon o evidencijama u oblasti zdravstvene zaštite, *Sl. glasnik SRS 14/81, 24/85, 26/85, 6/89, Sl. glasnik RS 44/91, 17/92, 53/93, 67/93, 48/94*

Zakon o univerzitetu, *Sl. glasnik RS 20/98, 21/2002*

Pravilnik o sredstvima za vođenje evidencije u oblasti zdravstva, *Sl. list SRJ 6/00*

Zakon o predškolskom vaspitanju i obrazovanju (Ministarstvo obrazovanja i sporta Republike Srbije, u pripremi)

CSR – Centar za socijalni rad

MUP RS – Ministarstvo unutršnjih poslova Republike Srbije

PAS – Psihoaktivne supstance

GZZZ – Gradski zavod za zaštitu zdravlja Beograda

MOP – Materijalno obezbeđivanje porodice

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# Child Rights in Serbia
## 1996 - 2002

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## *PREFACE*

This child rights report for Serbia between 1996 and 2002 was composed by the Child Rights Centre with the assistance by their associates. Its objective is to provide the domestic and foreign public with information how the international guaranteed child rights are implemented in Serbian practice. To provide an answer to this question we have researched domestic law, that is, its co-ordination with the Convention on the Right of the Child as the most significant international document of this field. We have also exhibited here our estimates and comments on the existing state of things in relation to the exercise of individual child rights in practice.

The report was modelled after the General Guidelines for Reporting on the Committee on the Right of the Child, a supervisory body established by the Convention on the Right of the Child with a goal to have this international agreement implemented among the countries-co-signers (191 countries have ratified this Convention). Apart from the General Guidelines used, indicators that are specific for certain fields and our legal system have also been compiled.

On basis of such methodological approach this Report contains an introduction and seven chapters, and each of the chapters represents a review of individual types of rights. The introduction provides a brief review of the general political, economic and social circumstances existing in the time period covered by this Report. Also provided is a general evaluation of the state of child rights in FRY, as well as an evaluation of the institutional framework of Serbia for implementation of child rights. Within the review of individual rights we have quoted, first of all, the relevant provision of the Convention on the Right of the Child. Next, under the subtitle *Regulations in FRY and the Republic of Serbia* we have analysed the Constitution of FRY, the Constitution of Republic of Serbia, and the corresponding laws of FRY and Republic of Serbia, in relationship to the General Guidelines and our indicators. Finally, under the subtitle *Assesment of the Situation and Opservation* an evaluation is given of the exercise of these rights in relation to the regulations existing, lack of legislature and its consequences as reflected on the exercise of rights, and rights violations and general and special flaws of the system that is meant to ensure exercise of child rights are exhibited. Whenever possible, that is, whenever Centre possessed respective research results, a review of the viewpoints and opinions by the relevant professional groups (teachers, lecturers, physicians, etc.), as well as by the children themselves is also provided.

By adopting this method of report composition we wanted to comprise all the fields of child rights and make an all-comprising review of the exercise of such rights in Serbia. Although Child Rights Centre has so far achieved numerous specific researches and composed reports on various fields, this is their first all-comprising report on child rights.

In spite of the extensive efforts invested in the composition of this Report and of the

best intentions meant we were not in position to compose a uniform review of the state of things in the field of child rights. This was due to several factors. Firstly, we felt that some of the child rights were particularly affected, that is, that in some fields concerning life, existence and development of children exist large problems that prevent implementation of the other rights of children. Consequently, some of the issues such as the right for health (concerning abuse of narcotics and child maltreatment), minor-age delinquency, the social security right, and the education right were analysed more extensively. Secondly, we were restricted by the data available, and this is a result of non-systematic monitoring of this field by the relevant state authorities. For example, the fields of child work, family violence over children, torturing, refugee children and many other ones are not processed specifically within the consideration of competent state services, so the respective data are only available in fragments and through some other sources such as international or non-government organisations. Therefore, there are many gaps in our evaluation of the exercise of some of the child rights. Finally, in spite of excellent experts that we were able to identify and hire as our associates under this project, we were still unable to identify experts in all the fields involved because they simply did not exist in many of them. Namely, the child rights field, especially when it concerns some "innovative" rights, including civil and political rights, is in holistic sense rather new in our milieu and there are very few specialised experts.

In spite of these difficulties we have composed this Report that we are satisfied with, it being the first all-comprising one and that which would serve to us in methodological and content terms as a basis for our composition of annual reports about the state of child rights in Serbia.

Centre wishes to thank all the associates for the Report achieved. Their expertise, impartiality and effort to obtain and process the data were an essential contribution in its making.

Centre also expresses its gratitude to the numerous domestic and foreign government and non-government organisations that made our utilisation and publishing of their research results possible.

Furthermore, we thank the Norwegian and British organisation Redd Barn for their financial assistance in composition of the indicators, the Report itself and the database that we would also use for further annual reports. From the earliest work of this Centre they have been our most faithful friends and partners.

# THE GENERAL CONTEXT AND CHILD RIGHTS IN SERBIA

For easier understanding of the general circumstances in which child rights should be achieved a review of the political situation in Federal Republic of Yugoslavia will now be presented. As a proof supporting the fact that the circumstances in which children have to enjoy their rights are of very dynamic nature we have the newly formed situation in which in the place of Federal Republic of Yugoslavia there is now Union of Serbia and Montenegro. The change of the name is by itself not a problem, but a problem will be presented through focusing on the political issues, that is, constitution of the new state community, new bodies, new competence, new constitutions, new definitions of human rights, and new re-organisation of state institutions. In the light of formation of the new state community exists the fear that child rights would once again in a way be "awaiting" their turn and that simply there would not be enough attention dedicated to children. Presentation of this Report is, among other things, an attempt to draw the attention of the domestic and international public and political decision-makers to the current position of children in Serbia, and to propose that the slogan ***"children above all"*** should not in the new state be an empty saying but rather a reality of the relevant policy.

**Demolition of the society and its consequences for children**

The crisis onset in ex-Yugoslavia coincided with adoption of Convention of Child Rights under the auspices of United Nations (1989). During the years that followed a deterioration of the political, economic and social circumstances in Federal Republic of Yugoslavia had an enormous influence on the implementation of child rights. After more than a decade of wars, demolition and isolation a period of economic consolidation, more stable political circumstances and social recovery began.

In spite of the changes already made in Yugoslavia many problems have existed. A combination of economic and political crisis, huge instability and lack of certainty even in the larger part of south-eastern Europe have seriously threatened the efficacious implementation of the Convention. In some of the countries of this region, especially in Yugoslavia, the crisis has contributed to a much worse situation in which children live than in the early 1990s. The war conflicts, together with tensions and traumas that went along with them, as well as the massive migration of the population have produced an enormous problem for our country. We were faced with a lack of structural uniformity, changes in the family milieu and in general terms, as well as with an incapability of the system of social protection to answer to its newly formed needs.

**The political changes in Yugoslavia in 2000 and child rights**

The dramatic events of 5th October 2000 have brought end to the decade of dictatorship in Yugoslavia. And even more than that, these events marked a possible end to the destabilisation of the entire region, the wars and the economic doom. But what a majority of people had awaited and desired for many years, that is, fast changes in all the social spheres did not occur overnight.

Just like with any sudden political change a progress of this volume can not be achieved quickly. After many months of political negotiation the governments in Yugoslavia and Serbia were established. The adverse heritage left to this country is more than obvious. Economically, Yugoslavia is in a difficult situation. Politically, there still are several "neuralgic" points such the south of Serbia, Kosovo and the relationship between Serbia and Montenegro. These problems are being resolved and the economic recovery of the country will depend on the speed of that process. A lack of political and economic certainty makes it almost impossible for the authorities of Yugoslavia to deal with planning of a long-term policy in special fields of child rights. For the beginning the activities of Ministry of Social Issues of Serbia and Ministry of Education and Sport of Serbia provide encouragement. Another positive signal is the formation of Council for Child Rights within Government of Serbia.

Today, more than two years after the political changes achieved in Yugoslavia there is no big progress in the improvement of the situation for children. Still, many doors remain open. What has been done is that a process of demystification has begun. For the first time in Yugoslavia the public is in the position to learn the truth about the situation of the children placed in institutions of social care. Also, one can see in what state are the health care institutions, schools and other spots at which the children stay daily. The dramatic situation in education (in terms of the employees' professionalism, attitudes, curricula and salaries) is object of open debates, and the relevant administration is working on a reform. Safety of children is a topic discussed openly, whether it concerns schools, home or street.

As far as implementation of child rights is concerned, we are in the stage of determining the factual state of things in respect of the children situation through collection of respective data. The information are accessible but dispersed and learning them requires a more serious project of research to be applied. The state authorities are faced with urgent humanitarian needs and, on the other hand, with the need to have a long-term strategy formulated.

In any case, any significant change regarding the situation of children will depend, among other things, on the capability of the political decision-makers of Yugoslavia to strategically reason and to compose the plans for the near and distant future. It will also depend on their capability to "notice" the children and place them into the focus of their attention.

**The economic, social and political context and the child rights in Yugoslavia**

The political and economic crisis of 1990s has produced an enormous social crisis that in a way has still been going on. The consequences are displayed not just as a general collapse of the system of values but also as a xenophobia and intolerance. Many children have been brought up and educated in a culture of hatred and nationalism, and this has been the case in both the greater part of south-eastern Europe and Yugoslavia too. Children have been growing in an atmosphere of prejudices inspired by the mass media controlled by the former power and the milieu in which they have lived. This could permanently determine their attitudes in life. The overall crisis has isolated the country from the world and Europe, and especially the children of Yugoslavia. The access to free media and other independent sources of information was limited. A basic estimate tells us that for a long time after completion of this crisis generations and generations will posses a syndrome of "missed" years in terms of information and knowledge. Most of the children in Yugoslavia have never travelled beyond the borders of their country nor have they met their age-mates from another country. Thanks to a greater openness of the media, film industry and Internet accessibility, some children are now becoming familiar with the life existing beyond the borders of Yugoslavia. Unfortunately, the new information accessible to them are geographically restricted to Western Europe and America, whereas the information from this region of the world and from other parts of the world are still less accessible.

Although the situation in which the children of Yugoslavia live now is directly conditioned by the political, economic and social circumstances prevailing, it is still to a great extent also conditioned by the views on children themselves and their rights. One of the basic characteristics of the attitude toward children is an overly protective approach, at least in its verbal presentation, because in Yugoslavia still prevails the typical patriarchal family structure in which expanded family plays a significant role both in terms of extension of assistance and in terms of influence. Moving from the north toward the country's south the features of this patriarchal quality become more distinct and more dominant. This kind of family structure, in which pater familias distinctly dominates, directly influences the attitudes toward children and their right for participation, as well as the right of privacy and expression of opinion. In addition, the attitudes toward woman, including female children, are predominantly discriminatory, and once again to a more distinct extent as one moves from the north toward the south of the country.

Also similar are the attitudes applied beyond family and this is noticeable in the education system, in health care and social protection institutions, as well as in the actions of state and judiciary bodies. The traditional attitudes are also noticeable among most of those people who make political decisions. Therefore, it is of course difficult to expect a different attitude toward children in a milieu in which human rights are still unrecognised or unaccepted on the national level. It is very likely that the altered political situation in Yugoslavia, including the chances for some progress in the

economic sphere and in the reform of legislature, would not be sufficient unless processes for alteration of the attitudes concerning human rights, including child rights are developed. The political, economic and social progress is not possible without respect for human rights. And perhaps even more of that is necessary for respect of child rights. Especially so when political and civil child rights are in question, because they belong to the sphere of privacy and personal freedoms.

The family situation - a situation that is so essential for child's development - has drastically changed. The largest number of families in Yugoslavia became faced with growing poverty and impossibility to maintain housekeeping. At the same time the state authorities were unable to come to the rescue the same way they had done in the decades that preceded the crisis, not just because a large number of the families suddenly needed assistance but also because the state itself became impoverished. Thus, it spent its all the smaller budget primarily for payment of debts, for military needs or for support of all the more numerous police forces.

Briefly, after all the general situation of the children of Yugoslavia is as follows:

- *The health* of children is deteriorated;
- *The education system* has been exposed to a general demolition in the last decade (although a large number of children was involved in elementary education) which had its adverse effect on the quality of education;
- *Minor-age delinquency* has been increased in the last decade of previous century, and minors became perpetrators of even heavier crimes;
- *Abuse of narcotics* and psychotropic substances is on the rise;
- So is *sexual exploitation children*;
- *Exploitation of children at work* that used to be practically non-existent before 1990s is now a reality in Yugoslavia;
- *Trafficking of children* for the purpose of sexual exploitation and exploitation at work is another problem that we are faced with;
- *The children-members of national minorities*, especially Roma children are now in a deteriorated situation;
- On top of all this, some form of *war conflict* has been experienced by hundreds of thousands of the children who now live in Yugoslavia, and they are now enduring all the consequences derived from such events. Almost the same number of children had to leave their original homes and *move* to other places.

*De iure*, child rights have been accepted in Yugoslavia in full: this country has ratified the Convention and is therefore obligated to observe and ensure implementation of all the rights as contained in this international document. However, the regulations of FRY and Republic of Serbia are not fully adjusted to the contemporary international standards in the field of child rights. As far as the practice is concerned the situation is also unfavourable and, unfortunately, at this moment we can not boast of a high and balanced level of child rights implementation.

This Report, as we mentioned earlier, analyses the state of things in the legislature field and the practices regarding child rights. Whenever possible, also are analysed the attitudes concerning enjoyment of individual rights. Along with that we also describe the proposals for advancement of each relevant right and the practices in this field. For easier introspection we shall now briefly present the proposal of relevant policy that consists of recommendations linked with implementation of child rights at national and international levels.

*General recommendation at the national level:*

- Full implementation of the Convention of Child Rights, including broad promotion of this international document; Revision of national laws and practices;
- Allocation of a special budget for children;
- Strengthening competence and authorisation of a special body at the level of Government of Serbia - a Council of Child Rights by chance, and formation of similar bodies at the level of smaller administrative communities;
- Introduction of supervisory mechanisms such as, for example, Ombudsman for Child Rights;
- Development and application of a national action plan for children (as already planned for 2003) with an emphasis on the basic principles of non-discrimination, the best interest of child, the right of live, survival and development, and right of participation;
- Openness for discussion with children and youngsters on issues in their interest;
- Support by the state and co-operation with the local, national and international organisations dealing with child rights.

*General recommendations at the international level:*[1]

- In co-operation with UNICEF, World Bank and other relevant organisations, Committee for Child Rights should have a special programme in this field for our region and the country and should assist FRY and the non-government organisations in the development and implementation of the policy in the field of child rights. In this case a certainty is necessary that UNICEF and World Bank would be present with their activities and/or funds in our country on a long-term basis;

[1] Already delivered to Government of FRY for the purpose of active inclusion in the work of international organisations of this field, as well as for the purpose of utilisation of the knowledge and reputation in the service of influence on decision-makers at international level

- European Union and Stability Pact should find ways to answer the requests of the civil society of Serbia and Montenegro for dedication of a greater attention to the problems of child rights and implementation of them;
- International organisations active in the field of child rights (among other ones) should co-ordinate their plans concerning Convention of Child Rights while using the best methods and working in agreement with Government of Yugoslavia, governments of the republics, local administration bodies and non-government organisations, under full respect for local customs and tradition.

In addition to these general recommendations and on basis of the state of things from this Report, *Centre of Child Rights proposes formulation and (where this has already been done) consequent implementation of a special policy in the field of child rights* that would be linked with topic fields and by means of which the following would be included:

- Termination of children poverty;
- As a priority, ensuring of corresponding health care services and security of children and parents in health care institutions, especially in maternity wards;
- Essential reform of the education that includes education for human rights and democracy, and special introduction of new methods of studying;
- Special and joint efforts by Yugoslavia and other countries of south-eastern Europe in the struggle against abuse of narcotics and psychotropic substances, as well as against children trafficking and other abuses including illegal across-border activities (e.g. economic, sexual and other forms of child exploitation);
- Development of measures for early detection and elimination of violence over children in the family, schools, on the street and in institutions of social protection;
- Establishment of a system of minor-age judiciary with inclusion of diversion measures and alternatives in the institutional measures;
- Development of specific programmes for the children who belong to minority groups, including programmes for development of their cultural welfare;
- Development of mechanisms of overlooking the conditions of children placed under the system of social protection, and the practices of judiciary bodies, with a particular review of the reform of the adoption system and gradual elimination of institutionalisation as the alternative form of placement of children without parental care;
- Development of a specific methodology for rehabilitation and reintegration into the society of the children-victims of war conflicts or some other form of violence;
- Abolition of child work;
- Development of special programmes for "the children on the street";
- Development of safe and "friendly" milieus for free-time activities of children.

This list is not complete and final but it is rather based on the problems identified with which children of Yugoslavia are faced. Detailed information on the position of children and enjoyment of their rights, on basis of which we have identified the basic problems and made the list of priorities that Serbia should adopt as a strategy in this field, are available on the pages that follow.

# Special Rights

# *I*

# Definition of a Child

# DEFINITION OF A CHILD

### *Article 1 of the Convention on the Rights of the Child*

***For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.***

## Regulations in the FRY and the Republic of Serbia

According to Yugoslav legislation, full age (majority) is reached at the age of 18 years. The Marriage and Family Relations Act of the Republic of Serbia contains an explicit provision regulating the age limit for majority status (Art. 15, para. 1). The constitutional regulations link the majority age limit with acquisition of the active and passive electoral right status. Thus, according to Article 34 of the Constitution of FRY, a Yugoslav citizen who has reached the age of 18 years is eligible to vote and be elected into state bodies. Acquisition of electoral rights is regulated in the same way in the Constitution of RS (Art. 42, para. 1).

According to the regulations covering the field of *health care*, in order to subject a child to surgical or some other medical procedure one must obtain an approval from his/her parents, adopter or guardian. However, if the child's life is at stake and such approval being unobtainable on account of urgency, the medical procedure may still be undertaken on basis of doctors' consultation examination (Art. 10 of the Health Protection Act of RS). Abortion is an exception, so Article 2 of the Procedure for the Interruption of Pregnancy in Medical Institutions Act prescribes that girls only require approval from their parents until the age of 16 years.

*School education* duty ceases for children who have reached the age of 15 years at the end of that school year. However, if a child has reached the age of 15 years without having completed his/her elementary school education he/she might be allowed to continue the education until he/she reaches the age of 17 years after his/her own or his/her parents' request (Art. 33, para. 1 and 2 of the Elementary School Education Act of the Republic of Serbia - ESEA of RS). A child of exceptional knowledge and capacity may complete his/her elementary school education in a term shorter than eight but not shorter than six years (Art. 62, para. 1 of the ESEA of RS).

The child who has reached the age of 15 years and who possesses a general health capacity may independently establish his/her *employment status* and dispose with his/her earnings and property acquired through his/her own work (Art. 7, para. 2 of the Act on Employment of FRY, Art. 122, para. 2 of the Marriage and Family Relations Act

of the Republic of Serbia). The same provision is contained in the labour legislation of the Republic of Serbia (Art. 13, para. 1 of the Labour Act of RS), but an employment relationship may only be established with a person below the age of 18 years under written consent from his/her parents or guardian, provided that the work does not place in danger his/her health, moral and education, that is, if such work is not prohibited by the law (Art. 13, para. 3 of the Labour Act of RS). Children are not allowed to work at a job position that involves particularly heavy physical strain, underground or underwater work or the work that could, considering the psychophysical capacity, harmfully and with increased risk affect their health (Art. 35 of the Act on Bases of Labour Relations of FRY, Art. 67 of LA of RS). One may not commission to a person below the age of 18 years to work beyond the full-time work period nor to work at night if such a person is employed in the field of industry, civil engineering or transportation (Art. 41 of ABLR of FRY, Art. 67 of LA of RS). Children above the age of 15 years who are members of a family community and work at their agriculture farm or jointly perform other activities or who in any other way jointly perform economic activity independently participate in the management and disposal with the joint property (Art. 340 and 341, para. 2 of the Marriage and Family Relations Act of the Republic of Serbia). This way they are made equal with the children who are employed with an employer.

A court may allow *conclusion of marriage* to a child above the age of 16 years at his/her own request if it finds that he/she has reached a physical and mental maturity necessary for his/her exercise of rights and duties of marriage (Art. 49, para. 2 of the MFRA of RS). The child who concludes a marriage under court's approval also acquires his/her full working capacity. Once acquired, the working capacity may not be terminated even if death, divorce or its annulment should terminate the marriage.

The laws do not explicitly determine the minimum age for one's consent to *sexual intercourse*. However, the provisions of Criminal Codes anticipate punishment of extra-marital relationship with a child above the age of 14 years (Art. 114 of CC of RS), so one could conclude that a child below majority age may not give consent for sexual intercourse unless a marriage has been concluded.

*Military service (conscription)* duty is formed with the onset of the calendar year when a child (a Yugoslav citizen) reaches the age of 17 years (in that year medical and other examinations for recruitment are undertaken). The recruitment itself is done in the calendar year when the child reaches the age of 18 years, but he could become a service conscript at his own request even in the calendar year when he reaches the age of 17 years. Also, during a state of war the President of FR Yugoslavia may also order recruitment of the service conscripts who have reached the age of 17 years (Art. 288 to 291 of the Yugoslav Army Act).

The age limit for *criminal liability* as per criminal legislation is the age of 14 years (Art. 72 of CC of FRY). According to the criminal legislation of the Republic of Serbia children between the age of 14 and 16 years (i.e. younger minors) may only be

sentenced to educational measures, whereas children between the age of 16 and 18 years (i.e. older minors) may in exceptional cases be sentenced even to juvenile prison (Art. 73 of CC of FRY). A judge for minors may order that in the preparation stage a child in question be placed in a shelter, educational or similar institution, or to be placed under public guardian surveillance or into another family. Under some exceptional circumstances a magistrate for minors may order that the child be placed under police custody (Art. 486 and 487 of the Criminal Procedure Code of FRY). Death penalty is not prescribed in either the federal or the republican legislation. Also, Yugoslav legislation contains no life imprisonment punishment.

When it comes to child's *independent appearance in court*, the Civil Procedure Code of FRY prescribes that child possesses litigation capacity within the limits of his/her working capacity (Art. 79, para. 3 of CPC of the FRY). According to the Criminal Procedure Code of FRY a child who has reached the age of 16 years can file a private criminal suit (Art. 55, para. 2 of the CPC of the FRY) and the child - a damaged party - who has reached the age of 16 years is also authorised to simply issue statements and to undertake actions in the proceedings (Art. 65, para. 2 of CPC of the FRY).

If a child is above the age of 14 years his/her consent is required for acquisition or termination of his/her Yugoslav *citizenship*.

A child who has reached the age of 16 years may admit his/her *paternity or maternity* (Art. 93 of the Marriage and Family Relations Act of the Republic of Serbia), and at this age his/her consent is required even if somebody wants to recognise him/her as his/her own child (Art. 95 of the MFRA of RS). For adoption of a child above the age of 10 years one requires his/her consent (Art. 156, para. 3 of the MFRA of RS). If one wants to change the personal name of a child above the age of 10 years, or if at establishment of adoption one wants to change the name of the child to be adopted who is above the age of 10 years his/her consent is once again required (Art. 397, para. 2 and Art. 399, para. 3 of the MFRA of RS).

In Serbia a child who has reached the age of 16 years is allowed to have insight into the minutes of his/her adoption (Art. 173 of the MFRA of RS).

In civil legislation *full working capacity* is acquired at the age of 18 years (Art. 15, para. 2 of the MFRA of RS). The child who has reached the age of 14 years has a partial working capacity and may conclude legal agreements, but for the validity of such agreements one requires a consent by the parents (agreements of low importance are exempted), unless the law prescribes something else (Art. 122, para. 1 of the MFRA of RS). Child also possesses litigation capacity, but within the limits of his/her working capacity. In the inheritance legislation a child above the age of 15 years who is capable of reasoning may dispose with his/her property by means of his/her testament that would be executed in case of his/her death (Art. 79 of the Inheritance Act of RS).

Federal regulations prescribe that *associations* may only be established by persons of full age (majority) (Art. 9 of the Act on the Association of Citizens in Societies, Social Organisations and Political Organisations of FRY). However, republican regulations also anticipate possibility of children becoming members of associations but, in such a case, the establishment act must be subject to participation of a youth or similar social organisation too (Art. 27 of the Act on Social Organisations and Citizens Associations of RS). With reference to this, see the explanation of Article 15.

There is no explicit provision about the minimum child age required for permission to *consume alcohol drinks*. However, the criminal legislation of the Republic of Serbia prohibits serving alcohol drinks to children below the age of 16 years (Art. 132 of CC of RS). In prosecution practice, however, there were just two cases in 2002 that caused procedures to be opened by competent authority and punishment of the persons who had served alcohol drinks to minors and thus violated the mentioned provision of the Criminal Code of RS.

## Assessment of the situation and observations

Having in mind the provisions of the Labour Act the Republic of Serbia, it would be logical that a child establishing employment at the age of 15 years should enjoy all the rights derived from that job relationship. But, according to the current regulations the employed child may not become a member of a trade union. The same applies to the issue of establishment of non-governmental organisations. We feel that this situation - upon initiative made by this Centre - would be changed by the Act on Associations of the Republic of Serbia that is currently held by the Serbian Parliament in the form of a draft for adoption. According to this draft (Art. 10, para. 3) it is anticipated that a person at the age of 14 years would have a capacity to establish an association, under written consent by his/her legal representatives.

Also very significant are the issues that concern the criminal liability age limit. In scientific theory and in practice the age limit of 14 years is constantly exposed to the attempts for its lowering. The arguments used by the advocates of this idea are based on a presumption that child develops faster in today's living conditions and that he/she is, therefore, earlier capable to bear the liability for his/her actions. This viewpoint is also supported by the fact that the age level of the children committing serious crimes is becoming lower and lower. However, in the opinion of this Centre under no circumstances should this age limit be lowered but rather overall prevention measures ought to be undertaken which would also involve active work with the children who are detected to possess disturbances in their behaviour and communication.

A large problem presented in practice is a lack of observance of the provisions that concern sale and serving of alcohol drinks to children, considering the legal gaps that exist in this field and which inevitably require more detailed regulations.

# *II*

# Basic Principles

# THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

### *Article 6 of the Convention on the Rights of the Child*

***1. States Parties recognise that every child has the inherent right to life.***
***2. States Parties shall ensure to the maximum extent possible the survival and development of the child.***

## Regulations in the FRY and the Republic of Serbia

The federal and republican constitutions guarantee all citizens the *right to life* (Art. 21, para. 1 of the Constitution of the FRY, Art. 14, para. 1 of the Constitution of the Republic of Serbia). Apart from that, the death penalty is not foreseen in federal or republican regulations. Furthermore, protection of the right to life is envisaged through criminal legislation, by defining as crimes, the act of murder and other criminal offences that result in death, and by the provision of criminal sanctions for their perpetrators. In order to protect children, particular emphasis is laid on the murder of a child at childbirth, as well as qualified forms of acts inciting to suicide and aiding and abetting suicide, if these acts are committed against a child that is younger than 14 years, or against a child that is between the ages of 14 and 18 years (Art. 50 and 51 of the Criminal Code of the Republic of Serbia).

The law prescribes that *data on death* shall be entered in the Register of Births and in the Register of Deaths. The fact of death must be reported to the relevant registrar within three days of the date of death or the discovery of the body of the deceased. A member of the family with whom the deceased lived, or the person in whose home the deceased died is obliged to report his/her death. If these persons do not exist, the person who was the first to learn of the death shall report it. If the deceased died in a health institution, a military barracks, a house of penal correction, a hotel, boarding school or other institution or organisation, the respective organisation is obliged to report the death (Art. 27 of the Law on registers of the Republic of Serbia).

As for *the survival and development of the child*, the law prescribes that the social community shall provide conditions for free and responsible parenthood with measures for the social, health and legal protection of parents and children, as well as with the system of upbringing, education and information of all citizens (Art. 3 of the MFRA of RS). The obligation of the state, as defined in the Convention, to ensure to the greatest possible extent, the survival and development of the child, is further substantiated in the clauses referring to the obligations of parents and the obligations of the state to make provision for the care, health and social welfare, upbringing and education, rest,

recreation and participation in cultural and artistic life of children without parental care. In addition, republican criminal legislation envisages a series of acts against the health of people and the human environment. Thus, it defines acts referring to the transmission of infectious diseases (Art. 122 to 125 of CC of RS), as well as acts referring to the production and trafficking of harmful foodstuffs, the pollution of drinking water and contamination of foodstuffs and pollution of the environment (Art. 129 to 131 and 133 of CC of RS). Detailed penal clauses for acts that endanger the environment are contained in the Environment Protection Act of the Republic of Serbia.

## Assessment of the situation and observations

It is necessary to point to numerous shortcomings in practice, both in terms of the current regulations and in terms of their implementation.

As we have already said, the method of keeping registers of births, marriages and deaths is regulated in the Law on Registers of the Republic of Serbia (hereinafter - LR RS). The clause under Article 12 of the said law prescribes that the registrar enters only those facts and particulars that are reported to him/her, that is, the data prescribed in the relevant organ's official document. The birth of a child is entered in the register of births in the registration district where the place of the child's birth is located, and this clause also regulates the birth of a child in a means of transport and of a child whose parents are unknown, on the basis of the decision issued by the relevant guardianship organ (Art. 17 of the LR RS), while Article 18 of the same law regulates the registration of an adopted child. Article 25 of the said law prescribes the obligation of a health institution to report the birth of a child. Paragraph 2 of the same article mentions the circle of persons, who are obliged to report the birth of a child born outside a health institution. In keeping with this clause, the birth of a child shall be reported within 15 days of the date of its birth. The registration number of the child is entered for procedure according to the Unique Registration Numbers of Citizens Act of the Republic of Serbia, which prescribes that the registration number is determined according to the place of residence of the citizen, and of newly born children according to the place of birth, and that the registration number also defines the evidence given on the registration numbers kept by the municipal administrative organ responsible for internal affairs (Art. 2 of the Unique Registration Numbers of Citizens Act of the Republic of Serbia - hereinafter URNC of RS). Article 3 of the same law prescribes that the relevant administrative organ shall determine the registration number according to the place of birth of a child, for children born after December 31st 1978, and that after recording a birth in the register, the relevant administrative organ that keeps the register of births is obliged to submit a copy of the birth certificate to the relevant municipal organ to determine the registration number.

A death is entered in the register of deaths in the registration district where the place of death is located, in keeping with Article 20 of the LR RS, which also prescribes the method of recording a death when the place where death occurred is unknown and in

the event of death in a means of transport. The clause under Art. 25, para. 3 of the said law prescribes that a stillborn child shall be reported within 24 hours of the hour of delivery of the stillborn child, while Art. 27, para. 2 prescribes the obligation of a health institution to report the death of the deceased in a health institution within three days of the date of death, as regulated in paragraph 3 of the said clause. Reporting a death is done on the basis of a certificate of death issued by a health institution if the deceased person died in a health institution and if the deceased died outside a health institution, on the basis of a certificate issued by the doctor who established death. Without a death certificate, it is impossible to record a death in the register of deaths (Art. 29 of the LR RS).

Bearing in mind that the said law requires a death to be reported within three days, and a birth to be reported within 15 days, in cases when the death of a child is recorded in the register of deaths on the basis of a report of his/her death from the health institution, and then, later, a birth is recorded in the register of births, in practice, oversights may occur in updating the registers, and it happens that records of deaths are not entered in the register of births.

The earlier law on registers regulated the aforesaid facts of death and birth and the circle of people reporting them, in the same way.

The Health Protection Act of the Republic of Serbia prescribes that the cause of death shall be established for every deceased person (Art. 8 of the Health Protection Act of the Republic of Serbia - hereinafter HPA of RS), while the post-mortem procedure is envisaged as a special measure to establish the cause of death (Art. 86 of the HPA of RS).

According to the aforesaid law, a Book of Rules was adopted on the method and procedure for establishing the time and cause of death, for a post-mortem to be conducted on the body of a deceased, and for removing parts of the body. This Book of Rules prescribes that the time and cause of death shall be established by a medical examination and other medical methods, applying up-to-date methods in medical science and on the basis of medical documents, once the identity of the deceased is established (Article 2), that the family shall be informed of the time and cause of death of the deceased in a health institution, immediately, or six hours from the established time of death at the latest, and if the deceased is a stillborn child whose mother has been admitted to a health institution, the mother of the stillborn child is immediately informed in person (Article 4), and that when undertaking to bury the deceased who has died in a health institution, it is obligatory to check the identity of the deceased (Article 7).

The Act on Burial and Cemeteries of the Republic of Serbia prescribes that burial shall by carried out according to the relevant sanitary regulations, and that burial can be carried out after death is confirmed in the manner defined by special regulations, 24 hours after the moment in which death occurred at the earliest (Article 9). The special regulations on confirmation of death have already been mentioned, and Article 30 of the

Law on Registers prescribes that the burial of a deceased person may be carried out before reporting the death to the registrar, on the basis of a permit from the republican Secretariat of the Interior - issued by its organisational unit in the municipality on the territory where the deceased person shall be buried, if it was impossible for valid reasons to report the death to the registrar.

We may conclude from the aforesaid that in current legislation, regulations have been omitted relating to the obligation of burying stillborn or newly born babies that died in health institutions, from which it ensues that the bodies of the newly born and stillborn babies remain in the health institutions, which is almost regular practice.

Besides, the old custom of burying stillborn and newly born babies has ceased to exist in our country, thanks to the will of hospital staff, and not the parents, whose children have died.

Bearing in mind the aforesaid, the law does not envisage the obligation of burial, nor does it envisage the obligation of identifying newly born babies that have died, but only the obligation to inform the mother about this. As burial is carried out after identification, there is no obligation on the part of the health institution to enable the mother to identify the baby, as practically the only person who can do this. Apart from that, childbirth is often conducted under an anaesthetic during a caesarean section or when the mother's life is at risk in the course of childbirth and mothers are usually in a state of shock or unconscious, so that identification based on the said regulation is impossible.

Bearing in mind the said shortcomings in the current rules and the widespread public concern over serious indications that there were abuses in the sense of depriving parents of their newly born babies by declaring them to be stillborn, it is necessary to launch an initiative in the direction of amending and supplementing the said regulations.

With regard to the implementation of the relevant provisions of the Criminal Code of the Republic of Serbia, the data on the number of criminal offences committed against minors in the period from January 1st 1998 to October 31st 2002, is as follows:

| **Article of CC of RS** | **1998.** | **1999.** | **2000.** | **2001.** | **2002.** | **TOTAL** |
|---|---|---|---|---|---|---|
| **50** | 22 | 19 | 12 | 13 | 8 | 74 |
| **130** | | 6 | | | | 6 |
| **131** | 1 | | | | | 1 |

# THE BEST INTEREST OF THE CHILD

***Article 3 of the Convention on the Rights of the Child***

***1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.***
***2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.***
***3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.***

## Regulations in the FR Yugoslavia and the Republic of Serbia

Neither the federal, nor the republican Constitutions explicitly proclaim the principle that the best interest of the child will have primary significance in all activities concerning children. Instead, the Constitution of the FR Yugoslavia proclaims, as the obligation of the state, the special protection and care needed for the well being of the child in a regulation in Article 61, para. 1, according to which the family and mother enjoy special protection. *The principle of the special protection of the child* is also envisaged in the republican Constitution (Art. 28, para. 1 and Art. 29, para. 1 of the Constitution of the Republic of Serbia). Children older than 15 enjoy special protection at work as well (Art. 56, para. 3 of the Constitution of the FR Yugoslavia, Art. 38, para. 3 of the Constitution of the Republic of Serbia), while the state is obliged to provide material security for a citizen who is unable to work and has nothing to live on (Art. 58, para. 2 of the Constitution of the FR Yugoslavia, Art. 39, para. 2 of the Constitution of the Republic of Serbia). Also, children have the right to health care, financed from public revenues, if they do not exercise this right on some other basis (Art. 60, para. 2 of the Constitution of the FR Yugoslavia, Art. 30, para. 2 of the Constitution of the Republic of Serbia).

The general regulations of the Marriage and Family Relations Act of the Republic of Serbia (hereinafter MFRA of RS) envisage the obligation of society to provide

protection to children, whenever it is in the children's interest (Art. 7, para. 3 of the MFRA of RS), while children who do not have parental care enjoy the special protection of society (Art. 13, para. 2 of the MFRA of RS).

The Marriage and Family Relations Act of the Republic of Serbia regulates *the obligations of state bodies and public institutions in accordance with these general principles*. Thus, the guardianship body that generally supervises the exercise of parental rights is obliged to take measures necessary for the protection of the personal and property rights and interest of the child (Art. 133, para. 1 of the MFRA of RS). Measures that can be undertaken by the guardianship body include warning the parents about flaws in the upbringing of the child and the provision of necessary help (Art. 134 of the MFRA of RS), permanent supervision of the exercise of parental rights (Art. 135 of the MFRA of RS), removing the child from the parents (Art. 136 of the MFRA of RS) and sending the child to be brought up in an institution (Art. 137 of the MFRA of RS). In special cases, the parent may be stripped of his/her parenthood rights by decision of a court in non-contentious procedure (Art. 139 of the MFRA of RS).

*The basic forms of the protection of children without parental care* and adoption, organised placement with another family and other forms of protection in families, and the decision about their implementation is reached after the comprehensive assessment of every individual case and the possibility to choose a form of family protection that suits the child's needs in the greatest possible measure (Art. 148 and 149 of the MFRA of RS). The law states that adoption is permitted if it is to the advantage of the adopted (Art. 152 of the MFRA of RS). Incomplete adoption may end by decision of the guardianship body if it has been established that this is justified in the interest of the adopted child (Art. 177 of the MFRA of RS), while in the case of full adoption, the adopter may be limited in the exercise of parenthood rights or stripped of parenthood rights under the conditions envisaged by the law (Art. 197 of the MFRA of RS). Family shelter is provided with a family that is able to successfully perform parental duties, especially those regarding the appropriate care, upbringing, education and assistance to the child to teach him/her to become independent (Art. 202 of the MFRA of RS), while the guardianship body may decide on terminating the contract if the family fails to fulfil these conditions (Art. 211, para. 1 of the MFRA of RS). The guardianship body will place a child that has no parental care under guardianship. The purpose of guardianship is to help the child to develop his/her personality in the best way possible and enable him/her to become independent, through care, upbringing and education (Art. 219 of the MFRA of RS), and the guardian will be relieved of this duty without delay if the guardianship body determines that he/she has abused his/her authority or the guardian's work jeopardises the interest of the child - ward (Art. 250, para. 1 of the MFRA of RS).

*Juvenile justice* also provides special measures of protecting the child's interest. As for criminal proceedings against children, the bodies that take part in the proceedings are obliged to act with caution, taking into account the degree of the mental development,

sensitivity and the personal characteristics of the child so that the proceedings do not have a detrimental effect on his/her development (Art. 466 of the Criminal Procedure Code of FRY - hereinafter CPC of FRY). The progress of criminal proceedings against a child may not be publicised without permission of the court, nor may a decision reached during the proceedings, and if the court does allow the announcement of a part of the proceedings or part of a decision, the name of the child or any other data on the basis of which the identity of the juvenile might be disclosed, are not to be announced (Art. 473 of CPC of FRY). When a child is on trial, the public shall always be excluded (Art. 494 of CPC of FRY). Parties that take part in the proceedings, and other parties and institutions that are requested to provide information, reports and views are obliged to act swiftly so as to enable the proceedings to end as soon as possible (Art. 474 of CPC of FRY). In divorce proceedings, there are also regulations whose aim is to protect the interest of the child. Thus, if a married couple have had one or more children born into their marital relationship, reconciliation procedure is carried out by the guardianship body, which assesses the living and development conditions of the children and takes measures that are necessary for their upbringing, care and support (Art. 353 and 355 of the MFRA of RS). In proceedings relating to a dispute between parents and children, the guardianship body may assign a special guardian, if the interests of the parents and the child in the proceedings are in conflict (Art. 372 of the MFRA of RS). The public is excluded from proceedings to establish or dispute fatherhood, and this also applies to proceedings regarding the entrusting of children to care and upbringing (Art. 373 of the MFRA of RS). A guardianship body is entitled to take part in proceedings regarding family relations between parents and children, whenever it assesses that the justified interest of the child require this (Art. 375 of the MFRA of RS). During appeals procedure, the law also prescribes that the court of second instance is obliged to take care of the child's interest, and during compulsory execution, the court must take into account urgency and the need for the child's personality to be protected to the greatest possible extent (Art. 377 and 391 of the MFRA of RS).

The armed conflicts in the territory of the former SFRY and the large number of refugees have led to the adoption of special laws and other regulations, which are related to these persons. Besides other rights, *refugee children* are guaranteed the right to education and professional help in the preparation of exams, in order for them to integrate into regular education, and they also have the possibility to obtain financial benefits (the Expelled Persons Relief Decree of RS).

## Assessment of the situation and observations

Just as neither the federal nor the republican Constitutions explicitly proclaim the principle that the best interest of the child shall have primary consideration in all activities that concern the child, there is no special mechanism in practice for monitoring the implementation of this principle. Meanwhile, since the principle that lies

in the foundation of exercising all other rights is at issue, it is possible to monitor its implementation indirectly through reports about the situation in other areas (see - adoption, child outside of the family environment, the right to education, health and health protection, juvenile justice, etc.).

- *If, for example, we have information that an alternative form of family care has been provided for only around 60% of children without parental care (whether by fostering or adoption), while the others are in institutions, we may claim that the current practice in this field is not guided by the best interest of the child. In this context, the situation with children with special needs, or those who are in conflict with the law, is much worse.*

If we proceed from the stand that one of the mechanisms for securing respect of this principle is to create a setting for the child's opinion to be taken into consideration in all matters and procedures that concern him/her, understanding of the regulations and an evaluation of the situation in reference to Article 12 of the Convention may provide an indirect insight into how this principle is treated, and which measures have been taken in order to implement and promote it.

- *A positive example from practice that proceeds from the importance of taking the child's view into account and thus, implicitly, his/her best interest, is the comprehensive reform process in the field of education. In addition to the reform of the curriculum, teaching methods and efforts towards the democratisation of the entire educational system, we recorded methodologically planned participation of pupils with his/her evaluation of the state of affairs in education and to collect his/her recommendations for "a school that corresponds to his/her interest".*

There is no system for the education of professionals in child rights, so that we cannot comment on the way in which the principle of the child's best interest is included, in this context.

However, after the introduction of civic education as a facultative subject, a large number of teachers (and this refers especially to high schools) completed special training in the field of child rights that also included the principle of the child's best interest.

In view of the fact that this is a right, that is, a principle, which is extremely difficult to realise from the standpoint of methodology and research, surveys of the opinions of children and adults that have been conducted so far have not provided a direct insight into the measure in which this right is respected.

- *As an illustration, we would like to present the results of the survey published in the "Agenda for the Future" by the Child Rights Centre, from 2001.*[2] *While*

> *giving their view of the situation in the health care system, 60% of those questioned said that school doctors were superficial in their work, and endeavoured to spend as little time as possible with a patient. 75% of those questioned said that the doctors do not devote sufficient attention to explaining the nature of illnesses and ways of their prevention. Such data can indirectly be interpreted as an indicator of the lack of respect for the principle of the child's best interest in the field of the right to health and health care.*

The Centre has no data about caring for the child's best interest in court and administrative proceedings. It is assumed that the child's best interest is the starting point for every decision. However, it is questionable whether decision-makers have a specific awareness/knowledge about the child's best interest. This principle should be raised to a higher level by the specific definition of its contents in particular fields that are related to children.

[2] Research carried out during February and March 2001, with 746 children aged between 14 and 18, from the territory of Serbia and Montenegro. Children from especially vulnerable groups (without parental care, in conflict with the law, with disabilities, the refugees and the displaced and members of national minorities) were included in the survey.

# RIGHT TO NON-DISCRIMINATION

***Article 2 of the Convention on the Rights of the Child***

***1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.***
***2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.***

## Regulations in the FRY and the Republic of Serbia

*The principle of non-discrimination in the Yugoslav legislation* is expressed by way of the constitution provisions that refer to all citizens. Article 20 of the Constitution of FRY prescribes that citizens are equal irrespective of their national affiliation, race, sex, language, belief, political or other conviction, education, social origin, property status and other personal characteristic. Furthermore, everybody is obligated to respect the freedoms and rights of others, and he/she holds responsibility thereabout. In addition, Art. 61, para. 2 of the Constitution of FRY explicitly prescribes that children born out of wedlock have the same rights and duties as those born in wedlock. Respective provisions are also contained in the Constitution of Republic of Serbia (Art. 13 and 29, para. 4).

Neither the federal nor the republican constitutions explicitly mention *prohibition of discrimination on the grounds of disabilities*. Although under prohibition of discrimination on the grounds of "other personal characteristic" one could also imply prohibition on the grounds of disabilities, a better adjustment of the legislation to the Convention would be achieved if these grounds were explicitly indicated in the clause about prohibition of discrimination. Elimination of discrimination on the grounds of disabilities is a necessary precondition for enjoying majority of the rights guaranteed by the Convention, so the importance of this type of grounds demands that it should be specially mentioned within the provision on prohibition of discrimination.

The Convention prescribes that *rights must be guaranteed to all children living under the competence of the country in question*, even to the children who are not local

citizens. The Federal Movement and Sojourn of Foreigners Act anticipates rights of foreigners whose refugee status has been recognised - the provisional accommodation, support resources and health care (Art. 55). Their children enjoy the same rights as their parents (Art. 52). The status of the refugees from the territory of former Yugoslavia is object of separate regulation in Serbia: the Refugees Act of RS and the Expelled Persons Relief Decree of RS. These regulations ensure for children the right to accommodation and food, financial aid, health care and the right to education and employment (Art. 2 of the Refugees Act of RS).

*Federal criminal legislation* prohibits causing, stirring up and promotion of racial and other discrimination and violation of the basic human rights and freedoms on basis of differences in the races, skin colour, nationality or ethnic origin (Art. 134 and 154 of CC of FRY). *Republican legislation* punishes acts of violation of citizens' equality as manifested through deprivation or restriction of the citizen rights determined by the Constitution, law or other regulation, including by-laws and ratified international agreements. Also prohibited is granting of privileges and special benefits on basis of difference in the nationality, race, belief, political or some other conviction, ethnic affiliation, sex, language, education or social status (Art. 60 of CC of RS).

## Assessment of the situation and observations

Although our legislation contains regulations prohibiting discrimination, it is not comprehensive because there are many fields in which discrimination does occur - they lack legal regulation. More precise regulation is required of the issues connected with the prohibition of discrimination on the basis of age, disabilities and health problems.

This particularly refers to children with disabilities. Due to the lack of access ramps for wheelchairs in almost all the schools and majority of the health institutions exercise of the child rights to education and health is made impossible or, at the best, made difficult for these of children. That way they are placed into a position that could be described as mere discrimination in relationship to the other children.

Insufficient development of the network of institutions for upbringing and education of the children with disabilities, as well as their uneven territorial distribution, could be greatly marked as the cause why a majority of such children with special needs do not attend school. This is a direct deprivation of these children of their right to education. Analysis of Article 28 indicates a lack of inclusion programmes for the children with special needs and an insufficient readiness of the state to stimulate the work on these programmes, which is just another form of indirect discrimination.

On the other hand, insistence on the programmes that strengthen the potentials of marginal groups (whether they are children with disabilities or minority communities) is good to a certain extent. Namely, isolated and insufficiently co-ordinated

development of special programmes for these groups could at a certain moment cause the effect of some type of ghettoisation rather than of social integration (e.g. opening special classes for Roma children in elementary schools). One of the consequences derived from the lack of inclusion programmes for Roma children is the fact that 70% of the children in the centres for education of adults (some of which operate as elementary schools with reduced curriculum) are those of Roma origin.

Furthermore, frequent adoption of the children with special needs by foreign citizens occurs. This is something that the law allows, but that way such children are deprived of living in their own cultural environment (see Art. 21). Although such adoption is done in the best interest of child, we feel that this contradiction remains.

One can notice a hidden resistance in the public toward those children who are HIV positive. In spite of the fact that a certain number of such children attend the regular elementary school, in practice there were several cases of drastic violation of their rights, even by professionals themselves.

In the field of criminal legislation and judicial practice it is necessary to react in those criminal act cases that involve elements of discrimination (particular concern is caused by the cases involving attacks on Roma children and injury infliction to them).

Generally speaking, social racism and xenophobia need to be confronted more seriously. Although in our environment a stereotype prevails that "we are people who have nothing against those who are different", we are witnesses of large intolerance in all spheres of life toward different people, especially the Romas. To what extent such prejudice and stereotypes are strong, while frequently shaping even our behaviour, is indicated by the research data of the Child Rights Centre[3] which contain adolescents' evaluation of them.

What the participants in this research almost unanimously agree about, is that girls and boys, young ladies and young men are equal in our society. Indications of tendencies toward traditional behaviour that favours the role of male members of family are observed among Roma children and children internally displaced from Kosovo and Metohija.

Discrimination on other grounds seems to be a reality of a large number of children, and its sources are recorded in their social status, national origin, and physical and mental disability.

[3] The research was conducted in February and March 2001 among 746 children of 14 to 18 years of age, from the territory of Serbia and Montenegro. Even children from particularly sensitive groups were included therein (i.e. children without parental care, children in conflict with the law, children with disabilities, refugees and displaced children, as well as children members of national minorities). The research results are presented in the publication entitled Agenda for the Future of the same year.

The children from particularly sensitive groups are exposed to a behaviour and estimates that they experience as discrimination not just from the broad public but also from their own age-mates.

The following children have a feeling of "being labelled" on account of their origin or social status:

- Children without parental care living in foster families (44%) and institutions
- 90% of the children in educational institutions;
- 3 of the refugee and displaced children, and
- All the Roma children.

Children with disabilities most frequently attribute their feeling of being labelled to the "handicap", and those children who are placed in various institutions carry additional stigma.

The following findings tell us that these are not just subjective feelings of discrimination and stigma. When describing their behaviour the general population children indicate that they avoid company of:

- Age-mates with some physical disability (occasional avoidance 38% and frequent 12%);
- Romas (occasional 35% and frequent 13%), and
- Refugees (occasional 25% and frequent 4%).

# RECOGNITION OF CHILD`S OPINION -- RIGHT TO PARTICIPATION

***Article 12 of the Convention on the Rights of the Child***

***1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.***
***2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.***

## Regulations in the FR Yugoslavia and the Republic of Serbia

*The freedom to publicly express one's views* is guaranteed by Article 35 of the Constitution of the FR Yugoslavia, and by the corresponding regulations of the republican Constitution (Art. 45 of the Constitution of the Republic of Serbia). The right to freely express one's view is guaranteed to every person and there are no limitations of this freedom for children.

A child shall be provided with the opportunity to express his/her view in certain fields of *family life*. Thus, a boy aged 16, capable of making judgement, may recognise paternity (Art. 91 of the Marriage and Family Relations Act of the Republic of Serbia - hereinafter MFRA of RS), and if he is older than 16, his approval is needed for the recognition of paternity (Art. 95, para.1 of the MFRA of RS). A child shall be included in the group of people who may pursue the recognition of paternity in court, or may dispute paternity or maternity. Such charges may be pressed on behalf of the child by his/her mother or guardian, providing that the guardian has the approval of the guardianship body (Art. 98, para. 1 and 2, Art. 104, para. 1 and 2 and Art. 109, para. 1 and 2 of the MFRA of RS). Furthermore, when ruling on entrusting a child to someone's guardianship and upbringing, the court, that is the guardianship body, shall give special consideration to the child's emotional needs and wishes, about which they are obliged to obtain the opinion of the relevant experts, whenever this is required by the circumstances of the case (Art. 130 of the MFRA of RS). A child shall also give his/her approval for adoption if he/she is older than 10 (Art. 156, para. 3 of the MFRA of RS), and the adoption may cease on the basis of his/her demand, when there are justified reasons for this, as determined by the guardianship body (Art. 178, para. 1 of the MFRA of RS). When appointing a guardian, the guardianship body shall also take into

consideration the wishes of the child - ward, if he/she is capable of expressing them (Art. 230 of the MFRA of RS). The ward who is capable of doing so, may object to his/her guardian's work, which the guardianship body shall evaluate and decide on whether certain measures are to be undertaken (Art. 253 and 254 of the MFRA of RS). If a child is not given the needed approval, he/she has the right to appeal against such a decision by the guardian or guardianship body (Art. 267, para. 1 and Art. 268 of the MFRA of RS). Children older than 15, who live as members of a family, shall take part independently in the management and use of joint property (Art. 340 and Art. 341, para. 2 of the MFRA of RS).

*In the field of education*, a child is provided with the possibility to intervene in certain situations. Thus, a child - pupil in elementary school has the right to object under certain circumstances to his/her grades and to the process of grading, with the school principal (Art. 63 of the Elementary School Education Act of the Republic of Serbia - hereinafter ESEA of RS). A child may also object to educational measures imposed on him/her because of violation of obligations (Art. 66 of the ESEA of RS). Similar rights are enjoyed by children - high school pupils (Art. 63 to 66 of the Secondary School Education Act of the Republic of Serbia - hereinafter SSEA of RS).

The Civil Procedure Code envisages that a *child's capability to take part in litigation* is within his/her working capability (Art. 79, para. 3 of the Civil Procedure Code - hereinafter CvPC of FRY). According to the Criminal Procedure Code of FRY, a child that has reached the age of 16 can *press private criminal charges* (Art. 55, para.2 of the Criminal Proceedure Code of the FR Yugoslavia - hereinafter CPC of FRY), while the child - plaintiff, who has reached the age of 16 is authorised only to give statements and take action during proceedings (Art. 65 of CPC of FRY).

If a child is older than 14, his/her agreement is needed for the *acquisition or termination of Yugoslav citizenship* (Art. 8 through 21 of the Yugoslav Citizenship Act).

## Assessment of the situation and observations

The available official reports contain no data about the systematic monitoring and analysing of children's participation in making decisions within institutions or on the local level.

The current educational system envisages the holding of class meetings, primarily conceived as a framework for the expression and exchange of views among the pupils and the homeroom teacher. Also, every class elects a pupil's president whose role is mainly decorative in character, in view of the fact that otherwise, there are no clear mechanisms that would make it possible to advocate the pupils' views or elect a representative of all the pupils of a school, who may attend sessions of the Teachers' Council - but without the right to vote.

- *The results of the survey "Agenda for the Future" show that 37% of the interviewed pupils believed that class meetings are "a waste of time". Also, 58% of pupils believe that there is no mechanism in schools for the expression of the pupils' complaints, especially about the teachers' behaviour.*
- *The results of the survey conducted by the Child Rights Centre in 1999 and presented in the publication "Children's Participation in Focus",[4] have shown that the young believe that they exercise their rights to participation at school in a very low degree, even in spheres that do not have a deeper connection with the organisation and nature of the school. In only three of the proposed 20 school situations did the young say that they were satisfied with their degree of participation in decision-making (where one sits in the classroom, the way one is dressed, and the selection of pupils who will go to competitions!). It is important that we mention that all of the remaining 17 situations were not in the sphere of the law, but of rules and regulations, and even of unwritten rules.*
  *The teachers, in general, expressed a moderately positive view towards the participation of pupils, giving the highest status to the right to privacy, then to the right to access to school-related information, and finally to the right to one's own view and its expression. Although there is a compatibility between the teachers' declared stands and their true behaviour (teachers whose stands are more liberal behave more liberally in practice), one must acknowledge the fact that only one quarter of teachers allow their pupils a more significant degree of participation, within the possibilities provided in our schools (they ask what the pupils' views are about different aspects of teaching, learning and behaviour at school, and take these views into consideration).*

Children without parental care who live in institutions have the formal possibility to express their views at discussion meetings, which have been conceived as a way of solving the current issues in the organisation of daily life. Information from practice points to the fact that this form of exchanging views has not been established in the majority of institutions, and where it has been, it was only decorative in character.

- A survey carried out during 1998 by the Child Rights Centre, within the project "Child Participation in Homes for Children without Parental Care", showed that children had little and/or no possibility of influencing a change in the existing rules of behaviour. A very illustrative example was a situation in one of the homes, where the director banned all visits to children in the home by their school friends, with

[4] A study, whose task was to explore to what extent the children's right to participation was exercised (17-year-olds) in the family and at school, and stands about children's possibilities and rights to participation. The study included 555 high-school pupils from Serbia and Montenegro, 247 parents and 314 teachers.

the explanation that "they make a noise and are disruptive". This decision remained in effect until a new director was appointed.
- Data from the "Agenda for the Future" shows that children in the welfare protection system, in 30 to 76% of cases (depending on the form of protection and the institution in question), are unable to have any influence on the frequency of contacts with their parents. Also, between 30 and 70% of children said that they were not even informed, let alone consulted about their placement in a certain institution.

The right to express one's views and for these views to be taken into account in the practice of health care, should be integrated into the procedure of dispensary or hospital treatment. The Serbian Health Ministry recently introduced the institution of ombudsman - body of appeals within every health protection institution. So far, there has been no feedback on the way they are functioning, or data about how many and which complaints have been reported that are related to children.

From the data collected from research, experience so far and children's opinions about the health protection system,[5] we would like to point out just facts that are related directly to the expression of opinions and taking them into account.

- More than one half of high-school pupils (who are certainly capable of forming their own views about the majority of health issues) had the experience of "school doctors not taking them seriously when they complained about something".

Also interesting for evaluating the situation in practice are the results of a survey among doctors,[6] whose stands are, in principle, very positive regarding the inclusion of a child in the process of deciding about his/her health. However, when it comes to claims that are closer to everyday practice, the situation becomes much less optimistic. An interesting illustration is the fact that as many as 42% of doctors and 65% of nurses do not have a positive attitude towards the existing legal regulation, which enables a girl who is older than 16 to decide for herself about a possible termination of pregnancy.

In the mentioned surveys, the family has proven to be a somewhat better framework for the expression of views than institutions. Children in families have more freedom in the selection of schools, how they use their pocket money or in choosing their friends. Today's families, in our cultural environment, tend to have a more modern outlook

[5] Survey carried out for the needs of the Child Rights Centre, in co-operation with UNICEF, at the end of 1999 and the beginning of 2000, with 476 adolescents.
[6] Survey carried out with 112 doctors and nurses, who attended the seminar "Child Rights and Health", organised by the Child Rights Centre at the end of 1999 and the beginning of 2000.

when it comes to the level of communication. There are almost no taboos; it is possible to discuss most of the topics with one's parents, although the domain of reaching "important family decisions" is still untouchable for the majority of children.

Also interesting is that children in institutions have noticed that the grown-ups' readiness to hear and take their views into account is often offered as a reward and stimulation for those who are "good" and "obedient". Therefore, our culture treats the right to express one's views as something that has to be deserved, not as a right in itself.

The general conclusion in connection with stands and the exercising of participative rights in our cultural surroundings, points to the still prevailing patriarchal model, which envisages the unquestionable authority of adults over children, and, men over women. Relations with children are founded on protective models of behaviour, and the denial of the right to participation in decision-making (and making one's own decisions and choices), stems from the inability to accept the social and emotional maturing of a child (which is proven especially by the parents' resistance to letting the child choose his/her partner, go on holidays without them, in the limitation of outings, choice of friends, etc.). At the same time, there are certain regularities that prove that the modern level and seeing the child as an equal partner is higher in the northern parts of the country and in urban environments. The analysis of the views of teachers also sheds light on important factors that lead to the conclusion that certain individual factors, the system of values and the outlook (partly professional) on life, influence practice and attitudes towards children. Professionals (teachers) of technical orientation show a much higher degree of conservativeness in comparison to those who are occupied with social studies.

The local environment as a system does not envisage a mechanism for the expression of a child's views. There is no reliable data about the exact number of project gatherings for children and the young (within the activities of the civilian sector) that directly point to the organisation of drives in a local community that entail co-operation with the local authorities.

Examples of the promotion of the rights of the child to the expression of views and participation in decision-making, when it comes to the creation of policies in the field of child rights, are given in the project of national consultations of children within preparations for the Special Session of the UN General Assembly (carried out by the UK Save the Children Fund) and the research project of the Child Rights Centre - "Children of Today for Children of Tomorrow" (resulted in the publication "Agenda for the Future" that was distributed to all relevant political decision-makers). (Both projects were carried out in 2001).

A good example of the direct inclusion of children in changes of the system is found in the case of the draft Family Law, in the part that relates to children without parental care

(the Familia NGO is organising consultations with children without parental care and their stands are presented to the group of experts who are drafting the law). The next encouraging case is Talks about Reform, organised by the Ministry of Education and Sports of the Republic of Serbia (see Article 3).

There is no precise data about measures that have been undertaken to raise the awareness of families and the public in general, about the need to encourage children to express their views and about the training of professionals who work with children, although there have been many and mostly in connection with NGO activities. Some of those activities included media campaigns, which were mostly brief, not so well conceived and broadcast by media with a limited range (B92, for example - "I Have the Right to My Rights" and "I Must Also Be Asked"). The majority of activities were in the form of educational projects that dealt with the field of child rights in general. There have been dozens of training courses for instructors in the domain of child rights (the Child Rights Centre), seminars for elementary school teachers (Child Rights - Whose Responsibility, organised by the Friends of the Children of Serbia), workshops about child rights for adolescents (organised by a large number of NGOs in the country), seminars for professionals in the welfare protection system, the health services, the judiciary, the police and the prosecution (the Child Rights Centre), etc. All of these, and many other seminars that have not been mentioned, covered participation within the general topic of child rights. Few of the civil sector's activities were exclusively geared to the expression of views as such. Much more frequent are projects that are designed to making one able to constructively express one's views and initiate action within a specific context (ecology, culture, media, etc.). A number of courses about human rights (Belgrade Centre for Human Rights) included a special course about child rights.

With the introduction of Civic Education (as of 2001/2002 school year), the issue of child rights and action planning became available to a significant number of 2nd grade high-school pupils in Serbia, within the formal system of education.

None of the university faculties have a subject that deals specifically with the field of child rights. At the Pedagogy and Sociology Department of the Faculty of Philosophy, child rights are covered only as one of the topics within the curriculum, in two sections. Currently under way, now, is the evaluation of possibilities to introduce a facultative subject within the post-graduate programme of the Teachers' Faculty in Belgrade, as of the 2003/2004 academic year. The framework of this subject would envisage the acquisition of elementary knowledge about development specifics and the needs of children, as well as the fundamentals of their rights, information about the Convention on the Rights of the Child and its implications related to professional work with children.

# *III*

# Civil and Political Rights

# RIGHT TO A NAME AND A CITIZENSHIP

***Article 7 of the Convention on the Rights of the Child***

***1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.***
***2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.***

## Regulations in the FRY and the Republic of Serbia

According to the Yugoslav regulations *birth of child* is reported (orally or in writing) to the registrar of the registry region where the child was born. Birth of a child in a transportation means is reported to the registrar of the registry region where the voyage was completed (Art. 17 of Act of Registry Books of RS). The health institution in which a child was born is obligated to register him/her. When a child is born outside health care institution, the birth is to be registered by one of the following persons: the child's father or, if is unable to do that, some other member of the household, or his/her mother as soon as she becomes capable to do that, or the person in whose home the child was born and the officials who were present an/or assisted at the birth (midwife or physician). If these persons are not on hand or are not in position to register the birth, the obligation lies on the person who learns about the birth. A child's birth is registered within 15 days from the date of birth. If the child is born dead, the birth must be registered within 24 hours from the date of birth (Art. 25 of the ARB of RS). If the child's parents are unknown, his/her birth is registered in the registry book of births in the place where the child was found. The registration is done on basis of a decree by the competent guardianship body.

The birth data are registered in the *registry book of births*, and they include two types of facts. The first group of facts refers to the child born: name and surname, sex, day, month, year, hour and place of birth, and the citizenship of the child. The second group consists of data concerning the child's parents: their names and surnames, citizenship, place of residence, apartment address, and the date and place of birth of the parents (Art. 2 of Act of Basic Data for Registry Books of RS). If the parents are unknown only the child's data are registered - the time of his/her birth (Art. 17 of the ARB of RS). If this child should later be adopted, the personal name of the adopter will be recorded as the personal name of the found child's parent. A request of the future adopter and a decision of the guardianship body is required for this (Art. 18 of the ARB of RS).

According to Yugoslav regulations, *personal name* (consisting of name and surname) is personal right of citizens. The personal name is acquired through a record made in the registry book of births and its is established by mutual agreement of the parents within two months from the date of child's birth. If the parents do not reach an agreement on the child's name, the personal name is to be given by the guardianship body. The child is given the surname of one or both his/her parents. In Republic of Serbia, however, different surnames may not be given to the children of same parents. If one of the parents is deceased or is unknown or is not in position to exercise his/her parental right, the personal name for the child is determined by his/her other parent. If both parents are not living or are unknown or are not in position to exercise their parental right, the personal name of the child is determined by the guardianship body (Art. 393 to 396 of the Marriage and Family Relations Act of the Republic of Serbia). Law forbids giving the name to a child that is abusive, by means of which ethics are offended or is in contradiction with the customs and convictions of the milieu (Art. 398 of the MFRA of RS).

To ensure *child's right to citizenship* from the moment of birth and to avoid the case where a child could become a stateless person, the provisions of the Yugoslav Citizenship Act are of essential significance. Yugoslav citizenship is acquired through origin by: a) a child whose both parents at the time of his/her birth were Yugoslav citizens; b) a child born in Yugoslavia whose one of the parents at the time of his/her birth was a Yugoslav citizen; and c) a child born abroad whose one of the parents was a Yugoslav citizen and the other one is unknown or of unknown citizenship or without citizenship. Yugoslav citizenship is also acquirable by origin by the child born abroad whose one of the parents at the moment of his/her birth was a Yugoslav citizen and the other one was a foreign citizen if the child is registered as Yugoslav citizen with the competent diplomatic or consular office of Yugoslavia before he/she reaches the age of 18 years and if he/she applies for registration into a registry book of Yugoslav citizens. The application for registration of a child into registry book of Yugoslav citizens may be submitted by the parent who is Yugoslav citizen. In case that a child is object of guardianship, the application may be submitted by his/her guardian but, if the child is above the age of 14 years his/her consent to that effect is also required. If a child born abroad, whose one of the parents was a Yugoslav citizen at the time of his/her birth, is left without citizenship, he/she acquires Yugoslav citizenship even though he/she has not been reported as Yugoslav citizen or registered in the registry book of Yugoslav citizens in the manner described above (Art. 7 and 8 of the Yugoslav Citizenship Act).

A child that was born or found on the territory of Yugoslavia (a foundling) acquires his/her Yugoslav citizenship by birth if his/her both parents are unknown or of unknown citizenship or without citizenship. The Yugoslav citizenship acquired this way may cease if before he/she reaches the age of 18 years is determined that his/her both parents are foreign citizens. At a request by his/her parents his/her citizenship ceases with the date of delivery of respective decree. If the child is above the age of 14 years, his/her consent is also required for termination of his/her Yugoslav citizenship (Art. 11 of YCA).

The basis for acquisition of Yugoslav citizenship in this manner is to a great extent in agreement with the Convention provisions on child rights to citizenship, especially in relation to the children born on the Yugoslav territory, including those of unknown parents (foundlings). That way the possibility to have a child left stateless is eliminated to a great extent. Still, this possibility exists for a child born in Yugoslavia whose both parents are foreign citizens, and if the regulations of the countries whose citizens they are prohibit acquisition of foreign citizenship by the children born abroad or acquisition of foreign citizenship on basis of such citizenship of one of his/her parents or make such citizenship subject to some additional criteria that deprive some children of their right to have that citizenship.

*Regulations on determining parenthood* (paternity and maternity), as well as adoption regulations to a certain extent, are of significance for a child's right to know as much as possible who his/her parents are.

Yugoslav family legislation anticipates possibility under the conditions determined by law to have a child's maternity or paternity either determined or denied. Maternity is not specifically defined by law, and paternity is determined on basis of the presumption that the mother's spouse is also the child's father (Art. 86 of the MFRA of RS). Extra-marital (out-of-wedlock) paternity is determined through one's admission or on basis of a court ruling. In case of the latter, the right to file a respective court proceeding belongs to the mother, the child, the natural father of the child and also, under certain conditions, the guardianship body. Up to the age of 18 years reached by the child a charge for determination of paternity may be submitted by the mother on the child's behalf, the guardian under consent by the guardianship body and also, under certain circumstances, the guardianship body by strength of its official duty (Art. 88, 98 and 99 of the MFRA of RS). The right to file a court proceeding for denial of paternity or maternity relationship, in addition to his/her legal and natural parents, also belongs to the child. Up to 18 years of child's age the charge may be filed by his/her mother on his/her behalf, or the guardian with a consent by the guardianship body (Art. 104 and 109 of the MFRA of RS).

When *medically assisted methods of human reproduction* are concerned, the law explicitly determines that research into a child's paternity is not allowed if the child was conceived in a procedure of artificial fertilisation of the mother (Art. 101 of the MFRA of RS). Given that the Convention determines that child is entitled to this right "as much as possible" the mentioned legislation solution could not be considered as one opposing this Convention provision.

No obligation on the part of the adopter to inform the adopted child that he/she was adopted is prescribed by Yugoslav laws, whereby *realisation of the right to learn about the biological origin of the adopted child* is left to the adopter's own will. The right of a child to know his/her origin is also restricted by means of regulations on complete

adoption when the respective data about his/her parent(s) who gave the child for adoption are not recorded in the full adoption minutes, and the adopters' names are entered as the parents of the adopted child into the registry book of births (Art. 193 and 194 of the MFRA of RS). Serbian legislation also anticipates a possibility of insight into the relevant documents of full adoption for the adopters and the adopted child who has reached the age of 16 years, whereas the natural parents who gave the child for adoption do not have such possibility (Art. 173 of the MFRA of RS). There is an obvious disagreement between these provisions and the Convention provisions that should be considered in the process of amending the family legislation.

The social community ensures conditions for free and responsible parenthood through measures of social, health care and legal protection of parents and their children, as well as through its system of upbringing, education and information of all citizens (Art. 3 of the MFRA of RS). The basic principle proclaimed in the family legislation is that *relations between parents and their children are based on mutual rights and duties* that are equal without regard of whether the children are born within or out of wedlock (Art. 34 of the MFRA of RS). Parents have the duty and the right to safeguard their children and to look after their lives and health. Children have the right to live with their parents, but they may live separately from their parents only when their justified interests or common interests of children and parents require that. Parents also have the duty and the right to create conditions, by way of their own contribution and utilising services of corresponding social institutions, for adequate upbringing and education of their children and for their training for an active and creative life (Art. 113 to 116 of the MFRA of RS).

## Assessment of the situation and observations

In reference to the issue of recording birth of children in registry books it is necessary to make certain corrections in the law and in the practice of hospital (birth) wards. This was particularly indicated during recent polemics in the public concerning the suspicions created by some parents that their children who allegedly died in various birth wards throughout Serbia have really died. The law does not explicitly prescribe the obligation of identification of the neonates that died after birth, but rather only information given thereabout to the mothers. Since burial is done after such identification, there is no legal obligation on the part of health care institutions to make the identification possible for the mothers too, who are practically the only ones able to do that. Given such practice of health care institutions where deaths of neonates occur, it is clear that such actions of health care institutions is in a collision with the Book of Rules covering the method and procedure for determination of time and cause of death, for autopsy and for procedure concerning dissected parts of body, which in its Article 7 prescribes that during acceptance of the persons deceased in health care institutions for burial an identity check is to be done without exemption. The current legislation also lack regulations concerning obligation of burial of still-borns and neonates who were

born in health care institutions but died there immediately thereafter, so it implies that corpses of the still-borns and neonates remain in the health care institutions, and this is practically a usual procedure applied. The dilemmas of this kind could only be resolved by investigation and court officials, but the situation itself would be different if birth and death were recorded in a different way and if there were no gaps in the legal regulation system.

As far as acquisition of the citizenship status is concerned, although the procedure is considerably facilitated as result of the political changes made in the country in 2002 still a large number of the children, especially refugee children, do not have Yugoslav citizenship, and some of them are still in the status of statelessness, which is unacceptable for the Centre. For that reason the procedure of citizenship acquisition should be accelerated, particularly when one has in mind the negative consequences that the children having no respective status are exposed to. The Centre does not possess the data on the number of children lacking citizenship on the territory of Serbia.

# PRESERVATION OF IDENTITY

***Article 8 of the Convention on the Rights of the Child***

***1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.***
***2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.***

## Regulations in the FRY and the Republic of Serbia

According to Yugoslav legislation, a child's *personal name* may be changed at a request by both parents or his/her adopter, as well as at a request by his/her guardian under consent by the guardianship body. If one of his/her parents is deceased or is not known or is not in position to perform his/her parental right, the personal name may be changed at a request by the other parent. If the parents can not reach agreement about the change, the request is object of decision by the competent guardianship body after it hears both parents. A change of the name of a child above the age of ten years also requires his/her consent (Art. 404 and 405 of the Marriage and Family Relations Act of the Republic of Serbia). After change of the family status through recognition of paternity, conclusion of marriage between the parents, determination of paternity or maternity, or upon challenging paternity or maternity a new personal name may be given within two months from the date of change of that status, and this again requires a consent by the child if he/she is more than the age of ten years (Art. 397 of the MFRA of RS). On the occasion of establishment of an adoption too a new name could be given to a child. If the adopted child is more than the age of ten years, the change of his/her name (and surname) also requires his/her consent (Art. 399 and 400 of the MFRA of RS).

When speaking about *change of child's citizenship*, the law prescribes that the parent who has submitted a request to be released from his/her Yugoslav citizenship may by means of the same request also request a release of his/her children from Yugoslav citizenship. Along with this request one also submits consent by the other parent and an opinion by the competent guardianship body. If the child is more than the age of 14 years, his/her consent is also required. If the parents are divorced, the request for release of the child from citizenship may only be submitted by the parent to whom the child was entrusted for keeping and upbringing on basis of an effective court ruling. Should the other parent not give his/her consent for release of the child from citizenship or his/her place of living is unknown or if he/she has been deprived of his/her working

capacity or parental right, the request for release of the child from Yugoslav citizenship will be accepted if that is in the interest of the child by opinion of the guardianship body (Art. 21 of the Yugoslav Citizenship Act). In case of full adoption, the adopted child of up to the age of 18 years may have his/her Yugoslav citizenship terminated through release if the conditions described under Article 21 of the Yugoslav Citizenship Act are fulfilled. Consent by the adopted child is required if he/she is more than 14 years old. However, Yugoslav citizenship will not be terminated for a child in spite of a full adoption if he/she that way becomes a stateless person (Art. 22 of YCA).

If the person who has obtained a release from Yugoslav citizenship does not acquire a foreign citizenship within one year from the date of delivery of the release decree, the body who brought this decree may annul it at a request by that person (Art. 23 of YCA).

## Assessment of the situation and observations

The legal regulations that refer to the identity and citizenship issues are generally speaking observed and this Centre does possess any data about violation of this right.

The only objection could be made concerning inefficiency of the services and long procedure applied, as well as about the fact that no funds from the budget are ensured for some of the procedures for achievement of this right, but rather the applying party must bear them from his/her own resources.

For details on preservation of adopted child's identity, see Article 21 of the provisions on adoption, as well as Article 7 that refers to name and citizenship.

# FREEDOM OF EXPRESSION

***Article 13 of the Convention on the Rights of the Child***

***1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.***
***2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:***
***a) For respect of the rights or reputations of others; or***
***b) For the protection of national security or of public order (ordre public), or of public health or morals.***

## Regulations in the FRY and the Republic of Serbia

The freedom of expressing opinions in the public is guaranteed by Article 35 of the Constitution of FRY and by Article 45 of the Constitution of RS. The constitutions also warrant the freedom of press and other forms of public information, as well as the citizens' right to express and publish their opinions in public mass media (Art. 36, para. 1 and 2 of the Constitution of FRY, and Art. 46, para. 1 and 2 of the Constitution of RS). Distribution of press and other information may only be prevented on basis of a court ruling stating that they call for overthrow of the constitutional order, reduction of the territorial entirety of FRY, violation of the guaranteed freedoms and rights of people and citizens, or that thereby are caused national, racial and religious intolerance and hatred. The Constitution also guarantees the freedom of creation and publishing artistic works (Art. 53, para. 1 of the Constitution of FRY, and Art. 33 of the Constitution of RS).

The federal and republican regulations on public information (i.e. the Bases of the System of Public Information Act of FRY, and the Public Information Act of RS) regulate in detail the freedom of expression.

## Assessment of the situation and observations

By tradition freedom of expression is a right that "belongs" to adults. However, with the emergence of the Convention on the Rights of the Child, the child right to expression obtains its legal framework. Right to expression is essentially linked with the right to participate in decision-making, and this induces a fear of damage for adults' authority both in large parts of the world and in Serbia. Allowing children to participate in decisions represents a threat for the power and control by the adults. It is not disputable

whether a child could make decisions, depending on his/her development capacity, about things that refer to him/her. The child could make such decisions on his/her own or through assistance by the adults. What is disputable is whether and when this right would really be recognised and its exercise ensured in Serbia? We are aware of the fact that our country ought to enable development of the mechanisms for implementation of the right to participation too and, consequently, of the right to expression.

Since the right to participation as contained in Article 12 also includes to a great extent the right to expression, any estimates and comments concerning that right refer to this right as well. The special feature of the right to expression as contained in Article 13 is in the fact that it goes beyond the personal and family sphere (this does not necessarily mean that the right to participation only refers to the personal and family sphere). That is, it exclusively refers to enabling access to information and ideas. In that sense the child right to expression is closely linked with the right to access to respective information (Article 17) and the rights related to education (Articles 28 and 29), so the achievement possibility feature will also be partially presented in the description of those rights.

# ACCESS TO APPROPRIATE INFORMATION

***Article 17 of the Convention on the Rights of the Child***

***States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:***
***(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;***
***(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;***
***(c) Encourage the production and dissemination of children's books;***
***(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;***
***(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well being, bearing in mind the provisions of Articles 13 and 18.***

## Regulations in the FRY and the Republic of Serbia

The Constitution of the FRY (Articles 35 and 36) guarantees the right to freedom of belief, conscience and public expression of opinion, as well as the freedom of the press and other forms of public information. On the basis of the guarantees for the mentioned rights, it could be assumed that they include the right of the child to access to information, although this is not specifically stated. The Constitution of the Republic of Serbia (Articles 45 and 46) contains the same solutions. However, both Constitutions provide the possibility for the citizen to request and receive information from the state bodies, organisations and officials (Art. 44 of the Constitution of the FRY and Art. 45 and 46 of the Constitution of the Republic of Serbia). There are no constitutional provisions restricting this right, including from the age aspect, which could be

interpreted as the recognition of this right to the child. Likewise, the Public Information Act of the Republic of Serbia (Article 1) recognises the freedom of public information, however requiring that the media inform the public truthfully, timely and fully (Article 4). This law recognises the right of citizens to be informed on public issues (Article 3).

The answers to a comparative review of the compliance of other elements contained in Article 17 of the Convention with the national legislation should be sought through the right to freedom of expression (Article 13 of the Convention), aims of education (Article 29 of the Convention) and the rights of children belonging to minority groups (Article 30 of the Convention). Otherwise, Article 17 of the Convention mostly deals with the concrete measures a State Party is obliged to introduce, i.e. the policy implemented by the state's government and its competent bodies, rather than its legislation, save for the above-mentioned and where international treaties are concerned, of which, in this publication, we state only those of universal character.

## Assessment of the situation and observations

In practice, systematised and reliable data on the number and type of media intended for children and youth is non-existent. The constantly changing policies of the electronic media prevented us from obtaining information in this sphere on the type of children's and youth programmes, their ratings and accessibility.[7]

As for providing access to information, the most active in this field until recently have been international governmental organisations (UNICEF, UNHCR, UNHCHR, etc.), international non-governmental organisations (Save the Children, CARE, Handicap International, etc.) and national non-governmental organisations (Child Rights Centre, Friends of Children of Serbia, Humanitarian Law Centre, etc.). The state and its institutions are still mostly passive, slowly starting the process of responding to requests for providing information to children. This situation has improved since the state has started the process of disseminating information, which primarily enables access to institutions for other organisations, rather than initiating some specific programmes. The most important achievement in this sphere, as seen by the Child Rights Centre, is the introduction of the civil education course in elementary and secondary schools by the Ministry of Education and Sports of the Republic of Serbia. The course offers a range of materials of social and cultural interest to the child. There is a need for other sectors to get involved more actively in the process of providing information to children, particularly the health, social and cultural sectors.

[7] Data on children's views on the role of the media and the prevailing image of the child in the media are presented in the book: The Invisible Child - The Image of the Child in the Media, by Nada Korać and Jelena Vranješević, (Yugoslav) Child Rights Centre, 2001.

Bearing in mind the importance of this right, in 2001, the Centre for the Advancement of Legal Studies, a non-governmental organisation from Belgrade, prepared a Draft Law on Free Access to Information of Public Importance. The organisation is in the process of lobbying the Government of the Republic of Serbia and MPs to review the proposal.

# FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

### *Article 14 of the Convention on the Rights of the Child*

***1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.***
***2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.***
***3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.***

## Regulations in the FRY and the Republic of Serbia

Article 43 of the Constitution of FRY guarantees *freedom of belief, public or private confessing one's religion and religious rituals* and also prescribes that nobody is obligated to declare his/her religious belief. Identical guarantees are contained in the Constitution of Serbia (Article 41). In its Article 18 the Constitution of FRY also determines that Church is separated from State and that confessions are equal and free in their practice of religious affairs and rituals. Freedom of practising religious affairs also implies the freedom of organising by and within different confessions and religious tutoring dedicated to children, but attending such tutoring is subject to parents' approval and, furthermore, it may not be organised in such a way so as to affect the children's attendance of regular school.

According to the family right regulations, parents have a duty and a right to direct their children toward adoption of family and social values, as well as to produce conditions for proper upbringing and education of their children and for their training for an active and creative work through their own contribution and by means of services provided by various state institutions (Art. 115 and 116 of the Marriage and Family Relations Act of the Republic of Serbia).

When it comes to children who are members of minority ethnic groups, the acts regulating the elementary and intermediate education anticipate the possibility of organising lectures in the minority languages or bilingual lectures with elements of the national culture. A detailed presentation of these regulations is given together with that of Article 30 of the Convention.

## Assessment of the situation and observations

When it comes to practice non-governmental organisations have expressed their concern after the 2001 adoption of the Decree Introducing Religious education and an Alternative Subject in Elementary and Secondary Schools of RS, because the human right to freedom of conscience and religion was incorrectly interpreted during the discussions concerning introduction of Religion as a subject in state schools. First of all, it was incorrectly interpreted that the right to freedom of conscience and religion meant an obligation on the part of state to introduce in public schools religion lectures, either mandatory or optional. The main objections also concern the fact that those pupils who had chosen to take this subject did not have an opportunity to study the most significant religions but rather just the one they belong to. In a multinational and multiconfessional society such as our own this does not contribute to the development of understanding among peoples. On the other hand, the subject intended as the alternative one that was meant to inspire pupils' dedication to democracy applies just to the children not taking Religion. Also, non-governmental organisations have placed their objection that by means of a decree such as this one the Government of Republic of Serbia has violated its international obligation accepted through the ratification of the Convention on the Rights of the Child stating in its Articles 12, 13 and 14 that the State Party is obligated to ensure in an appropriate manner the freedom of thought, conscience and religion and free expression of opinion for children. Namely, this Decree does not recognise the children's right to participate in the making of decisions that affect them more than anybody else.

This field was in 2002 regulated by adoption of a new Elementary School Education Act of the Republic of Serbia that anticipated taking religion lectures and civil education as either optional or mandatory subjects, whereby children were deprived of the right to attend lectures in both subjects or to avoid them both.

When speaking about the right to conscience, we feel that the regulations covering the possibility of placing conscience objection concerning armed military service are inappropriate and do not allow using this right in full. Namely, children may only use this right at the moment of recruitment (the first recruitment is at the age of 17 years), and the Act does not leave possibility for any later exercise of this right. We feel that this decision should not be definite and that a possibility should be allowed for this right at any moment until a person is sent to his military service. We are also referred to such viewpoint through our awareness of the development possibilities of children for making a decision such as this one.

# FREEDOM OF ASSOCIATION AND PEACEFUL ASSEMBLY

### *Article 15 of The Convention on the Rights of the Child*

***1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.***
***2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.***

## Regulations in the FRY and the Republic of Serbia

The Constitution of the FRY in its Article 41 guarantees the right to freedom of political, trade-union or other association and activities of citizens, without the requirement of a permit, subject to registration with the competent authorities. This right is restricted in terms of prohibiting activities aimed at the violent overthrow of the constitutional order, violation of the territorial integrity of the Federal Republic of Yugoslavia, violation of the guaranteed rights and liberties of the man and citizen or the incitement of national, racial, religious or other intolerance and hatred. The same solutions are provided by the relevant provisions of the Constitution of the Republic of Serbia (Article 44).

The right to peaceful assembly and possibilities for its restriction are also regulated by the Constitution of the FRY. According to Article 40 of the Constitution, citizens are guaranteed the freedom of assembly and other peaceful gathering, without the requirement of a permit, subject to prior notification of the authorities. This right could be provisionally restricted by a decision of the competent authorities, in order to obviate a threat to public health or morals or for the protection of the safety of human lives and property. Identical guarantees are provided by the Republic Constitution (Art. 43 of the Constitution of the Republic of Serbia). However, this right could be restricted in order to prevent the obstruction of the public traffic.

The exercise of the right to association, i.e. the right to found associations, their registration and removal from the registry, are regulated by law. From the aspect of the Convention, it is important to note that, as is the case with the majority of other basic rights and freedoms, constitutions guarantee this right to all citizens, failing to contain any specific guarantees or prohibitions in regard to children. However, Article 9 of the the Act on the Association of Citizens in Societies, Social Organisations and Political Organisations of FRY prescribes that the founders of associations can only be citizens

who hold the right to vote, i.e. older than 18 years. It is up to the statute of each association if children can be its members and no prohibitions are contained in the legislation in this regard. On the other hand, the Act on Social Organisations and Citizens Associations of the Republic of Serbia, in its Article 27, enables children to be founders of an association, provided that the Alliance of Socialist Youth or a self-governing organisation and community take part in this founding!

These legal solutions raise the issue of whether the fact that the founders of associations on the territory of the FR Yugoslavia can only be adult citizens limits the right of the child established by Article 15 of the Convention. Although such interpretation is possible, it should be noted that the right to association is not exercised only through the right to be a founder of an association, but also through membership in an association whose members are adult citizens (for non-political associations, the law prescribes a minimum of 10 founders). This indicates a partial non-compliance of the federal regulations with this provision of the Convention and should be kept in mind in possible amendments of the relevant regulations.

## Assessment of the situation and observations

In practice, despite the extensive criticism and efforts made by non-governmental organisations, the regulations in this sphere remain unchanged. In the last decade of the 20th century, the right to peaceful assembly was most often brutally violated, while the right to association was often obstructed and inhibited, particularly in the Republic of Serbia. Extensive violations of the right of the child to peaceful assembly, as well as the misuse of children for political purposes occurred in the period of 1996/97 and 1999/2000. Primarily responsible for these violations were state bodies (the relevant ministry, school directors etc.), but the media also demonstrated large misunderstanding of child rights by poor reporting or disregarding this important issue.[8] However, since the political changes in 2000, the realisation of these rights has improved. State bodies no longer obstruct peaceful assembling and association, but the need to change the law remains.

In the course of the troubled events before the 5th October 2000, hundreds of children throughout Serbia took part in the organised protests against the government, exercising their right to association (the "Otpor" group) and peaceful assembly. Expressing their affiliation with the movement against Milošević's rule, children wore insignia such as badges and T-shirts or carried signboards and organised peaceful gatherings or other

[8] See: The Misuse of Children for Political Purposes - The state is obligated to enable children to hold peaceful demonstrations. Nevena Vučković Šahović, Naša borba, 9th December 1996.

non-violent activities. In response to their activities, only in July and August 2000, the police unlawfully arrested several dozens of children (aged 14 to 18). During these arrests, children were brought to police stations, interrogated and held in custody - in most cases in the absence of their parents or legal guardians. According to the assessment of the (Yugoslav) Child Rights Centre, the police treatment had elements of torture: emotional abuse, maltreatment, threats, intimidation and the use of physical coercion.

Bearing in mind these events and the legal non-compliance of the regulations concerning the right of a juvenile to association, the Child Rights Centre lobbied for the introduction of the appropriate provision into the law on non-governmental organisations, which would ensure the right to association for children from the age of 15. This would also be a way of eliminating non-compliance in relation to the age for employment (15, according to existing regulations) and the adequate right to association that stems from the right to labour. The adoption of this law is anticipated in the spring of 2003.[9]

[9] This is also relevant for the issues concerning the definition of the child, the right to expression, protection of children in labour and proceedings related to arrests.

# RIGHT TO PRIVACY

## *Article 16 of the Convention on the Rights of the Child*

***1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.***
***2. The child has the right to the protection of the law against such interference or attacks.***

## Regulations in the FRY and the Republic of Serbia

In Yugoslav legislation, the *constitutional guarantees of protection from arbitrary or unlawful interference* in private or family life, the home or personal correspondence, and from unlawful attack on the honour or reputation of the individual refer to all persons regardless of whether they are minors or adults, and are foreseen in the provisions of Art. 22, para. 1, and Art. 31 and 32 of the Constitution of the Federal Republic of Yugoslavia, as well as Art. 18, 19, and 21 of the Constitution of the Republic of Serbia.

These clauses guarantee the inviolability of the physical and psychological integrity of the individual, his/her privacy and personal rights, the inviolability of his/her home as well as the secrecy of his/her correspondence and all other means of communication.

Additional laws guarantee the right to privacy. Hence, the Public Information Act of the Republic of Serbia envisages the obligation to guarantee that the activity of public information respects the inviolability of human dignity and the right of the individual to his/her private life. Namely it is prohibited to publish or reproduce information, articles or data in which offence is given to the honour and reputation of an individual, that is to say, which contain offensive language or indecent words. Otherwise, the damaged person may seek retribution by bringing a lawsuit before the relevant court (Article 11). The penalties are extremely high for the editor in chief of a newspaper and twice as high for the founder and the publisher of the newspaper and are fixed in nominal amounts (Article 69). Federal criminal legislation lists a series of criminal offences such as the violation of the inviolability of the home, the illegal search of a home, premises or persons, the violation of the secrecy of letters and other types of postage, unauthorised wire tapping and sound recording and the unauthorised taking of photographs (Art. 129 to 195 of the Criminal Code of the Federal Republic of Yugoslavia), the sanctioning of which has the purpose of preventing unauthorised interference in the privacy of any person. However, only officials employed in the federal organs may be authorised to carry out these activities. The Criminal Code of RS

lists offences against the freedoms and rights of the individual and citizen that may be committed by any person, and this includes the violation of the inviolability of the home, unlawful searches, unauthorised wire tapping and sound recording, the unauthorised taking of photographs, the unauthorised publication of another person's correspondence, portraits and photographs, films or phonograms and the violation of the secrecy of letters and other types of postage (Art. 68 to 72 of the Criminal Code of the Republic of Serbia).

Criminal offences against the individual's honour and reputation are listed in the republic regulations. Sanctions are foreseen for the criminal offences of slander, insult and the act of disclosing personal and family circumstances (Art. 92 to 94 Criminal Code of the Republic of Serbia).

The Criminal Procedure Code of the FR Yugoslavia envisages special *measures for the protection of the privacy of the child in court proceedings*. One of these measures is the exclusion of publicity, which is mandatory in the case of trying a minor (Art. 494 of the Criminal Procedure Code of the FR Yugoslavia). Likewise, the progress of court proceedings involving a child cannot be published without the permission of the court and in the case when this permission is given, the name of the child and other data, on the basis of which one may conclude his/her identity, cannot be disclosed (Art. 473 of the Criminal Procedure Code of the FR Yugoslavia).

## Assessment of the situation and observations

According to the data of the Ministry of Interior of the Republic of Serbia, the number of criminal offences committed against minors in connection with respect for the right to privacy in the period from January 1, 1998 to October 31, 1998 was as follows:

| Article of CC of RS | 1998 | 1999 | 2000 | 2001 | 2002 | TOTAL |
|---|---|---|---|---|---|---|
| **72** | | | | 6 | | 6 |
| **194** | 9 | 11 | 15 | 7 | 9 | 51 |
| **195** | 789 | 514 | 587 | 768 | 559 | 3.217 |

The Centre does not have data on practice in court or judicial or administrative procedure. A precise analysis of the relation of the media towards protection of the right of the child to privacy has not been carried out but from an insight into a limited number of printed media (daily newspapers), one may notice individual but important examples of direct (mention of the full name and surname) or indirect (mention of the name of the parent/guardian and address) publication of the identity of the child in cases when he/she was the victim of an unlawful act, when he/she was convicted or involved in some case, in another way. As a good example of the media's irresponsible acts in the

context of violation of the right of the child to privacy, we mention the case of publishing the photograph of a naked minor on the front page of the most widely circulated newspaper in the country. The photograph was, incidentally, taken (and most probably directly sent) by the teachers, who had secretly photographed one of the activities in an awkwardly conducted game in a summer camp, in which the participants were (publicly) supposed to exchange their clothes in a group (the incident was connected with the activities in one of the summer camps organised by the Ministry of Education and Sports of the Republic of Serbia). We do not know whether the prosecutor's office launched proceedings against the media or against another party that had violated this right.

The current survey of the Child Rights Centre (see footnotes from Article 3 and 12) is an important source of data that can be treated as one of the indicators of the practice of certain institutions concerning the right of the child to privacy, and also the prevailing views in our culture. All the mentioned data are assessments and opinions of adolescents and where this is accessible, they are supplemented by the views of adults.

- *The practice of health services, primarily school dispensaries, during the regular medical check-ups of 55% of the respondents stated that they felt like 'they were naked in a shop window', seeing that the doctor examined them in a group. As the logical extension of this, 46% of the respondents found themselves in the position of having the results of their tests and/or diagnoses being publicly announced to them as a group. A quarter of the respondents said that sometimes 'the doctor shouted at them'. There were 7% who said that he/she had ridiculed them in front of the others, and 5% stated that the doctors had 'touched them in an indecent manner'. Generally speaking, the respondents in 57% of the cases assessed that it was not unusual in regular contacts with the health services for there to be a breach of their privacy. Meanwhile, the health workers themselves in 95% of the cases agree with the claim that children have the right to respect for their privacy and secrecy and the confidentiality of their medical data. In this way, we again encounter a discrepancy between views or stands and practice itself.*

- *Institutions of social protection and collective centres for refugees/the displaced persons*
  *The protection of the right to privacy in conditions of institutional/collective accommodation is certainly one of the great challenges to systemic solutions, given that these centres, by their very nature, represent a powerful barrier to the enjoyment of this guaranteed right. A statistically significant percentage of children in institutions of social protection (which also includes children without parental care and children with special needs) indicates frequent violations of the right to privacy (the inability to hold a telephone conversation without the presence of a teacher or other children, the entry of the teacher or other children into the dormitory without first knocking on the door, the communication of important*

*personal information in a group, the restriction of visits by friends). Children in collective centres for refugees/the displaced persons, clearly point to elementary obstacles in enjoying this right (collective dormitories with up to thirty beds, inadequately equipped sanitary facilities, the lack of separate premises for work and studying).*

- *Educational institutions*
  *As we mentioned in the assessment of the situation and observations from Article 3, generally teachers maintain a moderately positive attitude towards participative rights, within the framework of which the right to privacy ranks the highest. Viewed from the perspective of the pupil, respect for the right to privacy, defined as freedom of choice in clothing and appearance in the classroom was positively assessed in 57% of the cases.*

Generally viewed, respect for the right to privacy as a reflection of the social and cultural environment, represents the best indicator of the modern (liberal) attitude towards participative rights in general. Data indicates that the environment, which respects the right to privacy automatically, represents a context in which the child freely expresses its opinion, takes part in decision-making and joint activities (and vice-versa), (see more in Article 12). However, regardless of how much the prevailing views in a culture unquestionably have an effect on the enjoyment of this right (like others from the group of participative rights), it cannot provide justification for its (their) violation. Apart from promotional and educational activities to raise the level of awareness of the importance of respect for them, certainly there are other mechanisms that can encourage conditions for improvement in this area. Legislative solutions definitely should offer clearer provisions, although in certain situations the improvement of practice can be achieved in a more focussed and specific way, at the level of regulations and rulebooks. The best illustration of this are the institutions of social protection in which there is absolutely no reason at all for the right of the child to his/her privacy should not be guaranteed by definite rules about what action to take (the same as measures in the case of violating them) in situations that are directly connected with the fulfilment of this right (e.g. creating conditions for the privacy of telephone conversations, the communication of personal and confidential information and suchlike). Other areas can also be regulated according to the same model, and especially administrative procedures.

# THE RIGHT OF THE CHILD TO PROTECTION FROM TORTURE AND ILLEGAL OR ARBITRARY DEPRIVATION OF LIBERTY

***Article 37 (b-d) of the Convention on the Rights of the Child***

***States Parties shall ensure that:***
***(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;***
***(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;***
***(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.***

***Article 37 (a) of the Convention on the Rights of the Child***

***States Parties shall ensure that:***
***(a)No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.***

## Regulations in the FRY and the Republic of Serbia

The clauses of Articles 23 to 25 of the Constitution of the FRY envisage that everyone has the right to personal freedom and that no one can be deprived of their freedom except in the cases and in the procedure defined by the law. Pre-trial detention and the prolongation thereof is possible on the basis of a court decision if this is necessary for conducting criminal proceedings, but the duration of pre-trial detention must be reduced to the shortest possible period of time. The Constitution also guarantees respect for personal integrity and dignity in criminal and all other proceedings, prohibits all violence against the person who has been deprived of freedom or whose freedom has been limited, every extraction of confession or statement, as well as subjection to torture, humiliating punishment and treatment. The right to swift legal and other appropriate assistance and to re-examination of the lawfulness of the deprivation of freedom is guaranteed by the fact that a decision with a statement of reasons for pre-trial detention must be handed to the person at the time of his/her arrest or within 24 hours of being placed in custody at the latest, and the person in custody has the right to appeal against this decision, on which the court delivers its decision within 48 hours. The right of the person who has been detained to immediately engage a defence counsel is also guaranteed by the Constitution of the FRY, and is prescribed in greater detail in the Criminal Procedure Code of the FR Yugoslavia. The Constitution of the Republic of Serbia also contains similar clauses (Art. 14 to 16, 24 and 26 of the Constitution of the Republic of Serbia).

The Criminal Procedure Code of the FR Yugoslavia envisages a series of special clauses that are applied in the case of persons who have committed criminal offences as minors (up to the age of 18 years) and at the time of initiating proceedings, or a trial, they were not older than 21 years of age (Art. 464 the Criminal Procedure Code of the FR Yugoslavia - hereinafter CPC of FRY).

The juvenile judge can order a child to be placed in *pre-trial detention* during the preliminary procedure in exceptional cases, when there are reasons for this according to Article 486, paragraph 1 of CPC of FRY - if the child is hiding or there are other circumstances that signal the danger of him/her escaping, if there is reason to fear that he/she will destroy the traces of the criminal offence or influence the witnesses, that he/she will repeat the criminal offence, finish off an attempted criminal act or commit a criminal act that he/she has threatened to carry out, and also when it involves an offence for which a sentence of 10 years' imprisonment or more may be delivered, and the manner of committing the crime, the consequences or other circumstances indicate that pre-trial detention is necessary in order to conduct criminal proceedings without hindrance or danger to other people. On the basis of the juvenile judge's decision, pre-trial detention can last one month at the most, and the juvenile trial chamber of the same court may prolong it by two more months at the most for justified reasons (Art. 486, paragraph 2 of CPC of FRY). As a rule, a child is held in custody separately from adults.

However, the juvenile judge can decide that the child be held in pre-trial detention with an adult person if the confinement of the child lasts longer, and it is possible to place him/her in a room with an adult person who will not have a harmful effect on him/her (Art. 487 of CPC of FRY).

The child can have a *defence counsel* from the beginning of the preliminary procedure. However, if proceedings are being conducted for a criminal offence that carries a penalty of more than five years' imprisonment, the child is obliged to have a defence counsel from the start of the preliminary procedure, and for other offences that carry a milder sentence - if the juvenile judge considers that he/she needs a defence counsel. Only a lawyer can act as defence counsel for a child (Art. 467 of CPC of FRY).

The *penalty of juvenile prison* may be pronounced on children who were older than 16 years at the time when they committed a criminal offence. Juvenile prison sentences cannot last less than one or more than ten years, and the court cannot pronounce a juvenile prison sentence that is longer that the prescribed penalty of imprisonment for that offence, but it is not bound to pronounce the least prescribed measure of that penalty (Art. 78 of the Criminal Code of FRY). In the Republic of Serbia, persons sentenced to serving penalties of juvenile prison, serve their time in a home for juveniles until they are 23 years old, and in exceptional cases they may remain in the home even after they are at the age of 23 years if this is necessary for them to complete their schooling or if the remaining duration of their penalty is not longer than six months (Art. 181 of the Law on the execution of penal sanctions of the Republic of Serbia - hereinafter LEPS RS). The child is given the type of job in the home and the stream of secondary education, which the home is able to provide, bearing in mind his/her psycho-physical abilities, as well as his/her inclinations for a particular job or kind of education (Art. 182 LEPS RS). In addition, the child is offered the possibility of engaging in sports activities and spending some time outdoors (Art. 184 LEPS RS). If the child behaves well and makes an effort to work hard in school, the principal of the home may give a child leave of absence to visit his/her parents or close relatives for a period of 14 days, twice a year at the most (Art. 183 LEPS RS). The law also envisages that a child may be given a measure of solitary confinement (Art. 186 LEPS RS).

There is no provision for the *death penalty* in federal or republican regulations. Nor does Yugoslav legislation recognise the sentence of life imprisonment.

As for domestic positive legal regulations that refer to Article 37 (a) of the Convention, according to Article 25 of the Constitution of the FRY, no one can be subjected to torture, humiliating punishment or treatment. Identical guarantees are contained in Article 26 of the Constitution of the Republic of Serbia.

The Criminal Code of FRY prohibits *physical abuse in the performance of official duties*, which is defined as mistreatment, inflicting serious physical or mental suffering,

fear, insults or generally, behaviour that violates human dignity, when the perpetrator is a person employed in the federal organs (Art. 191 of the Criminal Code of FRY). Republican regulations also contain a provision referring to mistreatment in the line of duty, the perpetrator of which can be an official. Besides this, the criminal offence of inflicting serious or minor bodily injury, where any person can appear as the perpetrator, is sanctioned (Art. 53 and 54 of CC of RS).

As for the death penalty it cannot be pronounced either under the Constitution of the FRY or under the Criminal Code of FRY or of RS. Also, our laws do not recognise the sentence of life imprisonment. The maximum penalty for adults is 40 years' imprisonment and for juveniles it is ten years' imprisonment in a juvenile detention house, with the possibility of conditional release, on which a court of the first instance is to decide.

The *mental and physical integrity of the juvenile* is also protected in other chapters of the Criminal Code of RS. For instance, violations of an individual's dignity and ethics include the offences of rape and unnatural sexual acts, adultery and unnatural sexual acts against the disabled, adultery or unnatural sexual acts against a person who is below the age of 14, adultery or unnatural sexual acts by the abuse of office in which the passive object is a minor, whether in the fundamental or qualified forms of these criminal offences.

See more about the violation of the right to mental and physical integrity - of children, who are members of minorities, under Article 30 of the Convention.

## Assessment of the situation and observations

With regard to the application of the Criminal Code of the Republic of Serbia (CC of RS), according to the data of the Ministry of Interior of the Republic of Serbia, the number of criminal offences committed against minors in the period from January 1, 1998 to October 31, 2002 is as follows

| According to the article of the CC RS | year 1998 | year 1999 | year 2000 | year 2001 | year 2002 | TOTAL |
|---|---|---|---|---|---|---|
| **53** | 128 | 117 | 136 | 152 | 124 | 657 |
| **54** | 93 | 109 | 110 | 113 | 117 | 542 |
| **66** | | 1 | | | 2 | 3 |

The relevant clauses of the Criminal Procedure Code of the FR Yugoslavia, in the old and the new text, are adjusted to the requirements of the Convention. On the other hand,

results in practice are not so good. Several indicators testify to this. Although defined in the law as an exception, the measure of pre-trial detention, as a rule, functioned in practice. Other measures (earlier Art. 473 and 483, now 4485 and 495 of CPC of FRY) were applied only sporadically. At the end of the eighties, on the territory of the District Court in Belgrade,[10] the measure of temporary placement in a shelter[11] was pronounced in about 30 cases, at the most. In the past five years, this was done in only two or three cases. Some other measures (increased supervision, placement in an institution of correctional education) were not applied at all. All of this leads to the unreasonably frequent decision of assigning minors to pre-trial detention. On several occasions, the professional public criticised this kind of trend. Due to the lack of other grounds, the courts resort to the reasons stated in Article 142 of CPC of FRY, and decide on pre-trial detention because of the "danger of escape". The question is whether the minor has anywhere at all to escape? That is why it seems that the courts should be more cautious in evaluating whether the conditions have been fulfilled for issuing the measure of pre-trial detention. A possible solution may be to decide more often in favour of the measure of temporary placement and supervision, for which there are provisions in the law.

The other problem is the sojourn itself of minors in prison. There are, admittedly, premises for minors in district prisons. However, if there is only one minor in detention, he/she must be accommodated together with adults in order to avoid his/her isolation. A far greater problem is the stigmatisation of the minor, the lack of concept that accompanies his/her sojourn, the negative and aggressive atmosphere that prevails in prison conditions and practically leads to inflicting harm on his/her mind and behaviour. A good solution would be to engage professional workers, pedagogues and psychologists, who would create a concept for working with minors, who are in prison.

According to the House Rules of detention[12], the same legal rights belong to minors as those of adult prisoners, according to the Law on the execution of criminal sanctions (LEPS). The model Juvenile Justice Act (the working group of the Child Rights Centre in collaboration with the Danish Centre for Human Rights and the ministries of justice and social welfare of the RS) introduces significant novelties in keeping with international standards that place additional emphasis on measures of pre-trial detention being advisable only in exceptional cases, and on the urgency of treatment.

[10] The Belgrade District Court, the First Municipal Court, and the Municipal Courts in Mladenovac and Lazarevac, which have jurisdiction in procedure with minors, encompass this territory.

[11] The Shelter for Children and Young People in Belgrade.

[12] Document adopted by the Ministry of Justice of the Republic of Serbia.

The results of research show that in 70% of cases, pre-trial detention for minors lasts up to a month and only in just under 5% of cases, over three months.

The conclusion is that we should be more consistent in implementing Article 37 b-d, particularly in practice. This requires special training for police, courts, centres of social work and educational workers. So far the state has not done much in this domain, as opposed to some non-governmental organisations. See also commentary on Article 15.

# *IV*

# Family Milieu and Alternative Child Care

# THE RIGHT TO PARENTAL CARE

***Article 5 of the Convention on the Rights of the Child***

***States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.***

## Regulations in the FR Yugoslavia and in the Republic of Serbia

Yugoslav family legislation does not define the *family*. However, most of the regulations of family law refer to the family in the closest sense (parents and children), while fewer of them (for example those referring to the obligation of support, or an obstacle to marriage) regulate relations within the wider circle of relatives.

On the other hand, according to the Law on Social Care of Children of the Republic of Serbia, the family consists of a married or unmarried couple, children (born into the marital or extra-marital union, adopted and step-children), relatives of the first degree, and in the adjacent line - of the second degree of kinship, on condition that they live in the same household (Art. 6 of the Marriage and Family Relations Act of the Republic of Serbia - hereinafter MFRA of RS).

According to Article 3 of the MFRA of RS, society provides the conditions for free and responsible parenthood through measures that deal with the welfare, health and legal protection of parents and children, and through the system of upbringing, education and information of citizens. *Parents* have the duty and the right to protect their children and take care of their life and health, to develop relations of confidence and togetherness and guide them to cultivate family and social values (Art. 113 and 115 of the MFRA of RS). Parents also have the duty and right to make provision by their own personal contribution and by using the services of the relevant institutions of society for the appropriate upbringing and education of children, to enable them able to live an active and creative life (Art. 116 of the MFRA of RS). They are obliged to take care, in keeping with their possibilities, of the schooling and professional education of their children, bearing in mind the children's capabilities, inclinations and wishes (Art. 117 of the MFRA of RS). The parents exercise their parenthood rights jointly and in agreement, and in the event of their disagreement, decisions are made by the guardianship organ (Art. 123 of the MFRA of RS). In the event of one parent exercising

parenthood rights, in accordance with their agreement, or by decision of the guardianship organ, or that of the court, both parents are to decide, in agreement, on issues that are important for the child's development, on condition that the other parent fulfils his/her duties towards the child (Art. 126 of the MFRA of RS). The guardianship organ generally supervises the exercise of parenthood rights (Art. 132 of the MFRA of RS). If it is in the interest of the child, the guardianship organ will warn the parents about flaws in the upbringing of the child and help them in bringing the child up properly, and it may also advise them to address a certain counselling service, health, welfare, educational or other relevant organisation, on their own or with the child (Art. 134 of the MFRA of RS).

*Children without parental care* enjoy the special protection of society (Art. 13 of the MFRA of RS). The protection of children without parental care is provided, in keeping with their needs and the capabilities of the social community, by providing conditions for the kind of development of these children that will compensate for the loss of a parent or parental care in the best possible way (Art. 150 of the MFRA of RS). The basic forms of protection of these children, under family law, are adoption, organised placement with another family and other forms of sheltering in a family (Art. 148 of the MFRA of RS). The same rights and duties are established between the adopter and the adopted child that exist between parents and children, and the adopter shall only be a person, who has the personal qualities required for the successful exercise of the rights and duties of parenthood (Art. 151 and 154 of the MFRA of RS). Children without parents or parental care, and children, whose development is disturbed by the situation in their own family, may be sent to another family, where the circumstances that are suitable for their development, upbringing and enable them to become independent. Family sheltering may also be provided for children whose upbringing has been neglected and for children with physical or mental needs (Art. 200, para. 1 and 2 of the MFRA of RS). Placement is provided with families that can successfully perform parental duties, especially with regard for the appropriate care, upbringing, education and help the child to become able to lead an independent life (Art. 202 of the MFRA of RS), and the contract on placement with a family consists primarily of the list of rights and duties of this family (Art. 208, para. 3 of the MFRA of RS). However, during the child's stay with a family, the parents' or guardian's rights and obligations towards the child do not cease (Art. 200, para. 4 of the MFRA of RS), and the family is obliged to enable the parents to visit the child, except when the guardianship organ decides otherwise (Art. 208, para. 4 of the MFRA of RS). The organ responsible for guardianship work shall monitor the development of the child placed with another family, and is obliged to warn the family about flaws concerning the care, protection and upbringing of the child, and give recommendations for the correction of these flaws (Art. 213, para. 1 and 2 of the MFRA of RS). The guardianship organ shall place a child, who is without parental care, with a guardian (Art. 265 of the MFRA of RS). A child's relative is the primary choice as a guardian, if it is in the child's interest (Art. 244 of the

MFRA of RS). The guardian is obliged to conscientiously care for the child, especially for his/her health, upbringing, education and making him/her able to live independently (Art. 266 of the MFRA of RS).

## Assessment of the situation and observations

In the Republic of Serbia, the earlier law on the social community's care for children regulated "the system of social care for children, based on the rights and obligations of parents to take care of the upbringing and education of their children, the rights of the child to living conditions that enable his/her normal physical and mental development, and on the obligation of the state to provide this for him/her" (Article 1). Besides social benefits, now regulated by the Law on Family Cash Benefits,[13] the previous law regulated the entire field of pre-school upbringing and education, through the joint jurisdiction of three ministries of the Republic of Serbia: the Ministry for Family and Children (abolished in 2001, its jurisdiction was partly transferred to the new Ministry of Social Affairs), the Ministry of Education and Sports and the Health Ministry.

The regular payment of welfare benefits for families and children began only in 2001 (child benefit, maternity benefit and parents' benefit). The state's debt at the end of 2000 was 32.3 million German marks, i.e. 16.15 million Euro, and at the beginning of 2001, the Serbian government issued bonds for the payment of child benefit arrears[14].

Apart from the shortcomings in the law (treating almost the entire issue of pre-school upbringing and support to early development through the institutional framework of state "institutions for children", Art. 2 and 3), the system of social care for children has never carried out its proclaimed goals.

Around 25% of pre-school aged children (from one to seven years of age), are included in various forms of educational and upbringing programs in pre-school institutions, and 70% of this number are included in day programs that last eight or more hours, but capacities are insufficient. In view of the fact that almost no new facilities have been built during the past ten years, the number of rejected children, for whom parents applied to pre-school programs, has grown systematically (for example, from 3 800 in 1990/91 to 11 200 in 1998/99). At the same time, there are vast regional differences in the development of the network of capacities and the number of children included: poorly developed municipalities have only 11% of the capacities they need, and the number of children covered is 7,7%; there is a similar disproportion between towns and villages (50% of children covered in towns against 12% in villages). According to

[13] Article 24 of this law is in contradiction to "the child's best interest", because it favours the placement of children with special needs ("children with impeded development" in the text of the Law) in separate groups, instead of encouraging the inclusive approach

[14] National report about the realisation of goals of the World Children's Summit, Government of the FR Yugoslavia, 2001.

figures obtained from the Ministry of Social Affairs of the Republic of Serbia, there are 159 state-owned pre-school institutions[15], one private institution and several private "agencies", registered for providing services to parents of pre-school aged children. The standards regarding the number of children in the educational groups of pre-school institutions envisage that groups in baby-care centres consist of ten children aged up to 18 months, 15 aged between 18 and 24 months, and 18 aged between 24 and 36 months; in kindergartens, one group should have 23 children aged between three and four, 25 aged between four and five, 30 aged between five and seven, and 20 children in mixed groups, aged from three to seven. For agencies, this number is ten per group.

Although there is a formal[16] possibility for the organisation of various programs and services intended for children and families with children of pre-school age, the offer within public pre-school institutions was reduced during the 1990s, with the exception of pre-school groups (three-hour programs in the year before the beginning of elementary school, financed out of the republican budget). During the same period, the program contents, devised at the initiative of the third sector - local, international and foreign non-governmental organisations - developed significantly. They were primarily geared to the least covered, neglected and most vulnerable groups: the children of refugees and the displaced, of certain ethnic groups (Roma), and children with special needs.

However, there is no systematised or unified data about the programs and services of either sector, nor are the programs and services regulated in detail or stimulated by the legislation.

Co-operation with the family and supplying assistance to parents in recognising and supporting the developmental needs of their children is mainly carried out within pre-school institutions, and includes the parents of children who are already attending some of the programs in the relevant institution. Certain programs of non-governmental organisations include parents on a partnership basis, and only one program, *the School for Parents*, was supported by the former Ministry for Family and Children and still is by the current Ministry of Social Affairs.

The *draft law on pre-school upbringing and education* provides for positive steps in this direction. Also under way is the creation of an *Action Plan* within the *National Forum for Education for All* (NAFOS), the goal of which is to increase the number of children

[15] This number does not include institutions in the territory of the Autonomous Province of Kosovo and Metohija.

[16] The Rule Book about detailed conditions for the organisation of work with children and the performance of certain jobs and services of the pre-school institution, Official Gazette of the Republic of Serbia, No. 34/35, which was preceded by The Nomenclature of the program of pre-school education and upbringing, and other forms of social care for children, Belgrade, 1990, of the Ministry for Labour and Welfare Issues. The study Models of various forms of pre-school education, IPA, Belgrade, 1989, served as the basis for this Nomenclature.

of pre-school age included in the programs and to help the families, according to the different needs of the children and their parents/guardians.

Significant efforts have been invested in promoting and informing both adults and children about the Convention on the Rights of the Child, especially in the non-governmental sector[17]. An important novelty in this field is the introduction of the subject *civic education* in elementary and high schools (in the 2001/02 and 2002/03 school years, as a facultative, or elective subject, in the first and second forms), in which children learn about the contents of the Convention at both levels (in both elementary and high schools). For more information, see Articles 28 and 29 of the Convention.

In order to enable the more adequate planning and provision of help to families in their obligation of child rearing, a systematic survey is needed at the level of the Republic of Serbia to investigate the current offer (which includes the private and non-governmental sectors) and the real needs of families and children. This survey, for which funds have not yet been set aside, was recommended by the *Commission for Pre-School Education*, formed by the *Ministry of Education and Sports*. It will provide a basis for creating a national plan of support to the early development of children (project planned within UNICEF for the Republic of Serbia, in the period from 2002 to 2004).

Also, cities and municipalities should be obliged to plan the development of institutions, capacities and services in keeping with previously registered needs of families and children and the national plan of support to the early development of children, in a decentralised system.

[17] For more data see annual Reports of the UNICEF.

# PARENTAL RESPONSIBILITIES

***Article 18 (1-2) of the Convention on the Rights of the Child***

***1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.***
***2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.***

## Regulations in the FRY and the Republic of Serbia

*The family* is the usual, ideal and most natural environment for the life of the child to spend his/her childhood and enjoy the rights of the child. The Convention attaches the utmost importance to the family in protecting the rights of the child.

Nevertheless, different forms of relations within the family, defined by tradition, culture, economic status and many other parameters, exert various influences on the position of the child and on its ability to enjoy its rights in such an environment. Relations in the family are organised spontaneously on the one hand, and on the other, by the state intervening, i.e. with the adoption and application of laws.

*Relations between parents and children* change depending on the system of values accepted by society. The present legislation point to an ever-greater insistence on the equal rights of the child and recognition of their separation from traditional family relations. The Convention on the Rights of the Child clearly advocates the aforesaid.

One of the basic principles of marital relations and relations of parents and children is that the *parental right* belongs to both the mother and the father (Art. 33, para. 2 of the Marriage and Family Relations Act of the Republic of Serbia, hereinafter MFRA of RS). The parents perform their parental right together and in agreement, and in the event of their disagreement the guardianship body shall decide. One parent performs the parental right if the other parent is dead or proclaimed dead, deprived of the parental right or deprived of working capability, or is unable to perform his/her parental right

due to other circumstances (Art. 123 of the MFRA of RS). The child is entrusted to one of the parents for care and upbringing if the parents separate, if they divorce, or if their marriage is annulled. If the parents reach an agreement on the care and upbringing of the child, or if their agreement does not correspond to his/her interests, the guardianship body decides on which parent the child shall be entrusted to (in the event that the parents are separated), or the court (in the case of divorce or the annulment of marriage), (Art. 124 and 125 of the MFRA of RS). However, both parents decide in matters that are essentially important for the child's development and also in the case when one parent performs his/her parental right and the other fulfils his/her parental duties to the child (Art. 126 of the MFRA of RS). If a parent, who does not perform his/her parental right, does not agree with a measure or action by the other parent in the performance of the parental right, he/she may inform the guardianship organ about this, and the latter is obliged to decide whether such a measure or action is in the interest of the child (Art. 127 of the MFRA of RS).

Assistance to parents and legal guardians in the care and upbringing of children is primarily in the jurisdiction of the guardianship organ, which is obliged to provide assistance and intervene in certain cases (e.g. Art. 132 to 138, Art. 212 to 213 of the MFRA of RS).

Likewise, the Law on Social Care of Children of the Republic of Serbia (Articles 2 and 3) provides for the *foundation of institutions for children* with the aim of:

- Creating the basic conditions for providing an approximately equivalent level of satisfying the developmental needs of children;
- Providing assistance to the family in realising its reproductive, protective, educational and economic functions;
- Providing pre-school upbringing and education, as well as daytime care, upbringing and education, preventive health care, meals, leisure, recreation, cultural, sports and creative activities for children;
- Providing a content of work with children, who do not have parental care, children with special needs, children who are hospitalised for a long time and children from vulnerable families;
- Providing special care for a third child in a family with three children.

The same law regulates in detail the *system of social child care*, which is based on the rights and duties of parents to take responsibility for the care and upbringing of their children, the right of children to living conditions that enable their correct psycho-physical development, and the obligation of the state to provide this.

## Assessment of the situation and observations

At present, a process of reforming family legislation is under way in the Republic of Serbia. New family legislation is expected to modify the existing and recommend new

clauses that will incorporate the basic premises of the Convention on the Rights of the Child, in which parents bear the greatest degree of responsibility for their children, and when they are unable to do so, the state is obliged to help them, that is to say, undertake certain obligations.

The current Marriage and Family Relations Act of the Republic of Serbia does not reflect the modern spirit of the Convention on the Rights of the Child. As the reform of family legislation is now in progress, it is necessary to prescribe clauses that will regulate relations between parents and children in a more up-to-date way. The Child Rights Centre maintains that the new arrangement of the relations between parents and children should be based on the following foundations:

1. That parents or guardians have principal, if not exclusive responsibility for children;
2. That no right whatever within the frame of the family can be realised at the expense of the rights of the child;
3. That the state bears fundamental responsibility for providing conditions for parents to successfully perform their roles in the family.

In addition, in its Draft Family Law (in the segments referring to the relations of parents and children, with the corresponding procedural clauses), which was submitted as a model to the Ministry of Social Affairs of the Republic of Serbia, in the part that deals with the responsibility of parents, the Centre recommends the adoption of the new concept of joint parental responsibility. According to this concept, the responsibility of parents, which encompasses all the rights and obligations of parents, is common, regardless of their marital status or whether they live together. Also, in applying the concept of common parental responsibility, the model of the parental right, in which the possession of the parental right is separated from the right to its fulfilment, becomes completely obsolete.

Practice has confirmed that, the dispute regarding the suitability of a parent to care for a child (especially at the moment of divorce) leads to the total disintegration of the family, reduces the chances of successfully reorganising relations and increases the risk to the emotional status and the prospect of the disorganisation of the child. With the adoption of the new concept, in the event of being separated the parents would reach agreement on all matters concerning the performance of the parental right, and concerning with whom or where the child will live. Disagreement on the manner of maintaining these relations would be the reason for intervention by the guardianship organ, which has the authority to solve this disputed matter. In this way, too, the question of caring for the child is completely separated from the question of divorce, which would contribute significantly to reducing conflict. On the other hand, it is in compliance with one of the basic principles of the Convention, and that is respect for the best interest of the child.

The adoption of these ideas and their adequate application, is only one of the ways to realise the rights of the child. Parallel to amending the law, there is also a need to work on changing people's attitude, which would strengthen the equal participation of the child in family life not jeopardising the traditional values and characteristics of the family in our environment.

# MAINTENANCE OF THE CHILD

***Article 27, Para. 4 of the Convention on the Rights of the Child***

***4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.***

## Regulations in the FRY and the Republic of Serbia

The Yugoslav family legislation regulations provide that *duty of parents to support their children* (Art. 298 of the Marriage and Family Relations Act of the Republic of Serbia). A parent is not released from this duty even when he/she becomes deprived of his/her parental right (Art. 301 of the MFRA of RS). Stepfather and stepmother are obligated to support their minor-age stepchildren in case that these do not have relatives who have the duty to support them or if the cousins have no possibility for that (Art. 303 of the MFRA of RS). Brothers and sisters are obligated to support their minor-age brothers and sisters who have no support funds if the parents are not alive or are not in position to support them (Article 305). The obligation of support applies even to other cousins in the straight ascending line (Article 306). The right to support by blood relatives is achieved in the sequence of inheritance line (Art. 307 of the MFRA of RS).

*In a lawsuit on child support* the court determines the total amount of funds necessary for support, and in that procedure it will take into consideration the child's age, his/her needs for professional training, health and property statuses, as well as other circumstances that a decision of support depends on (Art. 310 of the MFRA of RS). If a court should determine that the parents neither individually nor jointly are in position to meet the needs of child support, it will inform the *guardianship body* thereabout. In such a case the guardianship body may on behalf of the child expand the support charge onto other persons who are by law obligated to provide the support. If the further proceedings should determine that the other relatives are also incapable to support the child, the guardianship body will undertake measures required to ensure the funds for support of the child according to the regulations on social protection (Art. 383 of the MFRA of RS). Also, on behalf of a child the guardianship body may file and lead a lawsuit on child support or for increase of the support amount if the parent keeping the

child for his/her upbringing does not perform his/her support obligation for unjustified reasons. The guardianship body is also authorised to file a proposal to the court on behalf of a child for enforcement of the ruling by means of which providing of support was adjudicated under Act of Enforcement Proceedings, if the parent him/herself does not request the enforcement (Art. 312 of the MFRA of RS). If a parent who was sentenced by court to pay a certain amount for a child's support does not execute his/her obligation regularly, the guardianship body will, on petition by the other parent or by official duty, undertake measures to ensure temporary support for the child according to the regulations on social and child protection until the parent in default proceeds to execute his/her obligation (Art. 318 of the MFRA of RS).

Republican Criminal Code contains *criminal act provisions covering failure to pay alimentation, that is, avoiding to provide support* for a person whom someone is obligated to support on basis of a final ruling or final court settlement (Art. 119 of CC of RS). A qualified form of this criminal act exists if heavy consequences for the supported child have occurred which could consist of deterioration of his/her health, problems in education, etc.

## Assessment of the situation and observations

In most of the cases the bodies and the support inductees fulfil their obligation. However, in some rather low number of cases obligors of support keep avoiding their obligation to pay the child's support, especially after divorce of their marriage. In such cases children frequently become means of various manipulations and are placed in the function of clearing mutual relations between the former spouses-their parents. It is then that avoiding of alimentation settling emerges as one of the forms of blackmail. The guardianship body very rarely files a suit on behalf of the child but rather leaves that to the parent to do so. Even when the proceedings are opened courts are in some cases quite inefficient, especially in small communities.

The precise data about the number of violation of this child right are lacked by the Centre, and very rarely some of the institutions possess them.

# SEPARATION FROM PARENTS

***Article 9 of the Convention on the Rights of the Child***

***1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.***
***2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.***
***3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.***
***4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.***

## Regulations in the FR Yugoslavia and the Republic of Serbia

*The right of the child not to be separated from his/her parents against his/her will* is protected under criminal legislation. Thus, sanctions are foreseen for the group of criminal offences against marriage and the family for unlawfully withholding or taking

a child away from his/her parent(s), adoptive parent(s), guardian or institution, that is to say, the person(s), who have custody of him/her (Art. 116 of the Criminal Code of the Republic of Serbia - hereinafter CC of RS), as well as for changing the family status of the child by substitution, replacement or in some other way (Art. 117 of CC of RS).

*The conditions and manner of passing decisions on the separation of the child from one or both parents* are regulated in republican family legislation. Children have the right to live with their parents, and they can live separately only if the justified interests of the child or joint interests of the children and their parents require this (Art. 114 of the Marriage and Family Relations Act of the Republic of Serbia - hereinafter MFRA of RS).

Subject to their agreement, the child shall live with one of the parents if they live separately, and that parent shall perform the parental right. If, in the event of the parents living separately, they do not agree with whom the child shall live, the guardianship organ shall make this decision (Art. 124 MFRA of RS).

In the verdict on the divorce of a marital union or its annulment, or the rejection of a case to establish that a marital union exists, the court shall also decide on who shall have custody of the child for its care and upbringing. If the parents have not agreed on this, or if their agreement does not comply with the interests of the child, the court, after obtaining the view and recommendation of the guardianship organ and examining all the circumstances, may decide that all the children shall remain in the custody of one parent, or that some shall remain with the mother and some with the father. If it is in the interest of the children, they can be entrusted for care and upbringing to another person or an organisation. In its verdict, the court shall arrange the manner in which the child maintains personal contact with the parent who does not perform the parental right, if the other parent prevents this, or if he/she believes that this is necessary in order to protect the child. At the request of one parent or the guardianship organ, the court may alter its decision on custody for the care and upbringing of the children, and on how the parents shall maintain personal relations with their common children if a change of circumstances should call for this (Art. 126 MFRA of RS).

When the interests of the child require this, the parent, or the parents may *temporarily entrust the child for care and upbringing to a third person* if that person fulfils the conditions to be a guardian. The same can be done in the event of the parents' departure to reside temporarily in another place in the country or abroad (Art. 128 MFRA of RS).

*If the event of the death or loss of commercial capability of the parent, who performed the parental right alone* or in the event of one parent abandoning the child, the other parent has the right to request the person where the child is staying, to hand him/her over to him/her for care and upbringing. If a dispute arises between the said parent and the third person, the court may decide to entrust the child for care and upbringing to the person, where the child is staying, or to another person or organisation, if, after

obtaining the view of the guardianship organ and examining all the circumstances, it establishes that the justified interests of the child so require (Art. 129 MFRA of RS).

The court or the guardianship organ that makes the decision on granting custody of a child for care and upbringing, is obliged to examine all the circumstances that are important for the proper spiritual and physical development and upbringing of the child in a suitable manner, and when making its decision, it is guided primarily by the interest of the child, being particularly mindful of the emotional needs and desires of the child, and it shall always obtain the view of the appropriate expert when the circumstances of the case require this (Art. 130 MFRA of RS).

*If a child does not live together with his/her parents or lives with one of them*, the parents shall reach an agreement on the manner of maintaining personal relations with the child. In the event of a dispute, the guardianship organ shall make a decision on this matter. The guardianship organ may re-arrange the manner of maintaining personal relations between the parent and the child if the set of circumstances changes and requires this, regardless of the court or guardianship organ's previous decision on this matter. The maintaining of personal relations between children and parents can be limited or temporarily prohibited in order to protect the health or other important interests of the children (Art. 131 MFRA of RS).

The *guardianship organ* generally supervises the performance of the parental right (Art. 131 MFRA of RS). In the event of a serious threat to the child's proper upbringing, the guardianship organ may take the child away from the parents and entrust him/her to another person or organisation for care and upbringing (Art. 136 MFRA of RS). If a child has a behavioural disorder, the parents, the guardian or another person to whom the child has been entrusted for care and upbringing, may recommend, or the guardianship organ, of its own accord, may decide to send the child to an organisation for its upbringing (Art. 138 MFRA of RS).

Parents shall be *deprived of their parental rights* if they abuse it or seriously neglect to perform their parental duties. A parent shall be deprived of the parental right in respect of all his/her children or only in respect of one child if particular circumstances require this. The court issues the decision to remove the parental right in extra-judicial procedure, after obtaining the opinion of the guardianship organ, and examining all the circumstances of the case. The other parent, the guardianship organ or the public prosecutor may initiate this procedure. The guardianship organ is obliged to initiate this procedure as soon as it learns that there are lawful reasons for this, and may take urgent action for the protection of the personality, rights and interest of the child. In marital disputes and disputes arising from relations between parents and children, the court that resolves these disputes may issue a decision in its official capacity, to deprive a parent of the parental right if it establishes that there are reasons foreseen in the law for doing so. The parent may restore his/her parental right by decision of the court when the

reasons, for which this right was deprived, cease to exist. A recommendation to restore the parental right may be submitted by the parent and the guardianship organ. In marital disputes and disputes in relations between parents and children the court that resolves them may issue a decision in its official capacity to restore the parental right if it establishes that there are conditions for doing so (Art. 139 to 142 MFRA of RS).

The previous analysis indicates that according to Yugoslav regulations that refer to *the separation of a child from a parent*, the child cannot be separated from his/her parents against his/her will, except in cases and under the conditions prescribed by law, following the decision of the relevant state organs, in legally prescribed procedure. The relevant state organs are either the court (when the provisions of judicial procedure are applied) or the guardianship organ (when the regulations on administrative procedure are applied and court supervision is guaranteed by means of administrative procedure). All the parties concerned may participate in both the court and in the administrative procedure.

In reference to the *obligation of the state organs in the case of the separation of a family* that ensues from a measure undertaken by the state, the Criminal Procedure Code of FRY envisages the obligation of the internal affairs organs or the court to inform the family of the person deprived of his/her freedom within 24 hours from the moment the person was taken into custody, unless he/she opposes the communication of this information. The relevant organ of social guardianship shall be informed of the arrest if it is necessary to take measures to provide care for the children or other members of the family of the person who has been arrested and who takes care of them (Art. 147 of the Criminal Procedure Code of FRY).

## Assessment of the situation and observations

The data collected by the Child Rights Centre shows that, in practice, poor use is made of the legal possibilities for the realisation of the child's right to grow up in a natural environment and for the protection of his/her welfare and, in cases when they are applied, it was most often by a physical person, in other words, the parent who received custody of the child for further care and upbringing after the termination of the marital or extra-marital union according to the guardianship organ or the court's final decision. Penal policy was at the lowest limit of the legal minimum with a significant presence of suspended sentence verdicts. For instance:

| | |
|---|---|
| **Reported crimes under Art.166 and 120 of CC of RS** | 201 |
| **Charges under Art.166 and 120 of CC of RS** | 121 |

*Reported crimes and charges according to Article 116 and 120 of CC of RS in 2001*[18]

| Type of crime | Adults convicted |
|---|---|
| Prison | 15 |
| Fine | 8 |
| Suspended sentence | 53 |
| Court arraignment | 6 |
| **TOTAL:** | 82 |

*Adults convicted of criminal offences under Art.116 and 120 of CC of RS in 2001*[19]

Recently, in the past three years, in their official capacity the guardianship organs largely reported the commission of the criminal offence under Article 116 of CC of RS in order to protect the interest of the child, and in these procedures actively represented the interests of children.

In the event of a serious threat to the proper upbringing of a child or serious neglect of a child, besides criminal legislative protection, the Marriage and Family Relations Act of the Republic of Serbia envisages measures in the domain of family legislative protection (supervision of the performance of the parental right and deprivation of the parental right). In the realisation of general supervision of the performance of the parental right, the guardianship organ may undertake the following measures: arraignment (Art. 134 of the MFRA of RS), permanent supervision (Art. 137 of the MFRA of RS), removal of a child from the parent without his/her consent (Art. 136 and 137 of the MFRA of RS), placing the parent in the position of a guardian regarding the property of the child (Art. 138 of the MFRA of RS) and deprivation of the parental right (Art. 139 of the MFRA of RS). The guardianship organ undertakes these measures in cases when the "justified interests of the child" require doing so if there is a "serious threat to his/her correct upbringing", if there is an "abuse in the performance of the parental right or serious neglect in the performance of the parental right".

*As we already mentioned in the chapter dealing with respect for the opinion of a child (Article 12), in 30 to 70% of cases (depending on the aspect of protection and the concrete institution) children in the system of social protection stated that they had no*

[18] Statement of the Federal Statistics Bureau, No.150/5.7.2002.

[19] Statement of the Federal Statistics Bureau, No.150/5.7.2002.

*way of being able to influence the frequency of contacts with their parents. We would like to underline that we do not have data on this if among the surveyed cases it involves the prohibition of contact between the parent and the child by the relevant guardianship organ.*

*In this part we also mention the opinion of the children in the care of the Correctional Institution in Kruševac, who consider the rule of being allowed telephone conversations with their parents twice a month to be an unacceptable rule.*

Before it decides to issue measures, the guardianship organ shall perform certain professional and formal legislative procedures to enable the parties concerned to participate, and this includes the child (giving proposals, communicating views, stands and expressing complaints).

*Supervision of the performance of the parental right*[20]

| | **1998** | **1999** |
|---|---|---|
| **Children against whose parents action was taken under Art.136 MFRA of RS** | 190 | 195 |
| **Children against whose parents action was taken under Art. 137 MFRA of RS** | 84 | 46 |
| **Children against whose parents action was taken under Art. 138 MFRA of RS** | 112 | 148 |
| **Children against whose parents action was taken under Art. 139 MFRA of RS** | 68 | 62 |
| **TOTAL:** | 454 | 451 |

In comparison to the previous period, in the past two years, these measures of family legislative protection have been applied to a more significant degree, due primarily to the greater sensitivity of the professional and other public to the phenomenon of the mistreatment and neglect of children, in whose case these measures are most frequently applied.

The legal solutions in the Marriage and Family Relations Act of the Republic of Serbia, for the guardianship organ to make decisions under Articles 136 and 137 even though

[20] Source: Reports of the centres of social work for 1998 and 1999 sent to the Ministry of Social Affairs of the Republic of Serbia.

parents have judicial protection in administrative disputes based on the right to bring a lawsuit, are not in keeping with Article 9 of the Convention on the Rights of the Child (which envisages that the court shall decide where separation of a child from his/her parents is concerned), therefore within the context of the reform of family legislation in the Republic of Serbia, legal solutions are foreseen that will fully comply with the aforesaid article of the Convention.

Practice is the domain of criminal legislation (Art. 118 of CC of RS - the criminal offence of abandoning and mistreating a minor, and Art. 120 of CC of RS - the criminal offence of violating family relations) indicates the following:

*Reports and charges against adults for criminal offences according to Article 118 of CC of RS in 2001*[21]

| | |
|---|---|
| **Reported criminal offences under Art.118 of CC of RS** | 48 |
| **Charges under Art.118 of CC of RS** | 27 |

*Adults convicted of the criminal offence under Article 118 of CC of RS in 2001*[22]

| **Type of criminal offence** | **Adults convicted** |
|---|---|
| **Prison** | 3 |
| **Prison, suspended sentence** | 13 |
| **Total:** | 16 |

In procedures to grant custody of children after the cessation of a marital or extra-marital union, the court and the guardianship organ shall decide. In keeping with positive legislation, the parents and the children participate in the entire procedure.

[21]Federal Statistics Bureau No.150/5/7/2002

[22] Federal Statistics Bureau No.150/5.7.2002.

Article 130 MFRA of RS envisages the participation of parents and minor children in these procedures. It prescribes that the court or the guardianship organ that passes the decision on granting custody of children for their care and upbringing, shall examine in the appropriate manner all the circumstances that are important for their correct development and upbringing, and also that when issuing the decision they shall be guided exclusively by the interests of the children. In making their decision, these organs are obliged to take into consideration the emotional needs and desires of the child.

*Dysfunctional family relations*[23]

| | **1998.** | **1999.** |
|---|---|---|
| **Court requests for reconciliation and assessment of suitability for custody after the cessation of the marital union** | 10.630 | 9.474 |
| **Court requests for the assessment of suitability for changing the decision on custody** | 843 | 720 |
| **Requests of the parties for reconciliation and custody of children after the cessation of the extra-marital union** | 1.756 | 1.448 |
| **Requests of the parties for changing the decision on custody after the cessation of the extra-marital union** | 175 | 166 |
| **Requests by the parties for regulating visits between children and parents who do not have custody of the child** | 2.121 | 863 |
| **Requests by the court for views on the ability of the child to enter matrimony** | 950 | 863 |
| **Extra-judicial work on dysfunctional family relations** | 5.868 | 6.342 |
| **TOTAL:** | 22.343 | 20.863 |

[23] Reports of the centres of social work for 1998 and 1999, submitted to the Ministry of Social Affairs of the Republic of Serbia.

In this domain, the Child Rights Centre considers it necessary to establish a clear and more direct link between the two legal sub-systems dealing with the protection of minor children and the family: family and criminal law. We believe that the most adequate manner for this is by establishing a system of juvenile justice that encompasses the system and organisation of the protection of rights and this in relation to the most sensitive and most threatened group of children:

- Those who are exposed to mistreatment or neglect, or whose development is threatened by disorders in the Functioning of the family, and
- Those who are in conflict with the law.

The Draft Family Law (in parts of the Relations of parents and children, with the appropriate procedural clauses) and the Draft Juvenile Justice Law, which were submitted as models to the Ministry of Justice of the Republic of Serbia, the Ministry of Social Affairs of the Republic of Serbia and the Council for the Rights of the Child, are the Centre's contribution in that direction. Here, in particular, we are thinking of the solutions these models offer, and they refer to establishing the concept of joint parental responsibility, establishing special measures for the protection of the rights of the child (and in that sense especially providing alternatives to the institutional care of children), the specialisation of the judiciary in family matters, independent legal representation of the rights of the child; and in the criminal legislative context, establishing special rules of criminal procedure and for organisation of the judicial system, as well as a more elaborate system of criminal responsibility for adults with regard to acts of violence against children.

# ILLICIT TRANSFER AND NON-RETURN OF CHILD ABROAD

### *Article 11 of the Convention on the Rights of the Child*

***1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.***
***2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.***

## Regulations in the FRY and the Republic of Serbia

This provision of the Convention refers above all to the situations when a child, contrary to a decision by competent authorities, is illicitly transferred or not returned to the person who was entrusted with the care. The republican criminal legislation anticipates the criminal act of *taking away a minor-age* child defining it as retention or taking away child from his/her parent, adopter, guardian or institution, in other words the party to whom or which he/she was entrusted, or rendering execution of a decision of child assignment impossible (Art. 116 of CC of RS).

FR Yugoslavia has also concluded *multilateral and bilateral agreements of legal assistance* between judicial and other competent bodies of the respective countries in execution of the decisions referring to childcare. The most significant convention in this field is the Convention of Civil Aspects of International Child Abduction. The countries-co-signatories adopted it in the aim of protecting children at international level against harmful consequences of illicit transfer or retention, as well as to determine a procedure that would ensure a quick return of such a child into the country of regular residence and ensure protection of the right to contacts.

Extension of such legal assistance is also possible through implementation of *the domestic regulations* on court proceedings under the condition of reciprocity. Thus, Act of Resolution of Law Collision with Regulations of Other Countries (Art. 86 to 96) anticipates that under certain conditions foreign court rulings that are effective under the laws of another country will be recognised. These court rulings are made equal with the decisions of domestic courts and produce a legal effect in FRY.

As far as *issuance of travel documents to children* is concerned, according to Act of Travel Documents of Yugoslav Citizens the Yugoslav citizen up to the age of 14 years who has no passport of his/her own, at a request by his/her parent or another legal representative of his/her, may have his/her name included in the passport of one of his/her parents or another legal representative. If the child is above the age of five years,

in addition to the inclusion of his/her name in the passport of his/her parent or another legal representative, a photography of him/herself must also be contained therein (Article 7). The child's inclusion in the parent's passport or that of another legal representative is valid for two years and may not be extended beyond that time. These benefits may be annulled by a body competent for issuance of travel documents or visa, if this is requested by the other parent or his/her legal representative. Inscription of the child's name into the passport of one of the parents or another legal representative will be annulled by official duty when the child receives a passport of his/her own (Article 8).

The decision about the method of issuance of passport, joint passport, travel sheet and/or visa regulates the situation if the parents of the minor-age child are divorced. The request for issuance of the passport and/or visa to such a person is submitted by the parent to whom the minor-age child was entrusted for keeping and care by means of a court ruling. When the official concerned learns that the marital or family relations are impaired (through a report by the other parent, competent guardianship body or some other party, for example), the inscription of the child's name into the passport of one of the parents, that is, issuance of the passport will be done on basis of consent by both parents. If the other parent does not approve thereabout the official will interrupt the procedure and request an opinion by the competent guardianship body.

## Assessment of the situation and observations

The central executive body in charge of the implementation of the Convention on Civil Aspects of International Child Abduction in our country is the Ministry of Justice of the Republic of Serbia. This Ministry has the duty to ensure a co-operation between the competent bodies of the countries-co-signatories for the purpose of prevention of illicit transfer or retention of children, as well as for the purpose of as urgent return of the child illicitly transferred to the country of his/her regular residence. This means that it acts both on request by FRY citizens (if the child is located abroad) or by request of foreigners (if the child is located in FRY) in the aim of soonest possible return of the child to the country of his/her regular residence. According to them as the central executive body for our country, this Convention is completely ignored and unimplemented at the international level. Depending on the concrete case our country has forwarded tens of such requests to the executive bodies of various countries-co-signatories of the Convention, but under no case has the procedure prescribed by the Convention been applied. On the other hand, even in the cases of the requests submitted to the Ministry of Justice of the Republic of Serbia under this Convention no action was undertaken. Therefore, in practice the procedure anticipated by the Hague Convention is not implemented, and in the cases of illegal abduction of children implementation of the national legislation is adhered to.

In the period between 1st January 1998 and 31st October 2002, according to the data of the Ministry of Interior of the Republic of Serbia, the total number of criminal acts

made to the detriment of minor-age children under Article 116 of Criminal Code of RS reached 27, that is, one in 1998, five in 1999, six in 2000, seven in 2001 and eight in 2002.

In our talks with the state bodies competent for control of border crossings we obtained the information that they do not request any written consent from parents for taking minor-age children abroad. Namely, the mentioned bodies' act in the sense of checking each of the individual cases on basis of the travel documents i.e. passport, and if any suspicion should arise they undertake additional checking steps. We feel that this kind of procedure is completely unadjusted to the seriousness of the situation. Thus we come to a conclusion that in practice a child might be taken abroad by one of the parents even without any consent (awareness) by the other parent, or by any other person without consent from his/her parents. Whether the cases of illicit transfer of children abroad would be promptly discovered and stopped depends exclusively on the estimate and capability of the mentioned bodies. A different arrangement of the procedure and an improved control in the crossing of state borders would certainly contribute to the prevention of such cases.

# FAMILY REUNIFICATION

***Article 10 of The Convention on the Rights of the Child***

***1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.***
***2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognised in the present Convention.***

## Regulations in the FRY and the Republic of Serbia

Article 30 of the Constitution of the FRY guarantees the *freedom of movement* to each Yugoslav citizen, as well as the possibility to leave and return to the FRY. Restriction of the freedom of movement and settlement and the right to leave the FRY is possible under the federal law in cases when this is required for the purpose of conducting criminal proceedings, prevention of the spreading of infectious diseases or the defence of the FRY. The Constitution of the Republic of Serbia contains similar provisions (Article 17).

*The right of the child or parent who are foreign citizens to enter the FRY* is regulated by the Federal Movement and Sojourn of Foreigners Act, (Art. 5 - 30), while their right to leave the FRY is guaranteed by other international documents that are directly applicable. A foreigner moving out from the FRY will not be issued an emigration visa

if criminal or misdemeanour proceedings are instituted against him/her and the body conducting the proceedings requests it (Art. 30 of the FRY Movement and Sojourn of Foreigners Act).

## Assessment of the situation and observations

The child's ties with his/her family are an integral part of their identity. Therefore, in cases of family separation, it is essential to ensure family reunification. One of the causes for separation is the child's and parents' different citizenship. Information on requests for citizenship for the purposes of family reunification should be sought from the Ministry of Interior of the Republic of Serbia. The CRC does not have data on such requests or the number of solved cases.

Separations also occurred due to the armed conflict on the territory of former Yugoslavia, when a large number of children were separated from one or both parents. Some international organisations, e.g. *Save the Children UK*, implemented family reunification projects in the past decade, through which several hundred children were reunited with their families.

Family separation also occurs in cases of illicit transfer of children across borders and failure to return them. Such cases are now being investigated within prevention programmes on searching for children victims of trafficking. Records on this are also kept by the competent bodies. It is suspected that a certain number of children from the FRY were transferred across the border for the purpose of trafficking, as well as that there are children foreign citizens staying in the FRY and Serbia for the purpose of prostitution, who are also separated from their families. Detailed data are non-existent, i.e. the CRC was not able to acquire them.

# A CHILD DEPRIVED OF FAMILY ENVIRONMENT

***Article 20 of the Convention on the Rights of the Child***

***1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.***
***2. States Parties shall in accordance with their national laws ensure alternative care for such a child.***
***3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.***

## Regulations in the FRY and the Republic of Serbia

Guardianship body performs general supervision of exercise of parental right and undertakes necessary measures to protect personal and property rights and interests of child (Art. 132 and 133 of the Marriage and Family Relations Act of the Republic of Serbia). In the aim of protecting children the bodies of judicature, other bodies, organisations and communities also have the obligation to inform the guardianship body, as soon as they learn that a parent is not in position to exercise his/her parental right or that a child needs protection for other reasons. Also, Registrar of Births is obligated to report to the guardianship body the birth of any child whose one or both parents are not known, so that measures for his/her protection could be undertaken (Art. 133 of the MFRA of RS).

The law regulates the cases when, due to the existence of a serious threat for proper raising of a child, he/she may be taken away from his/her parents and entrusted to another person or organisation for keeping and upbringing. However, the other rights and duties of the parents toward the child do not cease to exist upon taking away of a child (Art. 136 of the MFRA of RS). Also, the guardianship body may alone, or under proposal by the parents, guardian or another person to whom a child was entrusted for keeping and upbringing, send the child into an organisation for upbringing due to disturbance in his/her behaviour (Art. 137 of the MFRA of RS). In justified cases the guardianship body also may request from the parents rendering of accounts concerning management of the child's property, as well as to request from a court in a non-litigation

proceedings to allow safety measures to be applied over the parents' property for the purpose of protecting the property interests of a child, or to decide that the parents should have the position of guardian in respect of management of such property (Art. 138 of the MFRA of RS). The parent who abuses exercise of his/her parental right or who heavily neglects performing of his/her parental duties may through a decision by the court be deprived of his/her parental right. The court will take this decision after it has obtained an opinion from the guardianship body, having beforehand examined all the circumstances of that particular case (Art. 139 of the MFRA of RS).

*Child without parental care* is a child who has no living parents, whose parents are unknown or have disappeared, or a child whose parents for any reason temporarily or permanently do not exercise their rights or duties (Art. 147 of the MFRA of RS). Children without parental care enjoy special social protection (Art. 148 of the MFRA of RS).

*The basic forms of family-law protection of children without parental care* are: adoption, organised placement in another family, and other forms of family placement (Art. 148 of the MFRA of RS). Any decision of alteration of specific forms of such protection is brought on basis of comprehensive consideration of each case separately, as well as of the possibility for selecting the form of family protection that best suits the child's needs (Art. 149 of the MFRA of RS). The basic principle is that the protection of children without parental care, in accordance with the child needs and social possibilities, is achieved by ensuring the conditions for such a development that would in the best way compensate for the loss of their parents or parental care (Art. 150 of the MFRA of RS).

*Family placement* may be ensured for the children without parents or without parental care, for the children whose development is disturbed by the circumstances existing in their own families, for the children whose upbringing is neglected, and for the children with difficulties in their physical and mental development (Art. 200, para. 1 and 2 of the MFRA of RS). The placement is provided in a family that could successfully perform the parental duties, especially regarding proper care, upbringing, education and training of the child for an independent life (Art. 202 of the MFRA of RS). According to the law a child may only be placed into a family whose family member fulfils the legal requirements to be a guardian and which family has no more than three minor-age children (Art. 203 of the MFRA of RS). Such family is selected by the guardianship body on proposal by an expert team consisting of social worker, pedagogue, psychologist, physician and other experts, depending on the nature of the causes that call for family placement of the child (Art. 207 of the MFRA of RS). The guardianship body concludes an agreement with one of the family members, containing particularly the rights and duties of such a family (Art. 208, para. 3 of the MFRA of RS), and also implements a supervision of the way the aim of such family placement is achieved (Art. 212 of the MFRA of RS). The supervision involves following of the child's development and insight into compliance of the child's keeping, care and upbringing

with the law and the agreement of family placement. If the guardianship should notice any defects in respect of the care, keeping and upbringing of the child, it makes proposals for their elimination and undertakes other measures for which it is authorised under the law (Art. 213 of the MFRA of RS). The guardianship body will bring a decision on termination of the agreement concluded if the family ceases to fulfil the terms prescribed by the law, or if the aim of such placement has not been achieved, and it has the duty to ensure further keeping, care and upbringing of the child (Art. 211 of the MFRA of RS).

The child who is not under parental care is placed under *guardianship* by the guardianship body (Art. 265 of the MFRA of RS). The aim of the guardianship over a child is to enable as complete development of his/her personality as possible through care, upbringing and education, and to make him/her capable of an active and creative life (Art. 219 of the MFRA of RS). A relative of the child is one of the foremost choices made for the role, if that is in his/her own interest (Art. 224 of the MFRA of RS). The guardian has the duty to conscientiously look after the child's personality, especially after his/her health, upbringing, education and training for an independent life (Art. 226 of the MFRA of RS). He/she also has the duty to submit his/her reports to the guardianship body and render the accounts of his/her work early in the year for the previous year, during the current year if and when the guardianship body should request that and after his/her guardianship duty is ceased (Art. 243 of the MFRA of RS). Such a report will be examined by the guardianship body and it would undertake, if necessary, any appropriate measures to protect the protégé's interests (Art. 245 of the MFRA of RS). Furthermore, the protégé who is capable to do so, his/her relatives, other organisations and citizens may send complaints to the guardianship body concerning the guardian's work (Art. 253 of the MFRA of RS). The guardianship body will release the guardian from his/her duty if it should find that he/she abuses his/her authorities or should the protégé's interests be placed in danger, that he/she has become negligent in performing his/her duty or if it should find that it would be useful for the protégé to have someone else appointed as his/her guardian. In such a case the guardianship body has the duty to undertake measures necessary for protection of the protégé's interests until a new guardian is appointed (Art. 250 of the MFRA of RS).

A guardian may entrust the protégé, subject to approval by the guardianship body, to a child home or some other organisation for children to keep, maintain upbringing and educate him/her, or he/she may place him/her in a health care institution for an extended period of time (Art. 269 of the MFRA of RS). However, the protégé may only be sent to an organisation for upbringing due to disturbances in his/her behaviour, but on basis of a decision by the guardianship body (Art. 270 of the MFRA of RS). Such organisations have the duty to keep informing the guardian and the guardianship body about all significant problems in respect of the life, health, upbringing and education of the protégé, his/her release from the organisation and his/her new dwelling place (Art. 271 of the MFRA of RS).

## Assessment of the situation and observations

On basis of the records provided by centres for social work the structure of children lacking parental care in Republic of Serbia is as follows:

**Table 1.** Children without parental care
(Structure)

| **Type of Problem** | **1998** | **1999** | **2000**[24] | **2001/new registered** |
|---|---|---|---|---|
| Deceased parents | 1.805 | 1.874 | 1.203 | 1.254 (192) |
| Unknown parents | 83 | 101 | 37 | 40 (6) |
| Abandoned by parents | 4.187 | 4.154 | 3.023 | 3.240 (472) |
| Inadequate parental care applied | 495 | 548 | 588 | 632 (150) |
| Parents prevented to apply parental care | 2.602 | 2.555 | 1.793 | 1.809 (305) |
| **TOTAL:** | 9.172 | 9.232 | 6.644 | 6.975 (1.125) |

On basis of the data shown one may state that there is a significant increase in the number of children lacking parental care due to inadequate performing of the parental care right. In 1998, according to the reports from all guardianship bodies (i.e. from the entire territory of RS including Kosovo and Metohija) 495 children were recorded as having parents who inadequately perform their parental right, whereas in 2001 632 children of this category were recorded only on the territory of central Serbia and Vojvodina (with data from 23 guardianship bodies still missing), which is an increase of over 20%. We can discover the causes for such a high increase in, among other facts, all-comprising and continuing sensitivity and additional education of the professional workers working in the guardianship bodies for recognition of inadequate parenthood on basis of training programmes on protection of children from maltreatment and neglect.

[24] The data were composed on basis of annual reports made by centres for social work (i.e. guardianship bodies) for 1998, 1999, 2000 and 2001. The data for 1998 and 1999 were complete for the entire territory of Republic of Serbia, whereas for 2000 and 2001 they were incomplete, that is, they did not include the data from the guardianship bodies of Kosovo and Metohija and from 23 guardianship bodies of Vojvodina and central Serbia.

On basis of the data for 1998 we find that there were 90 597 children and youngsters recorded in the centres for social work on the grounds of various problems existing: either as children lacking material security, having crises in their families, violating the law, having difficulties in their psycho-physical development, or lacking parental care, etc. In relationship to the total number of children and youngsters recorded in the centres for social work, children lacking parental care had a share of around 10%.

In respect of implementation of Art. 37, para. 1 of the Act on Social Security and Provision of Social Welfare of RS, which determines the right to placement of child lacking parental care in a social protection institution, the structure of the measures applied as indicated in the records of centres for social work is as follows:[25]

**Table 2.** Children without parental care
(Structure of the measures applied)

| **Types of Measures** | **1998** | **1999** | **2000** | **2001** |
|---|---|---|---|---|
| Permanent guardianship | 5.566 | 5.116 | 5.216 | 4.485 |
| Adoption | 270 | 262 | 169 | 182 |
| Placement in family | 2.690 | 2.744 | 2.007 | 2.052 |
| Placement in social protection institution | 3.800 | 3.568 | 2.166 | 2.157 |
| **TOTAL:** | 12.326 | 11.690 | 9.558 | 8.876 |

On basis of the data shown in this table one may state that the largest number of children lacking parental care has been covered by the measures of guardianship protection. However, if one compares the data of the children lacking parental care with those of the applied measures of guardianship protection (these measures are obligatorily applied when a child without parental care is discovered), one may note that a significant number of the children have not been placed under guardianship (for example, 40% of them in 1998; 44,6% in 1999; 21,5% in 2000 and 35,7% in 2001).

As far as the obligation stipulated by Article 243 of the Marriage and Family Relations Act of the Republic of Serbia is concerned, whereby guardians have the duty to submit reports to the guardianship body and render the accounts of their work early in the year

[25] The same annotation as that applied for Table 1.

for the previous year and during the current year whenever the guardianship body requests such a report, we state that this provision is observed in practice, that is, guardianship bodies - on basis of specially composed individual programmes of protection for every child lacking parental care and enjoying guardianship - monitors the content of the measures applied and at least once per year obtain the guardian's reports of his/her activity in protection of the child's personality, property, rights and interests, in accordance with the legal duty prescribed. The guardianship body checks and verifies such guardian's reports through a special procedure. A lack of co-operation between the guardian and the guardianship body, even failure to submit the report on realisation of guardianship care and one's work thereabout, may be the cause to release the guardian of his/her duty.

The exact records of the number of cases where the measure of "direct guardianship" as described in Article 232 of the MFRA of RS (requiring the guardianship body itself to directly perform the duty of guardianship when this is in the interest of the protégé) do not exist. According to some estimates the number of such cases is between 30 and 40 percent of the total number of children lacking parental care and enjoying guardianship.

One needs to point out, however, that in the last two years (2000 and 2001) the number of children placed in families matches the number of children placed in social protection institutions. This means that placement in families is given priority as a more favourable form of protection for the children without parental care. In 1998, for example, there were only 29,32% of them enjoying family placement in contrast to 41,3% enjoying social institution care. After three years (in 2001) the figure relationship was considerably altered. There were 29,4% of the children placed in foster families and 30,9% in social protection institutions.

**Table 3**[26]

| Year | Number of Foster Families |
|---|---|
| 1998. | 1.834 |
| 1999. | 1.707 |
| 2000. | 1.608 |
| 2001. | 1.338 |

[26] The data were collected from the Electronic Data Centre of Ministry of Labour and Social Issues of RS.

On basis of the data presented in Table 3 one may see that there is a significant reduction of the number of foster families on the territory of Republic of Serbia. This drop is caused, above all, by the overall economic situation in the country, a lack of adequate material stronghold among the foster families, and a lack of campaigns promoting this form of protection of children without parental care that lead to engagement of new families.

However, in 2002 several campaigns were organised at local levels in the aim of finding new foster families. A special reform project was also introduced by Ministry of Social Affairs entitled "Development Strategy of Family Placement" as a part of the reform goals set for reduction of institutional forms and development of open alternate forms of protection of children lacking parental care.

In respect of Articles 212 and 213 of the MFRA of RS that anticipate that supervision of the achievement of the goals of family placement should be done by guardianship bodies and by special institutions of social protection established to organise family placement in the aim of achieving supervision of organised protection of children through family placement, guardianship body monitors the development of such child, organisation of his/her keeping and care, upbringing and education by way of direct introspection. The data are as follows:

**Table 4**[27]

| Year | Number of children whose parents are deprived of parent rights |
|---|---|
| 1995. | 210 |
| 1996. | 222 |
| 1997. | 207 |
| 1998. | 170 |
| 1999. | 178 |

A separate problem in the implementation of Article 139 of MFRA of RS that anticipates that a parent abusing performance of his/her parental right or heavily neglecting performance of his/her parental duties should be deprived of his/her parent right when a decision thereabout is brought by the court in a non-litigation proceedings

[27] Federal Institute of Statistics, Statistical Bulletin No. 22/93, "Social Protection, Beneficiaries, Forms, Measures and Services Provided in 1999".

upon obtaining an opinion from the competent guardianship body, lies in the insufficient legal definition of the legal standards such as "abuse of performance of parent right" or "heavy neglect of parental duty", complicated court procedure and duration of such procedure. For these reasons the measure of protection of children is relatively rarely applied in relationship to the volume of incompetent and irresponsible parenthood. Most frequently it is applied in the cases of so-called "self-disqualification" of parents, when the child in fact becomes a child abandoned by his/her parent(s) and when they give up their parenthood for good.

This is also the reason why no case in practice has been known of a reinstatement of the parental right (rehabilitation of parenthood) that was previously withheld, in court proceedings.

When it comes to children lacking parental care due to being refugees, displacement (moved out by force) or dislocation, the data are as follows:

**Table 5**[28]

| Type of problem | No. of children lacking PC | No. of children lacking PC but enjoying guardianship | No. of children lacking PC but placed in homes | No. of children lacking PC but placed in families |
|---|---|---|---|---|
| **Refugees** | 184 | 126 | | |
| **Dislocated** | 50 | 34 | 136 | 99 |
| **Displaced** | 125 | 73 | | |
| **TOTAL:** | **359** | **233** | | |

**Table 6**

| | Croatia | Bosnia & Herzegovina | Kosovo & Metohija | Other regions |
|---|---|---|---|---|
| **Refugees, displaced, dislocated** | 137 | 94 | 126 | 2 |
| **TOTAL:** | | | | **359** |

[28] The data are based on the reports by centres for social work as of 25 February 2002.

Within the population of refugee, dislocated (moved out by force) and displaced children of Yugoslavia, a significant number of them is temporarily or permanently deprived of parental care. It is necessary, therefore, to undertake the measures of guardianship and social protection for these children so that their personalities, rights, interests and property could be protected in an adequate and efficient manner. On the other hand, the legislation of Republic of Serbia regulating the family-law protection of children, does not possess the terms such as refugee, displaced or dislocated persons, so one could conclude from that fact that children lacking parental care, the refugees, the displaced and the dislocated are not protected under a defined institute of guardianship. Nevertheless, these children are not held out of a system of protection. Article 280 of the MFRA of RS stipulates that guardianship body may undertake measures determined by the law in the field of protection of the rights and interests of any foreign citizen until the authorised body of the country whose citizen he/she may be has brought the necessary decisions and has undertaken certain measures. In cases like these it is the guardianship body of the territory where such children dwell or where they have their refugee or displacement status resolved that is competent for undertaking of measures in protection of the children refugees, displaced and dislocated children without parental care.

Otherwise, the rules and regulations of the Republic covering the field of family-law protection of children lacking parental care are applied throughout the course, volume and content of the guardianship protection of these children.

# ADOPTION

***Article 21 of the Convention on the Rights of the Child***

***States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:***
***(a) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;***
***(b) Recognise that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;***
***(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;***
***(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;***
***(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.***

## Regulations in the FR Yugoslavia and the Republic of Serbia

Adoption in the FR Yugoslavia is regulated by republican family law regulations (the Marriage and Family Relations Act of the Republic of Serbia - hereinafter MFRA of RS), which describe the conditions and procedure of adoption and the organs that make decisions in the procedure. Legal regulations about guardianship are also a part of the legislation that is relevant for children without parental care. Within the forms of the social protection of children without parental care the Act on Social Security and

Provision of Social Welfare of RS contains regulations about the placement of children without parental care in institutions of social protection for children without parental care.

In adoption, the rights and obligations that exist between parents and children are established between the adopter and the adopted child, in accordance with the law. The MFRA of RS recognises *two forms of adoption*: partial and complete adoption, between which there are differences regarding the conditions for adoption, the rights and obligations of the adopter and the adopted child (the consequence of adoption), and regarding the reasons for the annulment of adoption.

Adoption is allowed only if it is to the advantage of the adopted child (Art. 152 of the MFRA of RS), which represents the *legal basis for adoption*. In the context of other forms of the protection of children without parental care (family law and social welfare), the advantage of the adopted child implies (in accordance with the MFRA of RS and the Act on Social Security and Provision of Social Welfare - hereinafter ASSPSW of RS) that adoption is the most prudent form of protection for a child without parental care, coupled with the fact that the child must be adoptable in the context of his/her legal, that is, family status. The child's adoptability envisages his/her legal attributes, or the legal conditions on his/her side: that the child is without parental care, and a child is considered to be without parental care if his/her parents are not alive, or are unknown, or have gone missing, or have permanently ceased exercising their parental rights for some reason (Art. 147 of the LFMR RS); that the child has not come of age (Art. 154, para. 1 of the MFRA of RS); that the child who is older than ten years agrees to be adopted (Art. 156, para. 3 of the MFRA of RS); that the child is not in the direct line of kinship, or the brother, or sister of the adopter, or that he/she is not the charge of the person who intends to adopt him/her, and who has not been relieved of guardianship duties by the guardianship organ (Art. 158 of the MFRA of RS); that the child is not older than five in the case of full adoption, and if he/she is, that he/she has been sheltered, cared for and brought up by the person who wishes to adopt him/her before the age of five, or by persons who are not related to him/her in the direct line or up to the fourth degree of kinship (Art. 188, para. 3 of the MFRA of RS). Decisions regarding the implementation of any form of protection of children without parental care are made on the basis of a comprehensive assessment in every individual case, as well as of the possibilities of selection of the form of family protection that best suits the child's needs. (Art. 149 of the MFRA of RS), which is in correlation with Article 21 of the Convention, which says that the states signatories that recognise and/or allow the system of adoption shall make sure that the child's best interest will be of primary importance.

The *adopter* may only be a person who commercial capability and who has the personal qualities that are required for the performance of parental duties and rights (Art. 154, para. 2 of the MFRA of RS); a person who is at least 18 years older than the adopted child, except if the adopter is the spouse of the parent of the child who is being adopted,

when the age difference between the child and the adopter may be less than 18 years (Art. 155 of the MFRA of RS). The adopter cannot be: 1) a person who has been stripped of parental rights by a court decision; 2) a person for whom there is reason to suspect that he/she will use the position of adopter against the well-being of the adopted child; 3) a person who does not provide sufficient guarantees that he/she will raise the child to be a useful member of society; 4) a person who is mentally ill or feeble-minded, or ailing from a disease that may place the health and life of the adopted child in jeopardy (Art. 159 of the MFRA of RS).

As for the *rights and obligations of the adopter and the adopted child in the case of partial adoption*, according to Article 174 of the MFRA of RS, adoption is carried out between the adopter, on one side, and the adopted child and his/her descendants, on the other, and includes relations of kinship and other rights and obligations that exist between parents and children according to the law, unless the law prescribes certain variations. In partial adoption, the relatives of the adopter and the adopted child do not assume the relationship, rights and obligations that stem from this basis, and the adoption does not have effect on the rights of the adopted child in regard of his/her parents and other relatives, or on his/her duties towards them. In partial adoption, the kinship relation between the adopted person and his/her biological parents and other relatives does not end. According to Article 175 of the MFRA of RS, in partial adoption, the adopter may and may not give a new first name to the adopted child. If the adopter has biological children, inheritance rights towards the adopted child may be limited or excluded altogether, and if the act of adoption has been carried out jointly by a married couple, the inheritance rights of the adopted child may be defined in a different manner regarding each of them, all in accordance with Article 176 of the MFRA of RS.

As for *rights and obligations in partial adoption*, Article 195 of the MFRA of RS regulates that, in full adoption, the relation of kinship and all rights and obligations that exist according to the law between parents and children and other relatives, are established between the adopter and his/her relatives on one hand, and the adopted child and his/her descendants on the other. In full adoption, the rights and obligations of the adoptive child towards his/her parents and other relatives end, and vice-versa. The adopter who wishes full adoption has identical status to that of the child's biological parents, therefore, according to Article 197, para. 2 of the MFRA of RS, he/she may be limited in the exercise of parental rights, or stripped of parental rights relating to the adopted, child under the conditions and in the manner envisaged by this law, just as if he/she was the child's parent.

Partial adoption *may end* through a break-up (under the conditions laid out, and in accordance with Articles 177 to 180 of the MFRA of RS) and through annulment (in accordance with Art. 181 to 187 of the MFRA of RS).

Partial adoption may end by decision of the guardianship organ when it determines that the justified interests of a minor child so require (Art. 177, para. 1 of the MFRA of RS),

and the list of subjects, who may start the initiative for terminating adoption with a guardianship organ is extremely wide, anachronous and unclear in the sense of terminology (Art. 177, para. 2 of the MFRA of RS). Partial adoption may also end by request of the adopter or the adopted child, when there are justified reasons for this, as well as on the basis of their agreement, and if the adopted child has come of age, the guardianship organ will not assess whether the ending of adoption is to the advantage of the adopted child (Art. 178 of the MFRA of RS). Partial adoption ends through annulment, a court decision on the annulment of adoption, if some of the preconditions were not fulfilled when it began and refer to the capability for adoption of the adopter or the adopted child, or with circumstances concerning the adopter and adoptive child, or preconditions that are related with the form of adoption, providing that such irregularities are foreseen in the law as reasons for annulment (in accordance with Art. 181, para. 1 of the MFRA of RS). In accordance with para. 2 of the same article, the right to start annulment procedure for reasons foreseen in the law belongs to the parents, adopted child and other persons who have a direct legal interest in the annulment of the adoption. Adoption for which the spouse of the adopter has not given his/her consent is also invalid, and in this case, the right to start the annulment procedure is carried out only by the adopter's spouse, no later than six months from the day when he/she learned about the beginning of adoption, and no later than one year since the beginning of the adoption relation (Art. 182 of the MFRA of RS). Adoption will also be annulled if it has begun without the consent of the persons whose consent was necessary for adoption, except if those persons stated before the relevant body that they agree to the adoption after the fact (Art. 183 of the MFRA of RS); adoption will also be annulled if the persons whose consent for adoption is necessary gave this consent under pressure or were deceived into doing so (Art. 184, para. 1 of the MFRA of RS). The court that has jurisdiction over the guardianship organ before which the adoption was carried out brings the decision on the annulment of adoption.

Full adoption cannot be broken up but only annulled if the conditions laid out in Article 198 of the MFRA of RS were not fulfilled at the time of the adoption: that the child was not a minor; that the adoption was carried out without the consent of the adopted child's parents or guardian; that the child was adopted by several persons, except if the adoption was by a married couple; that the adopted child is a direct relative, a brother or sister; that the adopted child was older than five at the time of adoption, except in cases described under Article 188, para. 3; that the child was not adopted jointly by a married couple, except in cases allowing for exceptions, as laid out in Article 191; that the adopter is a person stripped of parental rights, or is mentally ill or feeble-minded, or ailing from a disease that can place the life or health of the adopted child at risk; that the adoption was carried out by foreign citizens without the approval of the relevant state administrative body. Full adoption will also be annulled under the conditions laid out in Article 199 of the MFRA of RS, which are related to regulations of the same law about the annulment of partial adoption, and which have been listed above in reference to the annulment of partial adoption.

According to the regulations of the MFRA of RS, the *guardianship organ* is in charge of carrying out the adoption, and, according to the same law, the centre of social work is the guardianship organ, which performs tasks of family protection, family help and guardianship. In performing these tasks, the guardianship organ may be entrusted with making decisions in administrative matters.

Therefore, in Serbia's legal system, the centre of social work (CSW), that is to say, the guardianship organ performs tasks referring to adoption and the procedure of adoption. This is not an organ of judicial authority, and it cannot be said that it is a body of administrative authority. It is actually a public service (institution), which the state entrusts with the performance of tasks that are under the jurisdiction of the state.

The CSW is a multidisciplinary body as a rule, according to all the tasks that it performs. Professionals in a CSW are organised in teams, which deal with the protection of adults and the elderly, as well as children and youth. Within teams for the protection of children and youth in a CSW, there are sub-teams for the protection of children without parental care, which perform adoption-related tasks: the definition of the conditions for adoption on the child's side, the definition of these conditions on the side of the persons interested in adoption, the determination of the complementary suitability of the adopters and the adopted child, and other jobs that are important for the performance of adoption. After establishing all the relevant facts and circumstances, after all evidence in the procedure has been presented, and after it has been established that adoption will be the best form of protection of a child who is permanently without parental care, and that it is in his/her interest, the adoption is carried out before the CSW.

Adoption is carried out before the guardianship organ that is in charge of the area where the adopted child is resident, or is staying if he/she has no place of residence (Art. 161 of the MFRA of RS). The person who wishes to adopt the child and the adopted child's parents submit a joint proposal for adoption to the relevant guardianship organ, attaching the birth certificates of the adopter and the adopted child, and other proof of the existence of the conditions for adoption, all according to Article 162, para. 2 of the MFRA of RS. The said legal regulation refers to the commencement of procedure for partial adoption, which may be carried out even if both of the child's parents are known, in agreement between the child's parents and the persons who wish to adopt him/her. The procedure for establishing whether the conditions exist for the procedure of full adoption begins with the submission of a joint proposal by the married couple who wishes to adopt a child. As a rule, since adoption is allowed to married couples, that is to say, since only both spouses may adopt a minor child together (as well as the spouse of the parent of the child who is being adopted), according to Article 191 of the MFRA of RS, and only in extraordinary circumstances may the adoption be carried out by a person who is not married if there are justified reasons - it is necessary that both spouses submit a joint adoption proposal.

The guardianship organ is obliged to obtain *proof of the conditions for adoption* that has not been submitted together with the adoption proposal, and may order the person applying for adoption to provide such proof later (Art. 162, para. 3 of the MFRA of RS). In the procedure to determine the existence of the conditions for adoption, the guardianship organ acts according to the rules of regulatory procedure, in other words, according to the provisions of the Law on General Administrative Procedure, and according to the rules of professional work and procedure conducted in the CSW. This is a combination of judicial and non-judicial procedure, that is, specific procedure carried out by a multidisciplinary team of professionals in the CSW. As stated above, the team for the protection of children without parental care includes: a social worker, a pedagogue, a psychologist and a jurist, each assessing whether the conditions for adoption exist from the point of view of their respective vocations (on the part of the potential adopters, the child's biological parent and that of the child), whether the adoption is to the advantage of the adopted child, that is, whether it is in his/her interest, as well as the consequences of the adoption. Professionals of the CSW work with the parties in the adoption procedure in a team, and they may work individually or in a group, which means that every professional shall be able to interview all the participants in the adoption procedure and assess the relevant facts and circumstances, that is, questions, in the appropriate manner, but, when the need arises, the team of professionals will work together (in group work) on solving the relevant issues or on carrying out some other necessary activity in the procedure. The professionals keep records of the activities they have undertaken in the procedure in a case monitoring sheet, by entering official notes or in some other appropriate manner, wherein every professional is to complete his/her work on a certain segment by making a separate written report about his/her findings or opinions. According to the routine methodology of professional work of the CSW in adoption procedures, professionals of the CSW write reports and give their view about: the parent/parents of the child; the child; the persons who wish to become adoptive parents in order to assess their general suitability for adoption and the complementary suitability of these persons in relation to the particular child. According to Article 164 of the MFRA of RS, the guardianship organ is to obtain the professional view of the social worker, pedagogue, psychologist and physician about the suitability of the adopter and adopted child for the performance of adoption. Also, all experts bring a team conclusion, as a kind of a formal professional opinion, that is, they take a stand about the case. The team conclusion does not have the attributes of a formal legal decision, but represents one of the bases for reaching the formal legal decision, according to the regulations of the Law on General Administrative Procedure, and in the adoption procedure, the team conclusions precede the performance of adoption. Before the adoption is performed, the experts of the CSW are obliged to take a stand, in the form of a team conclusion, about: the choice of adoption as the form of protection of the child, who has been permanently left without parental care; the general suitability of the potential adopters; sending the child for adaptation; the approval of the adaptation report and the continuation of the adoption procedure; the complementary suitability of the potential adopters and the child; giving the child for adoption to the particular adopters.

*During the procedure of preparation for adoption*, the guardianship organ is obliged to inform the parents, the persons who wish to adopt and the future adopted child, in detail and in the appropriate fashion, about the legal, educational, moral and other important goals and consequences of adoption, and also to point out to the future adopters the importance of informing the adoptive child about the legal nature of their relationship, and provide the adoptive child with the appropriate counselling in this context (Art. 163 of the MFRA of RS). This norm refers to the guardianship organ's obligation to undertake measures in providing the necessary information to the participants in the adoption procedure, about all the important aspects and consequences of adoption. This norm is combined with the implementation of the regulations of Article 173 of the MFRA of RS, according to which the child has a right to know about his/her biological origin, that is, according to which an insight into the documents relating to the performed adoption (which are otherwise an official secret) will be provided to the adopter, to the adopted child after the age of 16 years and, in case of partial adoption, to the parents of the adopted child. Besides, Article 166 of the MFRA of RS envisages that, while collecting the information and the proof needed for carrying out adoption, the guardianship organ is to prepare, as necessary, the parents, the adopted child, the adopter and the persons with whom the adopted child is staying for upbringing and care, directly or through the relevant professional service, for the performance of adoption.

## Assessment of the situation and observations

The listed norms of the MFRA of RS cover a number of issues that the legislators have considered as important in the process that precedes adoption, as well as the circumstances to which the CSW should pay attention in this procedure. These issues and circumstances may be divided in a way that leads to the conclusion that the adoption is preceded by four professional procedures, or by the same number of segments of one procedure, whose goal is adoption as the appropriate form of protecting a child who is permanently without parental care. Within these procedures, or segments of one procedure, the CSW must:

1) Assess the general conditions and circumstances in the context of the existence of the legal conditions for the adoption - The existence of these conditions must be determined, that is they must be examined in order for it to be concluded beyond any doubt that there are no legal obstacles to adoption in the given case. These issues and circumstances are related to: the child, the potential adopters and the adoptive child's parents. Besides examining the legal conditions for adoption and determining that there are no obstacles for adoption on the child's side, the guardianship organ is to examine whether adoption, as the form of legal and family protection, is in the child's best interest.
2) Assess the conditions and the circumstances regarding the potential adopters, with the aim of establishing their general suitability for the performance of adoption - This includes the guardianship organ's obligation to assess the relevant circumstances that certify the potential adopters' capability to

adequately deal with the child, to care for him/her, protect and bring him/her up. Also, it is the obligation of the guardianship organ to examine the physical, emotional, health, pedagogical and psychological characteristics and capacities of the potential adopters.

3) To provide the necessary help to the parent of the child, to provide necessary information about adoption to the potential adopters, and prepare the potential adopters, the parent and child for the act of adoption - In this context, the guardianship organ has a number of obligations that must not violate the rights of all the above mentioned, relevant subjects in the adoption procedure. The obligations of the guardianship organ are complex and demand a high level of expertise and professional standards.
4) To establish whether there is complementary (concrete) suitability regarding the potential adopters and the child - Complementary suitability includes the psychophysical and other abilities, or the potentials of the persons interested in adoption, regarding the particular child. During this process, it must be determined whether the overall parental capacity of the prospective couple of adopters suits the needs and characteristics of the particular child.

With the aim of checking the parental capacity of the concrete couple of adopters, and of finding out whether the couple's personal qualities suit the needs of the child, the guardianship organ may decide that the child spends a certain period in the family of the potential adopters before adoption, if this is in the adoptive child's interest, provided that this period can last no longer than one year (Art. 165 of the MFRA of RS).

If, during the process of examining the facts and circumstances that are relevant for the adoption, the guardianship organ establishes that the conditions for adoption laid out in the law are not satisfied, or that the adoption would not be to the advantage of the adoptive child - it shall issue a note of rejection of the adoption proposal (Art. 167, para. 1 of the MFRA of RS). According to para. 2 of the said article of the MFRA of RS, an appeal against the rejection note may be submitted within 30 days of its reception. The ruling on this appeal is reached by the Minister of Social Welfare of the Republic of Serbia, in second-degree procedure; an administrative process may be initiated before the Supreme Court of the Republic of Serbia to contest the second-degree (final) ruling, in accordance with the Law on Administrative Procedure.

If the relevant CSW establishes that the conditions for adoption have been fulfilled, the adoption will be performed. Adoption is performed in the presence (obligatory) of the adopter, his/her spouse, the parent or guardian of the adopted child, and of the adoptive child if he/she is older than ten years, except if the adoptive child has been cared for, protected and brought up until this age by the persons who wish to adopt him/her. The presence of the adopter's spouse and the child's parent is not obligatory during adoption if they give statements before the relevant CSW, or the CSW at the place of their residence, that they agree with the adoption and that they will not attend the adoption.

These statements are given for the record before the authorised employee of the CSW, and they must include the names of the adopter and of the adopted child (Art. 168 of the MFRA of RS).

According to the MFRA of RS, adoption is performed on the basis of agreement between the adopters and the parents of the child, and if the child has no parents, that is, if the child is under guardianship, the agreement is made between the adopters and the child's guardians. The agreement is made before the guardianship organ, which makes a record of it. Article 170, para. 1 of the MFRA of RS regulates that a special record is made of the performance of adoption. Paragraphs 2 and 3 of Article 170 state that the record of adoption contains the action undertaken, the statements given and (in partial adoption) the agreement between the adopters and the parents, that is, the guardian about the first name and inheritance rights of the adopted child, and the declaration of adoption. The record is signed by persons who gave statements during the adoption, the official of the guardianship organ that is carrying out the procedure and the recording secretary. According to Article 171 of the MFRA of RS, after the statements of agreement with the adoption given by the adopter, the parent or guardian, the official of the guardianship organ reads the record that the parties have signed and declares the adoption to be completed.

In full adoption, the presence of the adopters and the parent or guardian of the child is necessary, except if the parent has agreed to the adoption of his/her child (Art. 192, para. 2 of the MFRA of RS).

In full adoption, the surname of the adopted child entered in the record is that of the adopter, and data about the parent who has consented to the adoption of his/her child is not entered in the record, except if otherwise requested by the adopter. This is envisaged by Article 193 of the MFRA of RS, as well as the fact that, in full adoption, the adopter is recorded as the child's parent in the register of births.

Therefore, the positive legal solution in Serbia in the context of the form of adoption consists of a contractual form (a concord of will between the relevant parties in the concrete relation, that is procedure); in accordance with this, the existence of all conditions for adoption and the concord of will of all the sides is recorded, after which the record is signed and the adoption declared as fulfilled. The declaration of adoption is not constitutive in nature, it does not create a new relation, but is declarative in nature - it acknowledges the existence of a legal relation, which has emerged through the concord of will of the parties in the procedure, on the basis of all the established facts, circumstances and fulfilled conditions for adoption.

In the case of partial adoption, the CSW submits the record of adoption to the relevant registrar to record it in the register of births, and the CSW is obliged to keep records about adopted persons (Art. 172 of the MFRA of RS).

On the basis of the record of full adoption, the CSW brings a decision, containing the data for the new entry of the adopted child's birth, with data about the adopters as parents to be entered in the register of births. This decision annuls the adopted child's earlier record in the register of births (Art. 194 of the MFRA of RS).

According to Article 160 of the MFRA of RS, in special circumstances, the adopter may be a foreign citizen, if there are justified reasons, and in order for a foreign citizen to adopt a child, he/she needs approval of the republican administrative body in charge of health and welfare.

According to the said legal regulation, foreign citizens may adopt a child, who is a Yugoslav citizen, if there are justified reasons for this. This norm is in full compliance with Article 21 of the Convention, according to which international adoption may be considered as an alternative way of caring for a child, if the child cannot be placed in another family or adopted, or the child cannot be properly cared for in the country of his/her origin. Also, the said norm of the MFRA of RS is in accord with The Hague Convention on the protection of children and co-operation in international adoption, of May 29th, 1993[29], which states that international adoption may provide the advantage of a permanent family to the child for whom an appropriate family cannot be found in the country of his/her origin. The MFRA of RS clearly points out that international adoption is only resorted to in special circumstances, which is seen from the prescribed condition that this form of adoption is only carried out after approval is granted by the relevant state body.

It is clear from the aforesaid that only children, for whom it is impossible to find a proper form of protection in the country of origin or impossible to find adopters in the case that adoption is the proper form of protection, may be given for adoption to foreign citizens.

Judging by the many years of practice in the implementation of international adoption, the candidates for this form of adoption of Serbia, as a rule, are children with special needs, that is, children with difficulties in development. This means that a child, who has special needs, by the fact that he/she has been left permanently without parental care, has additional specific needs in the sense that he/she has developmental differences compared to children of the same age, or has a permanent congenital malformation. In Serbia, as a rule, it is impossible to find appropriate foster families, or persons interested in the adoption of children with special developmental risks (from the biological, genetic or mental viewpoint), so their only prospect is often to grow up in an institution of social protection. The people interested in adoption in Serbia are most often not prepared to additionally invest in a child with the aforesaid problems in

[29] The Federal Republic of Yugoslavia is not a signatory state of this Convention.

psychological and physical development, and accept him/her as their adopted child. These persons want a healthy adoptive child, a fact that does not disqualify them from the process of adoption, but they are certainly not appropriate candidates for the adoption of children with special needs, or with disabilities.

When one bears in mind the fact that, based on some research, certain types of retardation in a child's development are reversible, and that the consequences of some might be significantly reduced by providing normal conditions for the child's growth and development if this is done as early in the child's life as possible, then the importance of finding a suitable foster family for such children, which could provide him/her with the appropriate developmental possibilities, grows immensely. Giving the child for adoption to foreign citizens is often the only way for the child to be provided with a stimulating environment for development and, at the same time, for other legal regulations regarding the implementation of adoption as the form of protection of the child without parental care, to be fulfilled.

In the case of adoption by foreign citizens, all the same regulations of the MFRA of RS and all the same methods of professional work in the guardianship organ are applied as in the case of adoption by citizens of our country. Together with certain specifics that stem directly from the MFRA of RS (regarding the prior approval by the relevant state body), from the Law on the Resolution of Legal Disparities with the Regulations of other Countries in certain relations - the collision regulation, and the specifics regarding co-operation with the corresponding foreign bodies that are in charge of acquiring the needed information and establishing certain facts and circumstances on the side of the persons interested in adoption, the fulfilment of conditions for adoption on the side of the prospective adopters - foreign citizens - shall be verified beyond doubt.

The practice of CSW, as the organs in charge of carrying out adoptions, is founded primarily on the regulations of the MFRA of RS, but also on rules of professional multidisciplinary work in the CSW. The rules and methods of professional work regarding adoption are in accord with the regulations of the MFRA of RS, but these regulations supplement them, giving them content and viability that is in the spirit of the regulations and their goals.

The MFRA of RS, a law conceived and adopted well before the passage of the Convention on the Rights of the Child, came into effect on June 1980, while later amendments and supplements to the law have not brought solutions that are different in concept. In spite of the fact that it chronologically preceded the Convention, it may be said that the MFRA of RS, in the context of adoption, contains many norms that are in accord with the principles and standards of the Convention.

Since the Convention is founded on the belief that human rights, and therefore the rights of the child, are connected and inter-dependent, it is based on: 1) the right to ensuring

the survival, life and development of the child; 2) the child's right to participation in all procedures and issues that are related with him/her, and for his/her views to be taken into account; 3) the principle of the child's best interest; and 4) the principle of non-discrimination.

With regard to adoption and other measures and procedures that are undertaken in connection with the child, one should bear in mind that the Convention gives priority to the best interest of the child. In this context, the analysis of legal regulations about adoption leads to the conclusion that the legislator was mindful of "the child's best interest", that is "the interest of the child" as the value and goal. In the MFRA of RS, this is expressed in different terms, that is syntagms, so it contains the following modalities, that is to say, formulations that are essentially identical to the principle of "the child's best interest" from the Convention:

- Decisions on the implementation of any form of protection of children without parental care are reached on the basis of a comprehensive assessment of every individual case, and of the possibilities for the choice of the form of family and legal protection of the child that best suits his/her needs (Art. 149 of the MFRA of RS);
- Adoption is allowed if it is to the advantage of the adoptive child (Art. 152 of the MFRA of RS);
- If it is in the interest of the adoptive child, the guardianship organ may decide for the future adoptive child to spend a certain period before adoption with the family of the adopters (Art. 165 of the MFRA of RS).

These are explicit legal norms - clear and defined parts of legal norms that demonstrate the legislator's intention to establish and protect the value of the child's interest when adoption is applied as the form of his/her protection. Moreover, it is beyond doubt that the whole part of the MFRA of RS that regulates adoption, in spirit, upholds the principle of the child's interest as the fundamental basis and premise, which is the starting point when a child is given for adoption, as well as the goal sought through the adoption of a particular child. This statement is apodictic regarding the legal level of the organisation of adoption.

In the sphere of applying the legal norms on adoption, the principle of the child's best interest is also expressed, and this (which is very important) in cases of full adoption. However, what can be seen in the practice of the guardianship organs, and what undermines the preservation of the principle of the child's best interest to a certain extent, regarding adoption, arises from:

(a) partial adoption,
(b) no adoption of children permanently without parental care, who are placed in institutions of social protection.

As for partial adoption in Serbia, it should first be mentioned that this form of adoption is much less frequent than full adoption. Full adoption is a rule, while partial adoption can almost be viewed as an exception. However, since partial adoption is very often carried out as so-called "kinship adoption" its consistency in terms of the child's best interest may be brought in question. Kinship adoption strives to compensate for the lack of offspring of a concrete married couple, and compensation lies in the adoption of a child of the adopters' close relatives. To be born in mind here, of course, are all the circumstances of the case, that is to say, that the guardianship organ does not approve partial (kinship) adoption exclusively in order to satisfy the needs of the adopters, but it is clear in such cases that the issue is not the child who is permanently without parental care, and for whom adoption is the appropriate form of protection. Questions arise as to the child's need for adoption by the mere fact that, in kinship adoption, the circumstance of the child being without parental care does not often exist. This brief note about partial (kinship) adoption is a matter of principle and, in view of the fact that it is seldom implemented in practice, it cannot be given the weight of a cardinal objection to adoption practice in Serbia.

As for the non-existence of the adoption of children, who are permanently without parental care, and are placed in institutions of social protection, one may say that the principle of the child's best interest is not respected in all those cases where the child's family status is not solved for an unjustifiably long period, that is to say, where the child is not given for adoption after his/her family status has been solved and, at the same time, not enough is being done for the child to develop outside of the institution. In cases when a child is permanently without parental care, when he/she is placed in a institution of social protection and not in a foster family, and when there are no prospects of the child's reunification with his/her biological family for some reason, adoption is, in principle, viewed as a possible form of the child's protection. When this form is not assessed in time and quickly enough for the most appropriate form of protection to be selected for the child, in other words, when the child is not given for adoption at an early age while there is every indication that adoption is the most appropriate form of protection - then, in this case, there is a violation of the principle of the child's best interest.

As for the child's right to participation regarding adoption, the law prescribes that the child's consent is needed for adoption if he/she is older than ten years (Art. 156, para. 3 of the MFRA of RS). Also, if the child's first name is to be changed after adoption, the consent of the child is required if he/she is older than ten - which stems from the regulation under Article 175 of the MFRA of RS ("The adopter shall give the first name to the adopted child in the manner and under the conditions laid out in this Law"), and is in connection with Article 404, para. 5 of the same law ("If a change of the first name is sought for a child that is older than ten years, his/her consent is necessary").

Apart from the aforesaid, the child's right to participation in the process of adoption arises from a regulation in the MFRA of RS (Art. 163, para. 1), which speaks of the

right of the adopted child to be informed in the appropriate manner about the legal, moral and other important goals and consequences of adoption. The law does not contain a term that is more explicit than the legal standard "in the appropriate way", in which the child will learn about the nature, goals and consequences of adoption, which is conducive to the fact that this right of the child will be pursued in accordance with his/her developmental capabilities and ability to comprehend the importance of adoption and of the procedure that refers to him/her.

In view of the child's non-discrimination in adoption, one should mention the position of children with special needs and of children from ethnic minority groups. The MFRA of RS does not contain regulations, which discriminate any social group that the child may belong to.

The mere position of the child with special needs reduces the chances for him/her to be adopted by citizens of our country and, as we have already explained, these children are most often adopted by foreign citizens, which practically discriminates them in a certain way by the fact that it is much less likely that they will remain in their country of origin after adoption.

Children of ethnic minority groups, and Roma children, are most often adopted by persons from the same ethnic background, which is in accordance with the child's right to the preservation of his/her ethnic identity.

The developed multidisciplinary work in the CSW has significant value in relation to adoption. By the organisation of its work, profile of experts, their professional standards, work methods, implementation of legal standards and rules of professional work - the CSW has an important influence on the implementation of the principle of the child's best interest. The system of protection of children without parental care, with adoption in view, contains positive characteristics, which are derogated by certain shortcomings in practice, arising partly from inappropriate legislation, and partly from deficiencies in the organisation of the system of protection and the lack of routine.

The flaws in the practice of the protection of children without parental care in connection with adoption may be described as follows:[30]

- In many cases, the CSW are slow in establishing the legal and family status of the child, as an important precondition for timely adoption;

[30] Indicators of the lack of practice in adoption have partly been conveyed from: the Report about the work of the Ministry for Caring for the Family of the Republic of Serbia for 2000, and from the Explanation of models of legal regulations on the protection of children without parental care, composed by the team of experts of the Ministry for Labour and Welfare Issues of the Republic of Serbia, and the Save the Children UK NGO - Belgrade Office.

- In some cases, the institutions for sheltering children without parental care are late in submitting reports on the health and developmental status of the child in their care, which delays adoption;
- In the procedure that precedes the decision on the approval of adoption, the CSW does not always apply all the available measures of protection of the biological parent, aimed at the preservation of his/her parental function;
- The CSW do not make sufficient use of their legal authority to initiate procedure before the relevant courts for stripping parents who neglect their parental right or the performance of parental duties of their parental right; this shortcoming makes adoption impossible even when all the circumstances point to the fact that the child is permanently without parental care, and for whom adoption should be implemented as the appropriate form of protection;
- The parents' statements of consent for adoption often lack a statement referring to the form of adoption for which they give their consent (partial or full adoption);
- Previously achieved standards of professional work in the family legislative protection of children without parental care have stagnated or fallen;
- An administrative approach, rather than the professional and expert approach, is the predominant attitude of CSW employees;
- The CSW are institutions that are overloaded with a very diverse range of tasks, consequently, they lack capacities for developing and promoting their services in the protection of children without parental care (including adoption);
- In the practice of CSW, the preparation of prospective adopters for adoption is insufficient (or altogether non-existent), and informing the adopters about the nature and consequences of adoption boils down to the formal and superficial - and lacks pre-conceived, prudent planning;
- In the practice of CSW, as a rule, no support is provided for families after adoption (social and psychological, advisory, medical, legal, etc.);
- No supervisory mechanisms have been established for monitoring the adopted child, after adoption.

According to the MFRA of RS, the guardianship organ is obliged to keep a record of performed adoptions. In its annual report, the CSW informs the relevant ministry (currently the Ministry for Labour and Employment of the Republic of Serbia, in accordance with the Law on Ministries of the Republic of Serbia), among other things, about the number of performed adoptions and about other indicators regarding adoption.

In view of this fact, the ministry keeps certain data about the adoptions performed in Serbia, according to which one may draw conclusions about the nature of this legal institution in terms of practice.

According to information from the annual CSW work reports for 1998 and 1999, data about adoptions are to be found among other kinds of protection of children without parental care:[31]

1) Number of performed adoptions: 270 in 1998, 262 in 1999. Note: compared to other kinds of the protection of children without parental care (placement in an institution of social protection, placement with a foster family, other), the share of adoption was 2,94% in 1998, and 2,84% in 1999.

2) Age of adopted children:

| | |
|---|---|
| Up to the age of one | 1998 - 22; 1999 - 29, |
| Aged between one and two | 1998 - 17; 1999 - 25, |
| Aged between two and three | 1998 - 8; 1999 - 13, |
| Aged between three and four | 1998 - 2; 1999 - 10, |
| Aged between four and five | 1998 - 0; 1999 - 3, |
| Older than five | 1998 - 2; 1999 - 22. |

Note: In 1998, 51 cases of adoption were submitted to the Ministry for perusal, which is 18,89% of the adoptions performed in that year, while in 1999, 102 cases were submitted - which is 38,93% of the total number of adoption performed in that year. The presentation of adoptions according to age and gender structure, the types of adoption, the family status of the children, as well as the analysis of other data on adoption in these two years (which follows in this text) will only be possible for this number of cases (51 and 102).

The majority of adopted children were at the youngest age when they entered their adoptive families. As their age increased, the number of adopted children dropped.

3) Sex of the adopted children:

| | |
|---|---|
| Boys | 1998 - 24; 1999 - 49, |
| Girls | 1998 - 27; 1999 - 53. |

Both in 1998 and in 1999, there was a tendency of slightly greater frequency in adopting girls. Quoting the Analysis from which this data was taken, girls were more frequently adopted in towns and boys in villages; the reason for this latter claim probably lies in the traditional - patriarchal view of male supremacy, the desire to prolong the family line (surname of the adopters), the inheritance factor, farmwork, remaining on the land and suchlike.

[31] The data and comments have been conveyed from the Analyses of adoption of the Ministry for Care for the Family of the Republic of Serbia.

4) Types of performed adoptions:
   Full 1998 - 46; 1999 - 86,
   Partial 1998 - 5; 1999 - 16.
   The largest number of adoptions was with full effect. The majority of adopters wished to establish a permanent relation of parenthood with the adopted child, and it is therefore understandable that full adoption was performed in the majority of cases, after the fulfilment of the legal preconditions.

5) Family status of the adopted children:
   Born into extra-marital union 1998 - 46; 1999 - 86,
   Born into extra-marital union and determination of fatherhood 1998 - 3; 1999 - 5,
   Born into marital union 1998 - 0; 1999 - 10,
   Foundling 1998 - 2; 1999 - 1.
   The largest number of adopted children are born into extra-marital unions, because such children are frequently neither planned, nor desired by their parents. Children born into extra-marital unions are candidates for full adoption, almost as a rule. Here are some motives for giving children for adoption to close or distant relatives: solidarity and the desire to fulfil the desire of those relatives to have a child, because they cannot have their own children; the desire of the biological parents to provide their child with better conditions for development, upbringing and education; the child's desire to inherit the property of the adopters, a family pension, etc.

According to the figures of the Ministry of Labour and Employment, for the period from 1995 to 1999, the number of performed domestic and international adoptions (where the adopters were foreign citizens), is as follows:

| Year | Domestic | International |
|---|---|---|
| 1995. | 337 | 18 |
| 1996. | 334 | 16 |
| 1997. | 289 | 22 |
| 1998. | 270 | 6 |
| 1999. | 262 | 1 |

It can be seen from the above figures that the number of adoptions, that include both the domestic and the foreign factors, was constantly declining. In the course of 1998, 1999 and 2000, the Ministry for Family and Children applied a very restrictive policy towards international adoption, so this kind of adoption was abolished in practice. The result was an increase in the number and prolonged the duration of the stay in institutions of

children, for whom it was impossible to find foster or adoptive families within the national framework, because of their hereditary difficulties, disabilities, development needs or ethnic background.

According to the figures of the Federal Statistics Bureau,[32] in Serbia without Kosovo and Metohija, there were:

In 1998 - 222 adoptions
In 1999 - 231 adoptions

Data on adoption as the form of protection for children without parental care cannot be viewed as sufficiently comprehensive and consistent. The official statistical bulletin contains data about the number of performed adoptions, without many other necessary indicators, while the data of the relevant ministry is richer in content, with a greater number of indicators, but the indicators are based on a very small number of cases (compared to the total number of adoptions performed in the said period), and they cannot be used in a comprehensive analysis of characteristics and trends.

Apart from this, many indicators are missing that would be useful for professional supervision and analyses and might play a part in producing legislative policies and policies that promote adoption in all the segments of its complexity.

Considering the nature of adoption as a form of the family legislative protection of children without parental care, it is necessary to have data on a certain number of indicators to monitor events and progress in the implementation of Article 21 of the Convention, for example:

- the number of children with special needs (according to sex, type of adoption /full or partial/, domestic or inter-state);
- the number of children - members of ethnic minorities;
- the number of children sent for adaptation, before adoption;
- the number of terminated partial adoptions (through a break-up or annulment);
- the number of terminated full adoptions (through annulment);
- data on informing the adoptive child about the documents of his/her adoption;
- data and mechanisms of assistance for the prospective adopters prior to adoption;
- data on the guardianship organs' mechanisms for monitoring the adopted child's development in their adoptive families, that is to say, data on support to adoptive families, after adoption;

[32] Statistical Bulletin No. 2244, "Welfare Protection, Users, Forms, Measures and Services in 1998", Belgrade, 2000; and
Statistical Bulletin No. 2293, "Welfare Protection, Users, Forms, Measures and Services in 1999", Belgrade, 2001.

- the number of adoptive families from towns and villages;
- the number of children adopted by one person;
- data on assistance provided to a parent before giving up a child for adoption;
- data on whether the child was in guardianship, prior to adoption;
- data on the validity of the parents' statement of consent to the adoption of their child;
- the number of children born to parents, who are minors, that are given up for adoption.

# PROTECTION OF CHILDREN FROM ABUSE AND NEGLECT

***Article 19 of the Convention on the Rights of the Child***

***1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.***
***2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.***

## Regulations in the FRY and the Republic of Serbia

The Family Law regulations of FR Yugoslavia prescribe obligation on the part of judiciary, other organisations (e.g. upbringing and education ones) and every citizen to inform the public guardianship body as soon as they learn that a parent is not in position to exercise his/her parental right or that a child needs protection for other reasons (Art. 133 of the Marriage and Family Relations Act of the Republic of Serbia). Should the public guardianship body determine that a serious threat for proper upbringing of a child exists, it may take the child away from his/her parent and commit him/her to another person or organisation for guardianship and upbringing (Art. 136 of MFRA of RS). Furthermore, a court may deprive a parent of his/her parental right if he/she abuses exercise of that right or highly neglects exercise of parental duties (Art. 139 of MFRA of RS).

The current criminal legislation prescribes measures for protection of children from physical and mental violence, injuries or abuse, neglect or negligence, maltreatment or exploiting, including sexual harassment. The foremost acts sanctioned are those of violence against any person (e.g. heavy and light physical injury - Art. 53 and 54 of Criminal Code of RS). In the group of criminal offences against dignity of a person and morality there is a list of qualified forms of rape (if done to a female), intercourse and

indecent sexual assault, intercourse and indecent sexual assault imposed on a helpless person, sexual misconduct, indecent sexual assault and procuring or enabling performance of fornication (if done to a child of at least 14 years) (Art. 103 to 105 and 108 to 111 of CC of RS). A separate criminal act is the act of fornication and indecent sexual assault with a child younger than 14 years (Art. 106 of CC of RS). Any person may be object of persecution if he/she commits these acts. Furthermore, the law anticipates the offences of sexual assault and indecent sexual assault through abuse of one's official position, and the possible authorities listed as perpetrators in the qualified form of such criminal action are teacher, counsellor, guardian, adopter, stepfather or some other person who abuses his/her official position in effecting sexual assault or indecent sexual assault with a child above the age of 14 years (Art. 107 of CC of RS). In another group of criminal acts - those against marriage and family - neglect and maltreatment of minors is punishable where the perpetrator could be either a parent, adopter, guardian or any other person looking after the child (Art. 118 of CC of RS).

*Achievement of protection through discovery and reporting criminal acts, conduct of court procedure and punishing perpetrators* is regulated by the Criminal Procedure Code of the FR Yugoslavia. The child that was abused and having at least 16 years is authorised to issue statements on his/her own and to undertake actions in the proceedings (Art. 65, para. 2 of the Criminal Procedure Code of the FR Yugoslavia). This Act also anticipates the obligation of especially careful dealing in the hearing procedure for a child that was exposed to a criminal act so as not to exert harmful effects for his/her psychological state. If necessary, the hearing may be performed through assistance by a pedagogue or some other professional (Art. 102 (4) of CPC of FRY).

*Proposals for amendment and addendum of the legislature* have been submitted. They are in fact completely new laws in the field of protection of children and families against violence, maltreatment and exploiting: Act against Sexual Exploiting of Children, Act against Sexual Harassment, Marriage and Family Relations Act, Criminal Code (the portion on maltreatment and neglect of children and on violence in the family), law regulations of administrative procedure when the suspects are minor, and other regulations. The adoption procedure for such laws is extremely slow and difficult, but the new laws will be very useful in the work of courts and within the network of institutions and organisations dealing with protection of children against abuse and violence.

(Yugoslav) Child Rights Centre supervised vast and long-lasting activities for promotion of these laws and assembled a critical number of experts who introduced modern and progressive elements in these proposals.

## Assessment of the situation and observations

In the current social system protection of children fits into the existing care system for children that has developed as one of the society's priorities after the World War Two.

The state has allocated significant funds for advancement of the network of social, health and education services and institutions for children. Maltreatment and neglect, including abuse of children and especially sexual abuse and exploiting have not been recognised as social phenomena by the experts, they have even been denied by the official institutions for a rather long time.

In the stage when the society suffered a serious crisis and armed conflicts with all its consequences imposed between 1991 and 1999 violence was brought into the focused attention of both domestic and foreign public. This period of transformation of the society and its institutions was also marked by the activities spread by the non-governmental sector where numerous world standards in theoretical postulates and especially in practical activities and interventions were applied. Strengthening of the women's movement and organisations is particularly significant.

In the system of social protection of children the central place is held by the centres for social protection as legally authorised bodies of guardianship that make decisions and undertake measures and interventions in favour of abandoned children (children without parental care), those neglected, children with disabilities, or having disturbed and delinquent behaviour in their pre-adolescent and adolescent age, or among dysfunctional families with conflict, during divorce and after divorce procedure. In these terms centres for social work are holders of very extensive authorities: separation of children from the family, nomination of surveillance and guardianship, placement in children institutions and foster families, limiting or abolition of parental rights, etc.

In the period between 1991 and 1999 a large number of social care experts was faced with massive destruction of the population, children and their families, as well as with war consequences, refuge, forced migration, long chronic deprivation and direct violence and abuse of children on the territory of former Yugoslavia. About 14 thousand experts of all vocations dealing with children obtained most various practical education and were trained to be sensitive in recognition of violence, abuse and deprivation effects among children. This was all done through various programmes of psychosocial assistance with the support of UNICEF.

Thus, in 1997 all the more numerous and better-organised education for experts was started in the aim of detecting, intervention, protection and prevention of maltreatment and neglect over children. In such education not only new knowledge and skills were obtained, but the existing viewpoints and approaches regarding children were also changed, the motivation and enthusiasm for protection of children became stronger, and the common work goals were set up.

That is how creation of a unique movement for protection of children against abuse was started through development of a network of services, organisations, institutions and individuals. An elevation of consciousness and higher sensibility for existence of

violence and abuse of children in our milieu was achieved, and that also increased the need for action at the level of society.

A broad front of struggle was opened by non-governmental organisations for help in favour of female and child victims of violence in the family through their engagement and direct interventions, as well as through promotion of the awareness that violence indeed existed in the families and that the society must keep preventing it. This front soon included even numerous public services and institutions of the government sector, which were faced with the aftermath of violence among children not just inside the family but also outside.

As authorised bodies of guardianship Centres for Social Work represent the places for reporting harmful cases and for initial estimates and planning. In co-operation with the other relevant services, institutions and organisations (court, police, education institutions and health care services), and all the more significantly and more frequently with the NGO sector, they undertake various protection measures: SOS phone line and counselling centres against violence in the family, shelters for women, girls, centres for legal, financial and other help to the victims both within the families and beyond. A CSW also organises case sessions at which interventions are planned and co-ordinated, so it takes the role of a unique manager or supervisor of actions when high-risk cases are involved. In the Republic of Serbia there are 120 Centres for Social Work with a very significant concentration of university-degree experts who have a rich experience in the field of care for children and who are organised in operative teams for work with children and families.

In the period between 1999 and 2001 all the departments of the Belgrade City Social Work Centre passed through an intensive training for supervision of cases and interventions in the protection of children with a support by UNICEF. In this period another six city centres of Serbia passed through education of multi-professional teams for protection of children against violence (as organised by the NGO "Let's Cherish the Children"), plus four municipal centres of Belgrade (organised by the Child Rights Centre). That is how the cores and bases for multi-professional local teams for protection of children were formed, and representatives of local public services and organisations participating in case works were attached to them.

Systematic education of the experts in both social services and in other fields such as primary health care (paediatricians from school and pre-school dispensaries, home health care nurses, paediatric nurses and other health care workers and associates), pre-school institutions (nurses, pedagogues, psychologists, nursery-school teachers and others), staff and teams from institutions, as well as the judiciary and the police, have raised their sensibility and competence so that more of the recognised and treated cases of maltreatment and neglect of children emerge as facts than in the previous period.

The total number of children that the social service keeps record of for their disturbed family situations and/or inadequate parental care is estimated at around 90 000 in Serbia. Just in Belgrade there are 4 000 registered children from the families going through divorce procedure or having their parents divorced, who are without adequate care. Among two thirds of these child cases one or more forms of serious emotional and physical maltreatment and/or neglect are diagnosed.

The number of children in conflict with the law and displaying heavy behaviour disturbance who are under protection by the CSWs is significant (17 to 20 thousand), many of whom have a personal history of serious neglect and maltreatment. When placed in respective educational institutions they bring their syndrome of maltreatment (i.e. of a victim or maltreated evildoer) into the new milieu where other vulnerable children and adolescents live. This category of children carries a very high risk potential for further maltreatment transmission.

There were about 9 000 children left without parental care: 45% of them abandoned and 27% of them with parents incapable to look after them[33] (the data by the Ministry of Social Affairs of the Republic of Serbia). Particularly exposed to risk are the children whose parents maintain the problem of abuse of psychoactive substances, untreated serious psychiatric disturbances or who have done criminal acts or have been prison recidivists. Among these the children exposed to the highest level of threat are the youngest ones (up to the age of 3 years).

Children with disabilities are also represented in a high number as the users of CSW services: 6 000 with mental disabilities and 4 000 with physical disabilities - which makes about 10 000 children with impaired development. The risk of neglect and maltreatment among these children is three times higher than among other children, both within their families and outside.

In Serbia there is a large number of refugees and persons displaced from all regions of former Yugoslavia and Kosovo (about 10% of the entire Serbian population). The children from these families are very numerous (160 000). Especially numerous are the children from Kosovo (82 000). By passing through war miseries, losses and forced exodus, these children were exposed to accumulated risks of neglect and maltreatment. The most vulnerable among them are the children living in collective refugee centres (40 000 of them, 9 200 of whom are orphans).

Within its activities, particularly those during specific conferences held in 2002, the Serbian Ministry of Social Affairs has dedicated a significant attention to the problem

[33] According to the data of the Ministry of Social Affairs of Republic of Serbia

of protection of children against maltreatment and neglect. Ministry has formed an expert body for co-ordination with other department ministries whose field of activity includes children care.

According to the data available, in Serbia there are between 4 000 and 6 200 children placed in children institutions. These are children with mental and/or physical disabilities (special-needs children), with seriously disturbed behaviour or abandoned children. All of them were exposed to increased risks of maltreatment and neglect before joining their institution.

The currently started transformation of children institutions with a tendency of reduction of their capacities and re-direction of the children into various forms of foster families presents a big challenge and the transformation period carries additional risks of neglecting the best interest and welfare of these children.

The primary health care institutions, especially the pre-school and school dispensaries, have shown to be exceptionally significant places for early detection of children maltreatment and for initiation of appropriate interventions. Problems emerge, however, in the co-ordination with other services, particularly the social work service and especially in the towns where the CSW has not been trained for protection of maltreated children and where local multi-professional teams do not exist.

Home health care nurses who make home calls and have access to the families and children of youngest age (new-borns and nurselings) have a particularly important role. A telephone assistance service called *Counsel by Phone* was formed in the City of Belgrade Institute for Health Care, which is open 24 hours per day to monitor all the new mothers and their new-borns. In its practice this service covers the entire area of Serbia with its counselling and extends assistance through its network of associates and institutions for efficient intervention even in the cases of maltreatment of small children.

As part of its seminar entitled *Child Rights and Health* Child Rights Centre has dedicated a significant effort to the training of physicians and nurses working in the field of primary health care for all the regions of Serbia, and exactly in the field of protection of child rights in the acts of maltreatment and neglect of children.

In the sphere of specialised health care particular activity of inter-discipline teams within the institutions having large numbers of child examinations is being developed. Thus, the Inter-Discipline Team (IDT) of the Institute for Mental Health (IMH) in Belgrade, which has been operating under provisions of the Health Protection Act of RS (HPA of RS) since 1997/1998, became a clinical Section for Protection of Children against Maltreatment and Neglect. Currently, a centre for support of children and family called "In the Best Interest of Child" is beginning to work within that Section. Here is a brief review of the Section's activities:

A team within the **Clinic for Child Neurology and Psychiatry** (Pasterova St., Belgrade) handles diagnostics and treatment of the children who have been maltreated and neglected, in co-operation with CSW and the Incest-Trauma Centre ("Network of Trust").

**Mother and Child Institute** in Belgrade has an inter-discipline team for work with maltreated children that has advanced its activities and increased the number of interventions in co-operation with local CSWs and other teams.

**Children Clinic** of the University Clinical Centre (Tiršova St., Belgrade) has activated its inter-discipline team due to the large number of children coming for examinations and interventions as consequence of maltreatment and neglect.

**A Forensic Institute**'s team keeps its Registry of Children Deaths Caused by Maltreatment and Neglect.

There will follow a co-ordination of the methodologies and formation of a single medical protocol for somatic and psychosocial estimate of each of the cases for the purpose of diagnostics, therapy intervention and child and family monitoring, as well as for co-ordinated and simultaneous activation of intervention protection with CSWs and children institutions. This would also enable expansion of therapy possibilities and a broader involvement of other organisations and institutions in the rehabilitation and reintegration of children and families.

**Yugoslav Child Rights Centre** - (YCRC) has been the base for numerous activities and programmes in the field of promotion and advancement of the legislation covering protection of children and their rights, and a carrier of significant projects in the transformation of the system for protection of minor delinquents, social institutions, judiciary and many others. Within its publishing activity, in addition to numerous books (Y)CRC also published a methodological Handbook for Protection of Children against Maltreatment that has been most widely used among both CSWs and broad expert public.

**The Let us Preserve Children** organisation has continued its activities in advancement of the work of inter-discipline teams in local communities of Serbian towns, and their number has been increased to 8. Several regional educational seminars have been held for multi-professional teams from six towns.

**Network of Trust** gathers the most active non-governmental organisations, particularly those from the women's rights movement, and a number of representatives and experts from the health care services and institutions, as well as the police. Along with co-operation provided by CSWs this mutual activity that marked a great progress in comparison with that of the previous decade has also enabled more efficient utilisation of the resources (shelters for women with children, SOS phone line, etc.).

The number of cases with heaviest forms of sexual and physical maltreatment has increased, but processing of such heaviest cases has been intensified and the perpetrators have been brought to court. There still remains the problem of overly long time period when urgent protection interventions are necessary, especially for the benefit of very small children with high risk of dangerous forms of physical maltreatment.

In 2002 the police has much more been involved in the activities of prevention, education and case interventions. Thanks to the joint education of multi-professional teams, the police members were in position to adopt the knowledge and skills that are basic and common for them and many other experts engaged in other fields. Through such joint educational work activities in resolution of various cases and interventions are also opened.

The interventions against trafficking, particularly that involving women and children, sexual exploiting of children and pornography have been especially evident in the successful disruption of trafficking channels.

The mass media have intensively covered all the actions, thus giving their own contribution to inspiring the activities for improved protection of children against neglect and maltreatment. The promotion of child rights protection and anti-violence in families has been achieved through well-prepared media campaigns. Media announcements even included the cases whose resolution could lead to considerable positive changes in the police and the court practice, while inspiring a pressure from the public to make adoption of the new and necessary laws of this field accelerated.

However, some of the cases are still treated with much sensationalism and some of the editors do not take enough care about protection of the children or mothers who have become victims of violence since quite personal details are exposed in a very inappropriate way.

The current popularisation of the prevention of violence in family and abuse of children requires a good organisation of work and co-ordination with the media, and then it provides very good results.

The functioning of the system of child protection displays a lack of efficiency for several reasons:

- The maltreated/neglected children are insufficiently visible in the system of child care when compared to the other child categories;
- There is insufficient sensibility for child rights;
- The co-operation between the institutions, services and experts is insufficient and uncoordinated;
- Legal sanctions for non-reporting the cases of child maltreatment do not exist;

- The experts are insufficiently equipped with specific knowledge and skill for estimate, diagnostics, interventions, treatment and reintegration of the affected children and families, as well as for all forms of prevention in child abuse.

At the international gatherings and in contacts with renowned international experts it was estimated that the change in our country has been very intense and that within a very brief period of time (5 years), in spite of the very adverse circumstances, not only the activity network has been built but also a methodology has been adopted, modelled after the leading systems of Europe and the world for protection of children. The problems grow at exponential rate as the activities become intensified, and the resources for their resolution follow the trend of the basic changes within the society: economic, political, legal and other. Consequently, there emerges a disproportion between the possibilities to support the activities and the needs that are ever greater and more distinct.

The largest potential still remains among the educated and motivated experts working in the institutions and organisations, now much better qualified and more competent for team work and team co-operation. Investment into their further education - a constantly necessary one - is a primary need, but also investing into the methodology of transformation of the existing quality structures and building of new structures that would be more appropriate for the current level of modern knowledge and actual needs, and the society can afford their formation and functioning.

For sexual abuse, see Art. 34 and 39, Treatment and Recovery of Maltreatment Victims.

# PERIODICAL REVIEW OF PLACEMENT

***Article 25 of the Convention on the Rights of the Child***

***States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.***

## Regulations in the FRY and the Republic of Serbia

In accordance with the Marriage and Family Relations Act of the Republic of Serbia (Article 136) *a public guardian body performs invigilation of execution of parental duty.* Under this right the public guardianship body (in our practice it is Social Work Centre as the body committed with affairs of guardianship) may warn parents, limit their parental right or institute a court procedure for deprivation of parental right. If a serious threat exists for proper upbringing of a child, this body may take away the child from his/her parents and commit him/her for care, guarding and upbringing to another person or organisation.

In accordance with this Act the guardianship body may alone or under proposal by the parents-guardians or another party to whom the child was committed for care and upbringing send the child into an upbringing institution for upbringing due to deviations in behaviour (Art. 137 of the MFRA of RS).

*Children without parental* care may also under certain circumstances be placed into organisations or institutions. The guardian may, under consent by the guardianship body, commit the child to a child home as its inmate or to another organisation for keeping, upbringing and education, or place him/her into a health care institution for an extended period of time (Art. 269 of the MFRA of RS). On basis of a decision by the guardianship body a child may be sent to an upbringing organisation due to *disturbance in his/her behaviour* (Art. 270 of the MFRA of RS). The guardianship body will take this decision after it has previously obtained opinions by the social worker, pedagogue and psychologist about the child's character (personality of the inmate-to-be) and his/her social circumstances and the need to be sent to an upbringing institution. The measure of sending into an upbringing institution will be terminated as soon as the need for its further execution is completed, but not later than three years starting from the date of sending. After this deadline retention of the child may only be extended on basis of a new decree by the guardianship body to that effect (Art. 270 of the MFRA of RS). The social or another organisation to whom the inmate was committed (sent) or the

person to whom the child was committed for keeping and upbringing, as well as the health care organisation where he/she was placed for treatment have the duty to inform the guardian and guardianship body about all important problems in respect of his/her life, health, upbringing and education, as well as dismissal from the organisation and his/her new residence (Art. 271 of the MFRA of RS).

## Assessment of the situation and observations

When it comes to the practice, the system of social protection in Serbia consists of sixteen institutions for placement of children without parental care, in which 1 500 children are accommodated. The following table provides data on the number of such children according to their age and sex.

| | **Up to 1 year** | **2-4 years** | **4-6 years** | **7-14 years** | **14-18 years** | **Over 18 years** | **TOTAL** |
|---|---|---|---|---|---|---|---|
| **Female** | 14 | 103 | 41 | 280 | 181 | 45 | 664 |
| **Male** | 17 | 134 | 66 | 324 | 218 | 77 | 836 |
| **Total** | 31 | 237 | 107 | 604 | 399 | 122 | 1.500 |

In addition to the children placed in the institutions of social protection, about 2 100 children without parental care have been placed in foster families.

In Serbia's system of social protection there are five institutions for placement of children and young persons with psychophysical disabilities, one of which is narrowly specialised and accepts for placement only the children and youngsters with autism. In the table that follows we provide a review of the children and youngsters placed in these institutions according to their age and sex.

| | **Up to 1 year** | **2-3 years** | **4-6 years** | **7-14 years** | **14-18 years** | **Over 18 years** | **TOTAL** |
|---|---|---|---|---|---|---|---|
| **Female** | - | 22 | 66 | 182 | 91 | - | 361 |
| **Male** | - | 41 | 75 | 227 | 146 | - | 489 |
| **Total** | - | 63 | 141 | 409 | 237 | | 850 |

In addition to the children, there are also 1 203 adults and senior citizens placed in these institutions.

Regarding the children with behavioural disabilities/disorders, the system of social protection has three educational institutions. In the table below we provide the data about the number of children placed in such institutions according to the age criterion.

| Up to 6 year | 7-14 years | 14-18 years | Over 18 years | TOTAL |
|---|---|---|---|---|
| 0 | 59 | 74 | 13 | 146 |

The role of an institution of this kind, or the foster family, is to ensure social care, health care, upbringing and education process and legal protection for the child in co-operation with the social work centre as the guardianship body. On the other hand, a social work centre is obligated to monitor each of these aspects by way of periodical reviewing accomplished through visits to the child home or foster family. However, **in the last ten years the visits and reviewing of the children placed in child homes and foster families have not been executed because the centres for social work were exposed to an exceptionally difficult material position**. That is why the insight into the protection at that time was achieved on basis of annual reports by the child homes and foster families that were submitted to the centres. Since the envisaged elements for this type of reporting do not exist, these reports lacked uniformity. In the largest number of cases the most common conclusion after their acceptance by the guardianship body was that the child should remain placed as before, unless conditions for adoption of the child have been fulfilled.

Due to very few foster families available who are willing to accept a child with disabilities, an extremely small number of such children are now enjoying foster family placement. No child with behaviour disturbance is currently using family placement, although this measure is anticipated by the Act. For these reasons these children remain placed in the institutions for a long time. Most frequently the children with disabilities remain therein forever, and the children in the educational institutions until expiry of three years measure.

Apart from these problems with foster families, a significant drop in the number of foster families has occurred in the last ten years, most frequently due to irregular payment of allowances for the children's support. The trend has now been stopped because the delay has been made up for and even some additional payments have been effected, while the level of support allowance has been increased. Nevertheless, a whole series of problems keeps accompanying this form of placement. Only few municipalities of Serbia have developed foster care service. The largest number of foster families exists in Miloševac (near Velika Plana), Aleksandrovo (near Žitište), Subotica, and the village regions of Belgrade municipalities of Barajevo and Zemun. A very low number of foster families exist in urban regions. This fact frequently induces

decisions by the guardianship body to place children into institutions after their elementary education stage.

The existing foster families most frequently have for years been dealing with foster activity, which means that their members are of a rather high age so there prevails an appropriate difference in age between the children and their providers of foster placement.

Unresolved some of the issues regarding the foster family status, the low level of allowance for their work done, and a low number of the families that have accepted children for support without compensation are just a few of the problems that persist.

When it comes to child home protection the central issue in the last few years has been the conditions in which children live. Dilapidated objects, worn-out equipment, lack of medicines, footwear and clothes, inadequate nourishment of children, inadequate observation of the norms concerning spatial accommodation of children, lack of personnel, and lack of their motivation are just a few of the typical conditions in which children have lived.[34]

> *In addition to the estimates about the position of children in the social protection system as indicated in the presentation of provisions under Articles 2, 9, 12, 16 and 19 we would specially like to point out the message that was sent to us by the children who evaluated the conditions and circumstances they live in:[35] one of the priorities that should be worked on is improvement of the quality of communication with their counsellors and professional workers. Also valuable are the concrete recommendations that they experience as a way to help overcome this problem:*
>
> - *To increase the number of counsellors and professional workers so that they could have more time for direct work with children;*
> - *To maintain more personal contacts between children and professional workers at the centres for social work, and improvement in children's information about their rights and possibilities for implementation thereof;*
> - *To hold more of the joint activities in the institutions for the purpose of easier rapprochement, such as excursions, celebrations, sport gatherings, as well as possibility for open conversation; and*
> - *To apply the criteria for employment of counsellors and professional workers that take into consideration the personal motives and affection for work with children.*

[34] *Position of Children in Social Protection Institutions of Serbia,* Child Rights Centre, Belgrade, 2001.

[35] *Agenda for the Future, 2001.*

In almost all the institutions for placement of children the conditions have been essentially improved in the last two years, thanks to the investments by the state, efforts by the respective ministry to improve the conditions of placement, children's development and protection, as well as the material position of the employees, and to the significant assistance by international organisations. Nevertheless, many weaknesses carried over from the previous long period with orientation toward child home protection as dominant still remain.

From the above data one may observe that a large number of children is within the institutions. What worries us most is that there are 375 children below the age of seven years in them without parental care and 204 children with disabilities of the same age. This datum is in contradiction with the world trends that children of this age are not placed in institutions.

Apart from that, more than 70% of the children placed in institutions have one or both parents living. According to the data available from the centre for social work, just below 50% of these parents do not properly perform their parental role out of subjective reasons, whereas one number of the children is placed in institutions for economic reasons - which opposes the law provisions. Centres for social work were forced to undertake the step of placing children into institutions for economic reasons - they had almost no possibility to extend adequate assistance to the natural families.

Non-existence of alternative programmes and services of support to natural family and of semi-institutional forms of protection bring guardianship bodies into a situation that they have to place children into institutions or another family - and the number of these is insufficient, which is one of the causes for a large number of children kept in institutions.

Rather complicated procedure applied in adoption of children in spite of numerous applications submitted and a long procedure in determining the child's legal status have contributed to the partially large number of children of lowest age placed into institutions.

Apart from these facts it is also useful to mention some other weaknesses on account of which one may conclude that guardianship bodies, in spite of their legal obligation to extend to children a maximum protection, are unable to achieve that for objective reasons.

One of the large problems in protection of children is their leaving institutions. Child leaves an institution when he/she comes of age or after completion of his/her regular education because it is believed that he/she has thus acquired preconditions for his/her independent life. This assumption is completely unrealistic in our conditions because the opportunities for him/her to find a job and apartment, as well as to ensure for

him/herself the level of income that would enable him/her to live independently are practically non-existent.

*In addition to the priority indicated by the children living in institutions of social protection (that is, better quality of communication with the counsellors and professional workers), they also point out a need to have more reliable future ensured after leaving the system of social protection. For this the following is necessary:*

- *A more elaborate engagement of centres for social work and their co-operation with the schools so that children could have more extensive variety of prospective occupations;*
- *Stimulation of independence, initiative and mastering the skills required for independent life (preparation of food, household activities, development of attitudes toward money and earning through stimulation of practice, and alike, and*
- *Assistance in finding jobs and accommodation.*

Two problems are distinct in the institutions for placement of children with disabilities: a large number of beneficiaries in the institutions (between 300 and 600 of them) and joint stay with adults and elderly in the same institution.

Apart from that, these institutions are located beyond urban areas. One of them is located over 30 kilometres away from the nearest town, and this makes the personnel's work difficult. Furthermore, this is another reason for the difficulty in ensuring adequate professional workers.

In the field of expert work a protection model without any significant participation of children in any stage of protection is dominant. Looking after them and health care are the dominant forms of work with the children with disabilities. Lack of individual approach in the work with children is distinct in almost all of these institutions.

Its is expected from the reform projects for the system of social protection to resolve a greater portion of the problems in this field and to that effect the following is recommended:

1. Undertaking of measures in strengthening the roles of natural family, primarily economic one so that no child should be in an institution for purely economic reasons;
2. Development of a variety of services extended to natural families, especially to those having a child at risk, so that the pressure on institutions could be reduced;
3. Development of semi-institutional forms of protection - daytime stays, and alike;

4. Ensuring the conditions for centres for social work that allow permanent review of children in the social protection system;
5. Acceleration of the procedure of determining the legal status of children in centres for social work; and
6. Creation of conditions for children of youngest age not to be placed in institutions but rather stay in their natural families.

The Child Rights Centre believes that the following indicators would be useful for monitoring the implementation of Article 25 of the Convention in Yugoslavia (Serbia and Montenegro): number of children placed in institutions, families and using other, alternative forms of protection, duration of child stay in institutions, frequency of guardianship bodies' contacts with the institutions or foster families, participation of children in the making of decisions about the measures of their protection, number of children placed in institutions and enjoying other forms of protection in respect of sex, belief and national minority affiliations, degree of individualisation of protection plans, number of children returned to their natural family, number of employees per individual forms of protection and number of children, number of children who found employment and ensured for themselves conditions for independent life. The indicators concerning the standards of stay in institutions would be as follows: area of space per child for accommodation, studying, play, and alike.

Treatment of children and periodical reviewing of such treatment, as well as other aspects of the kind are presented in the text concerning Article 24.

Some of the data significant for periodical reviewing of placement in institutions are presented in the text dealing with Article 20.

# *V*

# Basic Health and Social Protection

# HEALTH AND HEALTH SERVICES

***Article 24 of the Convention on the Rights of the Child***

***1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.***
***2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:***
***(a) To diminish infant and child mortality;***
***(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;***
***(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;***
***(d) To ensure appropriate pre-natal and post-natal health care for mothers;***
***(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;***
***(f) To develop preventive health care, guidance for parents and family planning education and services.***
***3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.***
***4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the present article. In this regard, particular account shall be taken of the needs of developing countries.***

## Regulations in the FRY and in the Republic of Serbia

*The right to health care* as well as *the accessibility of health care for children* as defined in a clause in Article 60 of the Constitution of the FRY, accords every person the right to health care in keeping with the law, and children, pregnant women and elderly persons have the right to health care that is financed from public funds if they are not entitled to this right on any other basis.

The Constitution of the Republic (Art. 30 of the Constitution of the Republic of Serbia) also guarantees this right.

The Health Insurance Act of RS and the Health Protection Act of RS more precisely regulate the constitutional right to health care and the health system.

*The regulations on health care* envisage that children up to the age of 15 years, schoolchildren, students until the prescribed duration of their studies expires and up to the age of 26 years at the latest, unemployed persons registered with the labour exchange, as well as women with referrals for family planning, pregnancy, childbirth and maternity have the right to preventive, diagnostic, therapeutic and rehabilitation services in health institutions, which includes transport in emergency cases, medication, the auxiliary materials used for administering medication, the sanitary materials required for treatment and orthopaedic aids according to medical indications, that shall be paid from budget funds. In order to protect health the Government of the Republic of Serbia approves special programs: among other things, programs for the health care of children, schoolchildren and students and for the reduction of mortality of newly born babies and small children, as well as for family planning and women's health care (Art. 7 of the Health Protection Act of RS). Budget funds are also used for taking steps to prevent, suppress and put an end to epidemics of contagious diseases, as well as preventing or eliminating the effects on health caused by elementary and other disasters, the development of the information system and the collection, processing and analysis of health statistics and other data on the state of public health, public hygiene, the organisation, work, personnel, business of health institutions and so forth (Art. 8 of the Health Protection Act of RS).

Obligatory health insurance of employees, financed by employers and insurance holders in keeping with the law, covers the family of the employee, including children born in and out of wedlock, adopted children, step-children and foster children, as well as grandchildren, brothers and sisters, supported by the insurance holders (Art. 8 and 9 of the Health Insurance Act of RS). The child of an insurance holder has the right to health insurance until the age of 15 years (until the age of 26 years if they are regular or extra-mural students or pursuing post-graduate studies. If a child has to interrupt his/her regular schooling because of illness, he/she shall also have the right to health insurance for the duration of the illness, and if he/she resumes regular or extra-mural

schooling, even after the prescribed age limit, for the same duration as the interruption of schooling lasted due to illness, at the longest. In the event that a child becomes incapable of living and working, in the context of the provisions on disability insurance, before the expiry of the deadline for regular or extra-mural schooling, he/she shall have the right to health insurance for the duration of his/her disability (Art. 11 of the Health Insurance Act of RS).

Rights from health insurance include health care, compensation of wages and compensation of the costs of transport. Besides the right to health care, special care for children is also provided through the right to compensation of wages, to which insurance holders are entitled, among other things, in the event of caring for a sick member of the family, who is under the age of 15 years (Art. 32 of the Health Insurance Act of RS).

The aforesaid legal solutions regulate measures to achieve the majority of aims mentioned in this clause. Some of the measures, although connected with health care, are regulated in other provisions (for instance, provisions referring to the healthy quality of foodstuffs, the protection of water and environmental protection).

## Assessment of situation and observations

Enjoyment of the right to health is closely connected to a series of essential conditions for health, such as peace, freedom from fear of war, equal opportunities for all, the fulfilment of basic needs (nutrition, elementary education, the environment, adequate housing, social security and work), a political will and support for health.

The health service is one segment in the series of components of the social environment (such as social and political stability, economic stability, education, social support, lifestyle and habits) that is wholly connected with health but it is not the most important one. As we all know, over a long period of time, the prerequisites for health, like all the factors that determine it, were missing or had changed in Serbia, bringing consequences, the intensity of which cannot be expressed entirely by means of the available data. All these factors simultaneously placed immense pressure on the health service, whose duty it is, as part of the system, to enable people to enjoy their right to health. The most dramatic year, in terms of its effect on health, was 1999, but at the same time this is a year for which the least data exists that would illustrate problems.

The analysis of standard indices that are applied to estimate the quality and development of health care for children and young people does not indicate any downward trend that could be linked to the consequences of the serious socio-economic crisis that the country was, and in a manner of speaking, still is undergoing. From the formal legal point of view, the health system of Serbia provides free health protection for almost the entire population (93%), and for the segment that is not

covered by obligatory health insurance (especially where women, children and youth are concerned), the municipality covers costs. Health insurance applies only to the services of the state-run sector, whereas the user him/herself must pay the bills for medical services provided in the private health sector. Research on the accessibility of the private sector or its services does not exist therefore, it is difficult to judge the extent of its share in the protection of the health of children and youth. On the basis of information about what is affordable to the public at large, we can only assume that this share is negligible. One may describe the segment of the health service dedicated to providing health care for children and youth as developed and easily accessible. These assessments apply to both segments, the primary and secondary health services. However, this statement, unfortunately, does not imply a health service that can resolve all the problems and needs of the group for which it was established, in a satisfactory manner.

Among the results obtained in surveying secondary school pupils' experience and views (more about this, along with Articles 3, 12 and 16) about the system of health care and health education, some highlight the view of the accessibility and quality of the health services, and this includes hospital services. Here, we mention a few out of a total of 24 indicators that concern what the respondents reported happened to them once or several times: that they had to pay for or buy some of the materials which the hospital or health institution did not have supplies of (86%); that the doctor was absent for longer than the official break (54%); that the W.C. in the health institution was dirty or locked (52%); that they had to wait a month or more for an appointment for a medical examination (30%); that the medical equipment for their treatment was out-of-order or inaccessible (21%); and, that they had been hungry in hospital because the food was 'dreadful' (20%).

Health care centres that exist as the organisational form of work in every municipality supply primary health protection to pre-school and schoolchildren through their dispensaries (services). One of the characteristics of this form of health care is that there is an excellent supply of staff, which may be described in some cases as surplus (see: Table 1- No. of children from 0 to 6 years to one doctor in the pre-school dispensary):

| **TERRITORY** | **YEARS** | |
|---|---|---|
| | **1996** | **2000** |
| **Central Serbia** | 752 | 620 |
| **Vojvodina** | 959 | 391 |

According to established norms regarding staff, it is necessary to provide one doctor for every 1,200 inhabitants. This number has been exceeded in all territories and, as the number of children is dwindling in some areas the disproportion is becoming that much greater. Thus, let us say Belgrade has one doctor to every 218 children and a professionally qualified nurse to every 332 children.

The situation is similar in the case of health care for schoolchildren, where the norm is 1 800 children to a doctor. This norm was almost reached in Serbia in the year 2000 (1 754 children to one doctor), while Vojvodina was slightly above this (1 991 children). Public use of the health care services is growing and this is the most frequently mentioned argument for the need for such an extensive development of human resources. On the other hand, one would expect that the excellent supply of staff as well as the accessibility of institutions would be accompanied by changes in the content of work, in increasing the share of preventive activities, in health counselling and in the development of new programs but, unfortunately, that is not the case. In the structure of the use of primary health protection, medical treatment services are predominant, while preventive services are on a steady decline. Even in Belgrade, where a great deal has been done to promote preventive activities by the City Institute for the Protection of Health, the share of preventive services in the overall picture does not exceed 20%. The changes recorded in some institutions are rather the result of individual initiatives and special projects than of more profound systemic advances. One such initiative that represents a qualitative step beyond hitherto practice is the "counselling centre for the reproductive health of the young".[36] Counselling centres operate within the frame of the school dispensaries and perform their activities through multidisciplinary teams, who combine preventive and curative activities and measures from paediatric and gynaecological services with health education and individual counselling. So far, Belgrade, Novi Sad, Pančevo, Subotica, Kragujevac and Valjevo and Niš have been covered but further development is planned in this project. Also, it is necessary to mention the project "telephone for advice for a healthy child".[37] The general aim of the project is to promote the health of the mother and child, by encouraging decision-making regarding health on the basis of adequate and timely information, to convey messages and advice in keeping with co-ordinated and modern professional stands, to preserve and promote children's health, and stimulate their proper growth and development. About 3,500 conversations a month testify to the need for this kind of work and the trend is increasing; about 12% of the calls come from towns outside Belgrade, while 33% are night calls, i.e. in the period between 7 p.m. to 7 a.m. Some of the results of this 24-hour Call Centre are: 86% of questions are resolved with answers from a professionally qualified nurse; mothers with babies are almost completely covered (95%) by the house visits professionally qualified nurses make immediately after the mothers are discharged from the maternity hospital (compared to the 70% previously covered before the Call Centre started operating); there has been a reduction in the number of visits to the counselling section of the health care centre by parents with a baby just to obtain the answer to a question that could have been resolved by a

[36] Counselling centres were initiated and organised by the Republic Centre for Family Planning with the help of UNICEF.

[37] The project began in December 2001, with the professional, methodological and organisational assistance of UNICEF and the Ministry of Health and Environmental Protection of the Republic of Serbia, and the was carried out by the City Institute for the Protection of Health in Belgrade and the Federal Institute for the Protection and Promotion of Health.

simple telephone call. Based on these results plans have been made to expand the network of these centres to other towns in Serbia. On the other hand, research on a sample of secondary school pupils in several towns in Serbia has shown that the school doctor is the source of a certain amount of information for only 20% of the pupils. When one ranks sources of information about sensitive topics, he/she is last on the list, with a share of 4%. According to a study carried out by the City Institute for the Protection of Health in Belgrade (2002), only 5% of parents who take their children to a pre-school dispensary consider that the doctor does not provide sufficient information, but 50% believe that they have experienced a situation in which the doctor did not take them seriously. Besides children and parents, an important link in all these processes are the health workers themselves. According to one study, one might say that they themselves acknowledge that information is not communicated in the most adequate manner; 4,4% of health workers agree with the claim that "children and young people receive sufficient information about their health needs and measures of health protection", while 50% agree in part.

If one looks at the answers given by young respondents in a poll, the attention paid to the protection of privacy and keeping professional secrets is alarmingly small. Only 55% of the young people in this survey said that during systematic medical check-ups they felt "as though they were in a shop window", because the premises in which the regular medical check-ups were carried out did not provide even elementary conditions for privacy, and 46% of the pupils considered that the information on the condition of their health did not remain confidential. Meanwhile, 95,5% of health workers rank the keeping of professional secrets as well as respect for the privacy of a child as an extremely important category.

Hospital in-patient clinic activities are carried out in paediatric in-patient health institutions, children's wards in clinic hospital centres and hospitals, as well as in specialised institutions for specific diseases and pathological conditions in childhood. Apart from that, a certain number of children are hospitalised in institutions that cater for adults.[38]

In the more recent period the number of children receiving hospital treatment has declined, the average duration of hospital treatment has decreased, as has the average occupancy of hospital ward facilities (55 to 60%).

[38] According to data for the City of Belgrade, a third of all the children admitted to hospital are treated in these institutions.

Capacities in in-patient facilities for childcare may be considered developed and accessible. Their restructuring and the development of daytime clinics are some of the aims of the reform. Otherwise, the prevailing characteristic of in-patient institutions is the unsatisfactory conditions of accommodation, which in most institutions often verges on the very minimum in terms of all the necessities. The long lasting lack of funds, small investment in sanitary and hygienic facilities and space, and irregular investment in maintenance have, altogether, contributed to the general condition of these institutions. The situation is even worse with regard to medical equipment. For years, it has not been renewed. There were and still are many difficulties in servicing this equipment and getting supplies of processing materials. Frequently, donations in equipment are not adequate for the needs of the institutions they are intended for, nor are they properly distributed. Thus, a multitude of problems arise in making adequate use of the equipment and hi-tech apparatuses and meeting the needs of these young users for good diagnostics.

In our conditions it is a foregone conclusion that premises are not adapted for children. It is practically impossible to find toilet facilities that meet the needs of children. Besides this, instead of a cheerful environment that is suitable for children and young people, bleakness still prevails in hospitals, where the existence of a children's corner, a room for play and the presence of staff trained to deal with children are indeed - a rarity.

A particular problem when a child is staying in hospital is the absence of a parent (the mother). According to regulations, a mother may remain with her child until he/she is one year old and in exceptional cases until he/she is three years old. Nevertheless, even in such circumstances, no conditions even of elementary comfort have been provided for the mother, who often sleeps on a chair at the bedside of her sick child.

Access driveways to health institutions are often inadequate, and steep inclines and other advantages for children with special needs are also rare. According to the data of the City Institute for the Protection of Health in Belgrade, the principal reasons for children between the ages of 0 to 19 to be admitted to hospital, in the main, have not changed significantly over the years, and among the first five findings are chronic diseases of the tonsils, hernias of the groin, appendicitis (all three diagnoses require surgical intervention), the consequences of premature birth for a baby, and pneumonia.

For many questions referring to the realisation of the right of the child to health (interpreted in the broadest context), there is practically no data at all in health institutions. That is why examining the attitudes of health workers is essential because they are likely to be a good indicator of current views and behaviour.

Hence, it is very important to note that only 19,1% of the health workers of Serbia were acquainted with the text of the Convention on the Rights of the Child before attending

a seminar on the topic "The Rights of the Child and Health" and that 50% had some information about it.[39] One cannot claim with certainty that a knowledge of the Convention would change views and behaviour but one would expect it to contribute to an improvement. The belief is upheld by 54,5% of doctors and 38,4% of professionally qualified nurses that regardless of his/her age, a child needs the presence of his/her mother in hospital. The involvement of the child in what is happening to it in the health institution is almost exclusively the decision of the health workers. It is considered by 95% of doctors that the procedure of treatment should be explained to the child, and 39,1% consider it necessary to seek the consent of the child for each procedure and intervention. 40% of health workers consider that the environment of our health institutions is not adjusted to the needs of children, and the same percentage believes that children do not receive the highest possible standard of medical treatment.

The mortality rate of infants[40] represents the probability of death between birth and the age of one year, for every thousand live-born children.

This is one of the most sensitive indicators of the health condition, which is closely linked to socio-economic development, sanitation, the education of the mother, successful treatment or respiratory infections. Data indicates that infant mortality in Serbia is declining or oscillates with a minor increase, despite the many difficulties and the series of factors that were expected to lead to an increase. The year 1999 was especially difficult because of the shortage of medication, a drastic decline in the use of health care, economic difficulties and general uncertainty. Nevertheless, there was no increase in infant mortality. The only explanation that can be found for this phenomenon is that all available resources were directed to this most sensitive category.

**Table 2.** Infant mortality in Serbia 1996-2000

| **TERRITORY** | **YEARS** | | | | |
|---|---|---|---|---|---|
| | **1996.** | **1997.** | **1998.** | **1999.** | **2000.** |
| **Central Serbia** | 15.3 | 14.4 | 12.2 | 11.2 | 10.7 |
| **Vojvodina** | 12.3 | 5.3 | 9.7 | 10.2 | 11.9 |

[39] The Child Rights Centre in co-operation with UNICEF organised and carried out 33 seminars attended by 350 doctors and 500 professionally qualified nurses and paramedics from the end of 1999 to mid-2002. This project covered a total of 16 districts in the Republic of Serbia. All the participants and institutions received a copy of the Priručnik za zdravstvene radnike and saradnike (Handbook for Health Workers and Paramedics) and the guide 'The Rights of the Child and Health'

[40] The mortality rate of infants is routine data, collected and published every year.

Infants die mostly within the first six days after birth. This so-called postnatal mortality, which represents the sum of stillborn births and deaths in the first week of life for every thousand births, is influenced by engogenic factors and also by the health services provided to the mother and child. The constant level of these deaths, (after the growth recorded in 1996) can be linked to the poor quality of the health services.

The health of children of pre-school age is still very delicate. UNICEF considers therefore, that this indicator is the most important for monitoring the health condition of children. However, in our country, this data is not routinely collected or presented.[41]

**Table 3.** Child mortality rate up to the age of 5 in Serbia 1996-1999

| **TERRITORY** | **YEARS** | | | |
|---|---|---|---|---|
| | **1996.** | **1997.** | **1998.** | **1999.** |
| **Central Serbia** | 15.3 | 14.4 | 12.2 | 11.2 |
| **Vojvodina** | 12.3 | 5.3 | 9.7 | 10.2 |

The mortality rate of children up to the age of five is declining in Serbia but compared to other, neighbouring countries, it is still considered high (Croatia 8, the Czech Republic 5, Greece 7, Hungary 9, Italy 7).

A high percentage of children covered by vaccination (over 90%) was achieved throughout the entire territory of Serbia. As a result an extremely low incidence was recorded of all illnesses for which there are effective vaccines. Immunisation services are traditionally well organised and efficient and they achieve excellent results.[42]

Low weight (body mass) at birth is connected with the increased probability of a newly born or infant dying and with the later malnutrition of children. Even though this data has been collected over a fairly long time, it has only appeared as routine data since 1994. In our country, low weight at birth does not represent a significant problem because of its relatively low incidence.[43]

[41] This can be additionally calculated from vital statistics data.

[42] The success can be attributed to the "Program of Extended Immunisation" conducted by UNICEF and the Institute for the Protection of Health of Serbia, as well as the district institutes and health care centres. The powerful media campaign that accompanied the program led to the further promotion of immunisation as a highly effective method for preserving health.

[43] The percentage of children with a body mass lower than 2,500 grams at birth was around 5%, both in Central Serbia and in Vojvodina and lower than in other, neighbouring countries.

The percentage of malnourished children under the age of 5 is not routine data and is not published.[44] Malnutrition is higher in rural areas and in families where mothers are poorly educated. It is necessary to perform a more detailed analysis of the socio-economic characteristics of malnourished children. A far greater problem is overweight among children because 8,2% of children below the age of five are considered to be overweight and 6,1%, obese. Malnutrition on the one hand and obesity on the other, like the extreme economic hardship in which the average family with children lives in Serbia, imposes the need for urgently training health workers and increasing their sensitivity to these topics.

Incorrect nutrition and the low educational level of parents are the most frequent causes of the problems of malnutrition and obesity. We also need to underline that although there are detailed forms of monitoring the growth and development of children and an elaborate, detailed methodology of weight measuring and periods when the weight measuring is carried out, anthropometric data is not processed, nor is it used in estimating the health condition of children, but remains in medical record cards, from where it is taken only for use in special surveys. Likewise, there are no standard graphs for monitoring the growth and development of children on a national scale.

There are few analyses that would enable a detailed insight into the characteristics of the nutrition of children and youth. Although breast-feeding is considered to be the best form of nutrition for an infant and the ideal source of all necessary nutritious matter, there is no routine data on its prevalence. UNICEF's study conducted on a sample of households (MICS, 2001) is the only reliable source of this extremely important information for the health of children. According to this study, the percentage of children that are exclusively breast-fed until they are 3 months old is 6,3% in Central Serbia and 21% in Vojvodina; the percentage of children that are breast-fed at the beginning of the second month of their life is 20,3% in Central Serbia and 16,7% in Vojvodina. This means that the rate of breast-feeding, as the basic method of feeding children until the age of 4 months, is extremely low and unsatisfactory. The situation is partly redeemed by the *Baby Friendly* program, which was a support for breast-feeding, but its implementation did not entirely bring breast-feeding to a satisfactory level.

Data on the nutrition of children between the ages of 11 to 15 years was obtained on the basis of the statements of young people themselves in the study *Zdravstveno ponašanje školske dece* (The Health Behaviour of Schoolchildren, Institute for Social Medicine, 1999). Although, on the one hand, the consumption of fresh fruit (83%

[44] This data can only be found in a separate survey, which UNICEF conducted in 2001. According to that survey, the percentage of moderately and severely malnourished children below the age of 5 years, was declining and then came to about 2%, with visible differences between rural and urban areas.

daily) as well as vegetables (59% daily) can be considered satisfactory, there is a whole series of habits in nutrition that reveal insufficient activity in health training, both of parents and children.

Thus, 62% of children eat biscuits and sweets every day, 22,6% eat hamburgers and hot-dogs, and 28,4% drink coffee.

The aforesaid study on health behaviour draws attention to a whole series of other domains of life among young people, which are extremely important from the aspect of the psychophysical and social health of young people. Research has pointed to the inadequate schedule of sleeping (47,7% of young people do not go to bed before midnight); 76% feel tired when they go to school in the morning; 23% smoke every day and of these 12,45% below the age of 15 years smoke 20 cigarettes a day; 71,5% have experience with alcoholic drinks; 15,16% engage in no physical activity whatsoever, except at PE lessons; 20% watch television for four or more hours a day; 5% have tried marihuana, 12,8% have suffered serious injuries; 48,3% below the age of 15 years have had sexual experience; 5,8% have had sexual intercourse under the effect of drugs or alcohol.

It is necessary to separately analyse the knowledge and behaviour of young people in connection with the HIV infection. There is talk of the "risk-taking behaviour" of adolescents and young people, which confirms the well-known theory on the non-existence of a correlation between knowledge and behaviour. Although the ways to become infected with AIDS are not unknown to the majority of young people, a large number of them continue to "flirt with risk". The level of knowledge young people have can be considered mediocre. The index of the test on knowledge of AIDS (on a scale of 0 to 16) has a mean value of 6 for boys and 8,1 for girls. 62% of young people believe their own risk of becoming infected with HIV is less than other young people's, 2% believe that it is greater than other young people's, while 10% of young people consider that there is a probability that they will become infected with the AIDS virus. Systematic, program work in this domain does not exist either through the educational or the health system. Young people obtain information and advice through the media and friends, and the role of the school doctor and other professionals in the health system is negligible. Research within the RAR project (UNICEF 2002) drew attention to particularly sensitive young people, who are prone to hazardous behaviour as a lifestyle and for whom the risk of infection is very high. This refers to young HIV drug addicts, homosexuals, as well as sexual workers. Programs of the type "a strategy of high risk" do not exist for this group of young people. One can even speak of "silent resistance' to implementing them. A high degree of stigmatisation and discrimination only makes this dangerous situation even worse.

The program *Zdravstvena zaštita žena, dece, školske omladine i studenata* (The health protection of women, children, schoolchildren and students) was adopted in 1995 as one

of the national programs of Serbia and represents a planned, scientific and professional framework for organising the health protection of the aforesaid categories. The clear professional premise that there is a direct link between the protection of the health of women during pregnancy, at childbirth and in the post-natal period and the health of children, has been introduced in practice through a series of seminars[45] for gynaecologists and paediatricians in primary health protection and through creating opportunities for their joint action. The implementation of this program was accompanied by the publication of *Stručno metodološko uputstvo* (Professional Methodological Instructions) in which the aims of the program were formulated as: family planning and health care for women during pregnancy, childbirth and maternity; health care for pre-school aged children with a special view to reducing the mortality rate of newly borns, infants and small children, and health care for schoolchildren and students. Special attention in the program was devoted to health training and to a better approach to diseases and conditions that threaten children and young people. In the territories where a program evaluation was done (in Belgrade, for instance) one may say that the majority of aims were accomplished, despite a series of factors that caused difficulties in conducting the program.

The environment is believed to be one of the most important determinants in the realisation of the right to health. It is defined as a collection of all the influences that affect the birth, development and life of a child, his/her health, as well as his/her behaviour regarding health. In the systemic approach it is analysed as an *aggregate of influences*, while in the traditional approach, each of its segments is analysed, separately. Although there is a need to speak of the influences of changes in the socio-economic sphere, social relations, relations within the family, in the educational system, in the system of values within the community and so forth on the health of children, and on the possibility of realising this right, here, we shall confine ourselves to those aspects of the environment that in the traditional approach are directly linked to health and the probability of falling ill, in other words, to some of the aspects of the physical environment. Evident progress has been made in the environment in the last two decades of the century towards making it safer for health. Here, we primarily refer to water supply systems and the disposition of waste matter and housing, whilst very little has been done to control air pollution or to protect the microenvironment from tobacco smoke.

It is generally known that a healthy water supply is one of the most important pre-requisites for good health and that water pollution signals a constant danger from infection and epidemics. According to the UNICEF survey from 1996 and the year

[45] The seminars were organised and carried out by the Institute for the Health Protection of Mother and Child in conjunction with UNICEF.

2000, one may say that a significant improvement in the supply of clean drinking water has been achieved, while extremely visible differences have remained between the city and village. Thus, in 1996, in urban areas, 98,2% drank good drinking water, and in the year 2000 98,5% had good drinking water. In rural areas in 1996, 56,5% had good drinking water and this rose to 72,8% in the year 2000. Nevertheless, despite the almost general accessibility to water supply facilities, urgent interventions are needed to improve the water supply system, especially those that are not always operating to full capacity or those that are periodically switched off. According to an analysis conducted by the Institute for the Protection of Health of Serbia, in the course of 1998/1999, 62% of the water supply systems tested did not meet the microbiological requirements and 41% did not meet chemical and physical standards. The outbreak of hydric epidemics as the result of faulty water supply systems is not unusual in Serbia, testimony of which lies in the latest one in the year 2002.

Similarly, in many municipalities in Serbia, the depositing of waste matter is still a significant problem although tremendous advances have been accomplished in this respect. Unhygienic settlements, inhabited by a large number of children, mostly Roma and refugee children, as well as the low degree of health culture, represent a serious threat to health and require urgent and wide-ranging intervention.

Although Serbia has an extremely extensive system of health statistics and an organised system of registration and reporting, they lack an entire range of information relevant for monitoring current trends in health care. In particular, it lacks information referring to the user, his/her characteristics and rights. Some information is collected but is not processed or published and some is simply not recorded anywhere. Some of the information that is lacking where it concerns the health care of children and the rights to health are as follows: the mortality rate of children up to the age of 5 years; socio-economic, educational and other characteristics of the family of a dead child; nutrition, in other words, the rate of malnutrition and the rate of retarded growth and development of children up to the age of 5 years; socio-economic, educational and other characteristics of the family with a malnourished child or a child with retarded growth; the overall rate of disability - the percentage of children younger than 15 years, who are registered with a physical or mental disability; the prevalence of anaemia among children; the percentage of children younger than 4 months that have been breast-fed; the rate of continued breast-feeding; the treatment of children at home; the knowledge of the family - parents of the child's needs for doctor's services; a knowledge of the risk behaviour of children and parents; the development and use of youth friendly services; the use of health care, especially primary health care, and counselling for particularly sensitive children and young people (according to the cause of sensitivity); the percentage of children and young people who are "hard to catch" included/not included in programs and activities; the development and application of programs in the domain of nutrition; mechanisms of co-operation between sectors in the community; information on the child's perspective of the respect of his/her rights; data on the

number of "consents after being informed" sought for various types of intervention on children; the level of information children have about certain problems connected with health; the level of the parents' information about certain problems; the prevalence of risk behaviour according to forms of behaviour, the sex and age of the child; the prevalence of HIV/AIDS-related knowledge and strategies according to the sex and age of the child; the participation of children in planning and implementing any activity and program that is being conducted by an institution; activities being undertaken in the direction of the development of the harm reduction program for especially sensitive young people.

There is still more information that should be collected and developed and that should become part of the system of information on the health of children and their rights.

Children's right to health and health care depended on:

- The comprehensive state and commitment of the community in that domain, as well as on the situation in the environment;
- The development of the health care services, their accessibility, quality and readiness to respond to the needs of children and young people. Here, one should single out health workers and their knowledge, as well as readiness to accept children as collaborators in achieving the aims of health care.

An analysis of the social, economic and political context as well as the problems, particularly those of families with children in Serbia, can be found in numerous studies. They all indicate the extremely difficult period they have endured and the consequences the scale of which cannot be precisely determined. In this domain there is a tangible lack of research that would prove the influence of certain changes on the health of children. Although the mortality rates of infants and children up to the age of 5 years is continually declining, they are still higher than in the developed countries. Research that would document "protective factors" that functioned at the time of the deepest crisis when mortality did not increase could be significant for the further reduction of mortality. An analysis of the characteristics of a family that has experienced the death of a child, an analysis of the activities of the health service and the programs specially created on that basis could be the next step towards reducing child mortality.

Measured according to standard indicators, the primary and secondary health protection of children in Serbia has reached a high level in terms of accessibility. Significant problems still remain connected with the equipping and supplying of health institutions, hygienic conditions, the environment, access driveways and so on. As mechanisms for the evaluation of the quality of work in the health services do not exist in Serbia, one cannot speak with any authority about the quality of work in this segment. The excellent supply of personnel, as we have already highlighted, has not been accompanied by important changes in the content of work, the enlargement of preventive services, the

development of counselling centres and suchlike. Several facts illustrate this: the share of preventive activities in the overall picture is low; counselling work as an integral form of practical activity is developed only within the framework of separate programs; the role of the health service in offering information to young people about preserving and promoting health, and the development of preventive skills, except in some cases, is minor; there are no recorded initiatives in health institutions on the participation of children in any program linked to their health or in any form of decision-making on questions that refer to their health; children are most often the object of intervention, work is done "for them" not with them; one could say that the right of the child to privacy is always systematically threatened; a professional secret easily leaks out of the health institution and becomes news in the community; there are forms of discrimination both of children and teachers related to real or presumed HIV status; the high level of risk behaviour of children and young people has not led to any activity at all in health institutions - children's and school dispensaries, except those within the frame of special programs (there are very few recorded initiatives of co-operation between health workers and schools concerning these problems); there are no recorded initiatives on the commitment of parents in programs for the health of children; in the health institution the child is often deprived of the presence of his/her mother because this is contrary to rules and regulations; health workers do not demonstrate sufficient sensitivity for a range of issues that are essential to the health of children (lack of knowledge, skill and motivation results in very little commitment to activities that are conducive to health); health workers are insufficiently informed about the rights of children in general, particularly those connected with health.[46] The close link that exists between the implementation of children's rights, generally speaking, and the health of the child, both in the health system and in the community as a whole, is not yet fully recognised. When the realisation of the rights of children is seen to be the pre-condition of children's health - all other effects on health will be more positive.

[46] The program of the Child Rights Centre and UNICEF under the heading "The Rights of the Child and Health" is expected to bring significant improvements. The real impact of the program can be assessed by an evaluation after a longer period.

# SOCIAL SECURITY AND SERVICES

***Article 26 of the Convention on the Rights of the Child***

***1. States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.***
***2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.***

***Article 18 (3) of the Convention on the Rights of the Child***

***3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.***

## Regulations in the FR Yugoslavia and the Republic of Serbia

Yugoslav law envisages *obligatory social security* for all employed persons, which also includes the members of their family. Namely, Article 58 of the Constitution of the FRY envisages that with obligatory social security employees ensure for themselves and their families all the forms of social security and that the state provides material security for the citizen who is unable to work and has no means to live, as well as the citizen who has no means to live in keeping with the law. The republican constitution also contains similar provisions (Art. 39 and 40 of the Constitution of the Republic of Serbia). Rights in the domain of social security are regulated more precisely in the Act on Social Security and Provision of Social Welfare of RS.

In this law *social welfare* is defined as an organised social activity, the aim of which is to provide assistance to citizens and their families when they are in a position of social need, and to undertake measures to prevent the occurrence or remove the consequences of such a situation. The state of being in social need is considered to be a state in which the citizen or the family need the help of society in order to overcome social and vital difficulties and create conditions for satisfying the fundamental needs of life, if those needs cannot be satisfied in any other way (Art. 2 of the Act on Social Security and Provision of Social Welfare of the Republic of Serbia.

*Social security* is provided for citizens who are unable to work and do not have any means to support themselves, as well as for citizens, who, by their work and on the basis of their work, by the familial obligation of support, on the basis of property and property rights, or in some other way, are unable to secure sufficient means to satisfy the fundamental needs of life (Art. 3 of the Act on Social Security and Provision of Social Welfare - hereinafter ASSPSW of RS). Rights in the domain of social welfare and social security are: material security, an allowance to assist and care for another person; assistance for occupational training; house help; day care centre, placement in an institution or with another family; social work services, equipping a user for placement in an institution of social welfare or with another family and one-time benefit (Art. 9 of the ASSPSW of RS).

According to the provisions that regulate the *right to material security*, children (born in a marital, in an extra-marital union, adopted or fostered), who live in a joint household are, among others, considered to be family members. However, a person without income, who does not live with his/her parents, shall considered a family member, until he/she marries or establishes a family, or until the age of 27 years at the latest. The same clauses prescribe that a child, until he/she is 15 years old, shall be considered unfit for work, and if he/she is attending secondary school regularly, until the period prescribed for his/her schooling terminates (Art. 13 and 14 ASSPSW of RS). Children and young people with needs and adults with disabilities, who are able to train for a job but are unable to do so on any other legal basis, have the right to an occupational training allowance (Art. 26 ASSPSW of RS). A child with special needs, a child with autism and a child with a behavioural disorder, have the right to day care, which entails placing the user in an appropriate institution of social care that provides day care services or an institution of upbringing and education that offers such services (Art. 33 and 34 of ASSPSW of RS). A child without parental care and a child with a development disorder, due to family circumstances; a child with a moderate, more serious, or a severe mental disability, multiple disability and a child with a physical disability, who does not have the conditions to remain in his/her family, while the need for this form of protection lasts; a child with a behavioural disorder; an expectant or self-supporting mother with a child until the age of 9 months, who needs temporary protection and care due to lack of material resources, homelessness, disturbed family relations and similar situations, has the right to placement in a residential institution of social welfare that provides care, upbringing and education, and occupational training for specific jobs (Art. 36 to 39 ). All citizens have the right to social work services free of charge, with the understanding that it may be required for citizens to participate in the costs of some services offered by a centre of social work, (preventive activities, diagnostics, treatment, counselling and therapy, by applying professional and scientific knowledge to provide professionally qualified assistance to individuals, families and social groups in resolving their vital problems, or to provide assistance in organising local and other communities to prevent social problems and alleviate their consequences) (Art. 48 of ASSPSW of RS).

The *procedure for realising a right* lies in the jurisdiction of the centre of social work. Procedure is initiated at the request of a person or his/her legal representative, or a guardian in his/her official capacity, or following an initiative forwarded by citizens or the relevant organ and other organisations, and is conducted according to the regulations of the Law on general administrative procedure. Centres of social work, institutions of residential care for the placement of beneficiaries (home for children and youth; centre for the protection of infants, children and youth; centre for family accommodation; shelter for children and youth; home for children and youth with special needs; home for children and youth with physical disabilities; institute for the upbringing of children and youth; reception points; and shelters), day care institutions and house-keeping services are institutions of social welfare that are established for citizens to enjoy their right to social protection. The Ministry of Social Affairs supervises the professional work of these institutions and the funds for the realisation of these rights are earmarked in the budget (Art. 49 to 116 of ASSPSW of RS).

The Law on Social Care of Children of the Republic of Serbia and the law on pre-school upbringing and education arrange issues concerning the organised accommodation of children in pre-school institutions, in order to assist employed parents.

In the Republic of Serbia, *pre-school education* is part of the system of social care for children, therefore, it is subject to arrangement by the same law (Article 2). Institutions for children are established so that they may enjoy the rights described in this law (Article 3). Parents pay fees for the day care of children in institutions of pre-school upbringing, except the categories of children whose accommodation and day care is partly or entirely subsidised by the state (Article 8).

For pre-school aged children, who do not enjoy the right to full time day care, pre-school institutions organise a daily, three-hour, upbringing program in the year prior to when these children start elementary school. The municipality supplies premises for conducting this program (Article 32).

Pre-school institutions provide day care through organised, full-time, part-time, minimal, shortened, periodical, five-day programs and through different kinds of work with children, until they start attending elementary school (Article 54).

In keeping with their material status, municipalities are allowed to subsidise the expenses of childcare in pre-school institutions of rest and recreation (Article 11).

## Assessment of the situation and observations

In the past two years, there has been a significant improvement in the position of beneficiaries in realising all their rights in the domain of social welfare. Namely, until the year 2001, payments of benefit and allowances arrived after a long delay - of 1 to

2.5 years, hence their depreciation. Thanks to donations and the increased revenues in the budget of the Republic of Serbia, the remaining claims were paid and now users receive their benefits with relative regularity.

There has been no significant increase in the number of beneficiaries as regards the Act on Social Security and Provision of Social Welfare of RS. According to the data of the Ministry of Social Affairs of the Republic of Serbia, 42 204 families with 98 984 family/household members used their right to material security (RMS). Out of the total of users, 35,833 were children, and 449 children, personally, were the beneficiaries of this right.

Important changes came about in the domain of the right to childcare. Namely, in April 2002, the People's Assembly of the Republic of Serbia passed a Law on financial support to families with children. This law was adopted to improve conditions to meet the basic needs of children and, in particular, to encourage child-bearing, to give support to materially vulnerable families with children, families that have children with special needs, and for children without parental care.

The particular significance of this law lies in the fact that the rights of children without parental care and families with children with special, psychophysical needs are treated as a separate group. By singling out families that have children with special needs, emphasis is placed on the family as the natural environment and thus it may lead to keeping these children within the family circle and more rarely sending them to institutions of social welfare. The rights regulated by this law are compensation of wages during maternity leave, during leave of absence from work to care for a child, during leave of absence from work for the purpose of special care, parent benefit, child benefit, the subsidisation of pre-school institutions' fees for children without parental care, of pre-school institutions' fees for children with special needs and pre-school institutions' fees for children from materially vulnerable families.

Although the law has led to a significant improvement in the circumstances of a large number of these beneficiaries, practice is showing that the position of individual users will be more unfavourable because of the conditions for the recognition of certain rights. This refers especially to children with a more serious, or severe disability, and their entitlement to child benefit because the allowances for another person's assistance and care and for physical disability are included in the calculation of the income that determines whether the child is entitled to this right. Experts from centres of social work also warn that equating the foster family with the natural family where it concerns the conditions for realising the right to child benefit and, in particular, the material standing of the foster family, is a measure that does not stimulate the development of the fostering network, or network of family accommodation, because a number of the children in family accommodation will be left without this personal right. Moreover, the law already regulates that in cases when 50% or more of the

funds are secured from public expenditure for a child's education or rehabilitation, the amount of child benefit is reduced by 30%.

One should stress that there is a particularly significant measure in the law that refers to the right of children without parental care and children with special needs to the services of pre-school institutions free of charge, and that children from materially vulnerable families have the right to subsidised fees for attending pre-school institutions that exist in the network of pre-school institutions, depending on the material position of their families.

As for the remaining rights in the Act on Social Security and Provision of Social Welfare of RS, one should stress several things that are characteristic in current practice. We refer to the right to accommodation in an institution of social care or in family accommodation, then to the assessments by experts that the number of children is not in harmony with international standards nor with contemporary trends in the protection of children in social welfare. Namely, in institutions in Serbia there are 2,000 children without parental care and approximately 1,500 children with special needs, as well as around 180 children in conflict with the law, while there are roughly 2,000 children, that is to say, about 40% who are residents in family accommodation. Institutions for the residential care of children with special needs have a large number of beneficiaries (all of 600), they are accommodated together with adults with special needs, and the dominant feature in these institutions is that there is no individual approach or stimulation for development. These institutions are often outside large towns, which has an adverse effect on the adequate selection of staff. A small number of users in the social welfare scheme are able to enjoy their right to daytime placement in an institution for the simple reason that their number is extremely small and this only involves children with special needs, while there is no day care centre in Serbia for children in conflict with the law. As for the right to another person's care and assistance, one should stress that the users of this right in the social welfare scheme are in a more unfavourable position than users who realised this right based on their parent's years of service, through the pension and disability insurance administration. Inequality is reflected in that the users in the social welfare scheme receive a far smaller amount of this benefit. However, there have been announcements that the users of this right in the social welfare system will be equated with other users in terms of the level of compensation.

# STANDARD OF LIVING

***Article 27, Para. 1-3 of the Convention on the Rights of the Child***

***1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.***
***2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.***
***3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.***

## Regulations in the FRY and Republic of Serbia

Child right to living standards as proclaimed by the Article 27 of the Convention is in our legislation mainly covered by means of regulations on the relations between parents and children and regulations on social insurance. A detailed review of these regulations is given along the presentation of respective Convention provisions, so just a brief explanation thereof will be given here.

Regulations on family relations anticipate parents' duty to support their children. If a child up to the age of 18 years has not completed his/her education, it is parents' duty to support him/her in accordance with their possibilities until termination of the education in a particular school or university. If such education is extended for justified reasons, this duty is extended until 26 years of child's age, but not later (Art. 298 of the Marriage and Family Relations Act of the Republic of Serbia). In case that a child has no parents, or they are not in position to support him/her, laws envisage obligation of such support by cousins (Art. 303 to 308 of the MFRA of RS).

Social security is provided to the citizens and the families who are unable to ensure sufficient funds for fulfilment of their basic life needs by way and on basis of their work, cousin-type of support duty, property and property rights or in any other way (Art. 3 of the Act on Social Security and Provision of Social Welfare of RS). The rights in the field of social care and social security are as follows: material support, allowance for assistance and care by other person, assistance in training for work, assistance at

home, daytime placement, placement in an institution or another family, services by social work, beneficiary's equipment for placement in an institution of social protection or another family and one off assistance (Art. 9 of ASSPSW of RS).

In addition to that, the rights of pupils and students in the field of pupil and student standards in Serbia are regulated by Act of Pupil and Student Standards. The field is defined as an organised activity by means of which material and other conditions are created for acquisition of education and securing personnel needs of the community. From the viewpoint of child right to living standards that the respective Convention provision refers to, the provisions referring to the pupil standards are significant in respect of the child's age. According to Article 2 of the mentioned Act, pupil is entitled to accommodation and food in an institution for placement and feeding of pupils, upbringing work, pupil loan, pupil scholarship, cultural-entertaining and sport-recreational activities and benefits in interurban transportation. In order to have these rights achieved, institutions of pupil standards are established, and the funds for their operation are secured from the budget, as well as directly from the beneficiary, or by sale of services in the market, through donations and from other sources in accordance with law (Art. 4 and 6 of the APSS of RS). The right of full-time pupils of secondary schools to accommodation and food is achieved by means of a contest that is announced before start of a school year, and the sequence list of the pupils chosen under the contest is determined on basis of their success rate in the previous education process and their families' income. The accommodation and feeding expenses of pupils are also shared by their parents or guardians (Art. 8 and 9 of the APSS of RS). This Act also prescribes the right to pupil loan concerning secondary school education of those pupils acquiring education for scarce vocations. This right is also achieved by way of contest on basis of loan contract concluded with enterprises or institutions. The determined loan amount is paid to the parent or guardian under an obligation to refund it together with interest, in accordance with the terms and conditions as determined by the contest rules (Art. 10 and 11 of the APSS of RS). Full-time pupils of secondary schools who achieve excellent success during their education are entitled to pupil scholarship without an obligation to refund it. After the contest is announced the sequence list of the pupils-beneficiaries is determined on basis of their success in their previous education process and the family's income level (Art. 12 of the APSS of RS).

## Assessment of the situation and observations

The period between the early 1990s and 2000 was marked by a large economic crisis in the country. The national income per capita in 2000 was for 43% lower than that of 1990. The unemployment rate showed a constant increase tendency, so it was increased from 19,7% in 1990 to 26,8% in 1998, whereas the unemployment rate of youth was considerably higher.[47] On basis of 1998 research by Economic Institute it was estimated that approximately one million and 200 thousand people were relying for their income

[47] *Institute of Statistics data.*

on grey economy. According to the data by the Ministry of Labour and Employment there are around 900 thousand unemployed persons in Serbia. However, according to their estimates half of that number are involved in grey economy. A new law on employment is announced for adoption, whereby a more restrictive policy in the field of unemployment control is anticipated.

The cost of bare consumption necessities was in 1998 unacceptable for 33% of the population, whereas the average monthly net earnings *per capita* at the end of 2000 was around 40 Euro. Although the situation in the last two years has improved, there remains a dilemma among the experts whether the bare consumption necessities criterion is a reliable indicator of the population's standards because the families "do not purchase what is declared to be included in the bare consumption basket but rather what they need", one local analyst commented. The families with children are for 40% in a less favourable position in relationship to those without children. According to the data by the Ministry of Social Affairs of the Republic of Serbia, around 36 thousand children are members of the families receiving social payment assistance.

According to the 1999 report by the Ministry of Labour, Veteran and Social Issues of the Republic of Serbia, that is, their Sector of Social Payment Assistance, the number of beneficiaries shows a decrease tendency, but only as the result of reduction of the funds and more restrictive criteria for granting this type of compensation payments (that were even delayed for 14 months). In the last two years the situation in this field has somewhat improved (see Art. 26).

At the same time, in 1999 the number of beneficiaries receiving the assistance in the form of natural goods, subsidies for public utility expenses, achievement of health care and organised feeding in soup kitchens has increased for over 80% (according to the Red Cross information, the number of beneficiaries in soup kitchens reached the level of 100 000 in 1999).

A direct consequence of all these indicators is the fact that 29,4% of the children up to the age of five years display signs of malnutrition. This rate has increased since 1996 for almost four times.

What the living standards look like from the angle of children's view one can see from the results of a research done by the Child Rights Centre[48] for 2001.

The manner in which the surveyed children experience and estimate the material conditions of their lives could primarily be estimated as the result of long-standing

[48] *An Agenda for the Future*,(Yugoslav) Child Rights Centre, Belgrade, 2001

progressive pauperisation and gradual adjustment to deprivation. The strategies of survival displayed through readiness for deprivation and postponement, modesty in expectations and a type of coming to terms with the expression of "Sorry, not available" that is frequently applied almost represent a normal outcome in the children's behaviour.

*On the other hand, the parents' readiness to place the children's needs above many other ones could in a way be the explanation of the finding that children in their families (without regard whether it concerns the general population or just specially sensitive groups) bear the poverty consequences to a relatively less degree than those placed in institutions of social protection and collective centres for refugees and displaced persons. Still however, what does it specifically mean "not to be available"? What kind of most striking finding and answer is that?*

- *One third of the surveyed children in families feel that they do not have enough clothing, footwear and hygiene resources and that their diet is monotonous;*
- *The percentage of children in the institutions of social protection complaining of lack of food, clothing, footwear and hygiene means extends from 40% even up to 80% (depending on individual institutions);*
- *Another crushing indicator is that the question "what do you need most?" among a significant percentage of refugee and displaced children in collective centres causes spontaneous listing of basic goods.*

*Not only do children and youngsters believe that lack of money narrows possibilities for utilisation of their free time, but they also recognise poverty as one of the sources of discrimination:*

- *1/3 of the persons surveyed feel that difficult material status of families essentially narrows even possibilities for education (choice of school, purchase of textbooks, transportation expenses);*
- *1/4 of them feel that the material status of their parents is the cause for discriminative behaviour of teachers toward pupils.*

The economic and legal reforms started in late 2000 have lead to a mild recovery, but an enormous portion of the population (around 20%) lives below the upper poverty limit. This kind of situation negatively affects children, especially those who are the most sensitive. Further economic reforms may lead to even more serious problems because they will imply lowering of social benefits and a different set-up of health and education systems (requiring a higher share by the citizens). What one could expect as a positive trend is higher investment into education and this would improve at least one aspect of children's lives. Furthermore, Ministry of Social Affairs with the help by the World Bank and DIFID is starting a special project in the field of elimination of poverty that would be accomplished in five Serbian municipalities in the forthcoming period. This Ministry is also working on a strategy of reduction of poverty and the initial document in that sense has been composed.

Concerning particular difficulties linked with the living standards of children in Serbia, refer to the relevant law articles covering right to education, right to health care, right of children with disabilities, and right of social protection and social care services.

# CHILD WITH DISABILITIES

***Article 23 of the Convention on the Rights of the Child***

***1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.***
***2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.***
***3. Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.***
***4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.***

## Regulations in the FRY and the Republic of Serbia

Right to special protection of persons with disabilitiesin accordance with law is guaranteed by the Article 59 of the Constitution of FRY. The Constitution of RS determines in its Article 28, para. 2 that special protection is enjoyed by the persons who are not in position to look after themselves and after protection of their rights, and that the citizens partially capable for work are provided for in respect of training for a corresponding job and of conditions for their employment in accordance with the law.

Right of child with disabilities to special care, upbringing and training with the objective of extending an assistance to him/her in achieving a greatest possible social integration, as well as the method for implementation of this right in the Republic of Serbia are regulated in more detail by the Elementary School Education Act of the Republic of Serbia and the Secondary School Education Act of the Republic of Serbia. Children with physical and sensory difficulties in their development, with difficulties in their mental development (minor, moderate, heavier and heavy) and with multiple difficulties in their development (with two or more difficulties or autism) are enrolled to school on basis of a decree determining the type and degree of difficulty. Type and degree of the difficulty is determined by means of decree of the authorised municipal body on a proposal made by a medical committee, whereby also one's capability to obtain elementary education and upbringing, as well as the school to which the child would be enrolled are determined. Also, prescribed is the possibility of repeated diagnosis of the degree and type of disabilitiess, that may be conducted during the elementary education process on a request by the parents, the school or the health care institution (Art. 18, 19 and 84 of the ESEA of RS). Specific curricula are composed for each of the disabilitiestypes and degrees. It serves to more specifically determine the objective and the task of education and upbringing, duration of the education, age required for the enrolment, number of pupils per class or group, weekly and annual number of lectures held and other forms of educational and upbringing work, duration of lectures, and professional orientation of pupils (Art. 88 of the ESEA of RS). A school may perform the activity of pre-school upbringing and education, elementary and secondary education, and upbringing for children with the same type of disabilities. In addition, a school may organise room and board for the pupils and pre-school children in a pupils' home, and their stay therein may be either daily or permanent (Art. 91 of the ESEA of RS). The Secondary School Education Act of RS anticipates establishment of schools for pupils with disabilities and such schools, apart from extending secondary education, may also perform activity of elementary education and upbringing (Art. 15 of the Secondary School Education Act of RS).

Under certain circumstances rights in the field of social security are guaranteed to children with disabilities. They are financial benefit, allowance for assistance and care of another person, benefits for professional training, assistance in the home, daily stay or accommodation within social care institution or another family, accommodation

equipment for the institution of social care or the other family, as well as for social work services (Art. 9, 14, 23 to 25, 26 to 29, 30 to 47 and 48 of the Act on Social Security and Provision of Social Welfare of RS). Law on Financial Support to Family with Children of RS anticipates special protection of the families with children having disabilities in respect of terms and conditions that need to be fulfilled for granting child allowance and using pre-school institution services. Furthermore, Law on Old-Age Pension and Disability Insurance prescribes terms and conditions for granting family pension, reading and writing aids, but it also suspends the right to allowance for assistance and care provided by another person. Military insurance beneficiaries` children may enjoy these rights under the Yugoslav Army Act. Act of Civil Disabled Persons Rights regulates all the rights and benefits for this specific type of disabled persons, including children.

*Rights in the field of health care* are also guaranteed to these children. The health care includes: preventive, diagnostic, therapy and rehabilitation health care services in a health care institution, including transportation in emergency situations, medicines, accessory material used for application of medicines, medical supplies necessary for treatment and orthopaedic aids according to the indications. Means of health care for the persons not covered by mandatory health insurance are secured from the republican budget (Art. 7 of the Health Protection Act of RS).

There is also a series of by-laws referring to persons with disabilities such as Book or Rules on Terms and Conditions for Planning and Designing of Objects in connection with unobstructed movement of children, senior citizens, persons having disabilities, and books of rules on keeping records for certain rights.

## Assessment of the situation and observations

On basis of a detailed analysis of the regulations a necessity for design of an anti-discrimination law was pointed out. The current situation was evaluated as follows: "These norms (if observed as a single whole in outlines) lack a foundation, they are in a state of mutual "mild dispute", some of them have an approach to many other ones as neighbours with poor neighbourly relations have - they do not communicate with each other or sometimes just greet each other with a "hello". Many of the norms reflect their author's approach that persons with disabilities are objects of protection while one cannot see a purpose-serving approach to them as (potentially) independent subjects of social life. The norms are not in harmony with the relevant international instruments.[49]"

[49] Cucić et al, *Osobe s invaliditetom i okruženje*, Belgrade, 2001

Legal Aspects of Disability Protection in Serbia was the title of a project and two-day expert conference held in April 2002 supervised by the Centre for the Advancement of Legal Studies and other partners. The ultimate result of this project should be an Act of Protection of Persons with Special Needs. That law would serve as the foundation of all other legal norms.

Sometimes some legal regulations inspire prejudices with their formulation. For example, in the attempts to obtain data about children with disabilities until recently one was always given, and is even now given here and there, the explanation that the age limit for such children has been adjusted because they are parent-dependent (e.g. a child with disabilities who may be at the age of 40 years is also entitled to family pension!).

Systematised and precise data about the number and structure of the children or persons with disabilities or the mechanisms for monitoring their rights still do not exist. Collection of the existing data is impossible on account of lack of a unified system of data kept and criteria for sorting the subjects into the group. Consequently, the presumed estimates of the number of persons with disabilities obtainable from various sources are in considerable mutual disagreement. According to the estimate by the World Health Organisation in our country there are almost one million persons with disabilities, whereas domestic statistics indicate between 350 and 900 thousand.

The first serious research concerning disabled persons was done in twelve (out of the total number of 160) municipalities of Serbia between 18th and 29th April 2001 within the joint project of Handicap International and Centre for Studying of Alternatives. The number of 1 727 persons with physical disabilities were interviewed and the criteria for selection were precise. The project Analysis of the Data on Persons with Physical Disabilities Living in Serbia, supported by the Handicap International was completed in the summer of 2001. Central records exist now in all the organisations at the republican level. The database includes data about 7 072 members, 698 of whom are children below the age of 18 years. Through comparison of the number of members and the number of patients registered in medical institutions one reaches the fraction 2/7. The record files are almost identical, which makes the data comparable. However, there are also files with incomplete data because - the officials in these organisations claim - some of the members do not want to provide their data (for example, about their work engagement). This could be resolved through incitement measures in favour of diligent branches and members. A similar phenomenon was observed among the social organisations of persons with sensor disabilities since they do not maintain a database although they have the largest number of members (there are 12 080 persons with visual impairements - Statistical data of Institute of Statistics of RS, 1998). Ministry of Labour and Social Issues of the Republic of Serbia in co-operation with Pension Fund of Social Security, Institute of Health Care and Bureau of Employment are working to produce a database about persons with disabilities. This will enable monitoring of every child's rights.

Every child and his/her type of difficulty have their own datum, which is good because that helps identify the specific needs. In Serbia there are 3 517 children below the age of 18 years with disabilities. Within that number, there are 3,370 beneficiaries of care benefit and allowance for assistance by another person. That includes those children with disabilities or chronically affected by mental illness (175 of them living in families, 114 are beneficiaries of MSF (Material Support to Families), 2,313 with heavy physical and mental disabilities, 177 with multiple disabilities). The total number of children in families is 1,625 with 175 of these being affected by disabilities. There are 1,073 children with disabilities (up to the age of 18 years) that are placed in institutions (16 with impaired hearing, 3 with visual impairements, 48 with heavy physical disabilities, 90 with multiple disabilities, and 267 of others - according to data provided by Ministry of Labour and Social Issues of RS as of 29th October 2002.) Even earlier, the trends in the number of beneficiaries of social protection were also monitored by age. The figure data for that particular criterion are kept in Republican Institute of Statistics. We shall present here the comparative data for 1996 and 2001.

**Excerpt from Table 1** - State and Trends of Children and Youth--Beneficiaries of Social Protection According to Age and Sex Categories:

| Code Category | 1996 | 2001 |
|---|---|---|
| **41** Children and youth with partial visual impairement | 78 | 149 |
| **42** Children and youth with total visual impairement | 109 | 129 |
| **43** Children and youngsters with partial hearing impairement | 190 | 178 |
| **44** Children and youth with total hearing impairement | 202 | 191 |
| **45** Children and youth with speech difficulties | 150 | 157 |
| **46** Children and youth with physical disability | 534 | 780 |
| **40** Total number of children and youth with physical disabilities | 1.263 | 1.584 |
| **50** Children and youth with combined disabilities | 612 | 925 |
| **Total number of beneficiaries** | 60.305 | 65.361 |

In the Table 2a shown below the beneficiary categories are designated with codes as applied in Table 1. We can see here that the growth of the total number of social protection beneficiaries reaches the rate of 8%, those with physical disabilities 25%, and those with combined disabilities as much as 51%. What is striking is an increase of the material assistance in the form of natural goods, as well as an increase of the allowance for other people's care and assistance and of guardianship.

**Excerpt from Table 2a -** Forms of Social Protection among Minors-Beneficiaries:

| FORM OF PROTECTION PER EACH OF THE CODES | CODE CATEGORY | | | | | |
|---|---|---|---|---|---|---|
| | **41** | **42** | **43** | **44** | **45** | **46** |
| **Guardianship in 1996** | 2 | 5 | 7 | 7 | 3 | 4 |
| **Guardianship in 2001** | 7 | 6 | 9 | 10 | 6 | 22 |
| **Adoption in 1996** | - | - | - | - | - | - |
| **Adoption in 2001** | - | 1 | - | - | - | - |
| **Placement in another family in 1996** | - | 1 | - | - | 2 | - |
| **Placement in another family in 2001** | 2 | 1 | - | - | - | 1 |
| **Placement in social protection institution in 1996** | 12 | 26 | 17 | 33 | 9 | 25 |
| **Placement in social protection institution in 2001** | 5 | 14 | 33 | 23 | 14 | 42 |
| **Placement in another institution in 1996** | 4 | - | 14 | 14 | 4 | 3 |
| **Placement in another institution in 2001** | 3 | 3 | 11 | 17 | 1 | 2 |
| **Permanent fiscal compensation in 1996** | 13 | 10 | 12 | 12 | 5 | 23 |
| **Permanent fiscal compensation in 2001** | 10 | 1 | 5 | 4 | 4 | 23 |
| **Single fiscal compensation in 1996** | 21 | 15 | 84 | 84 | 15 | 59 |
| **Single fiscal compensation in 2001** | 53 | 12 | 52 | 40 | 48 | 222 |
| **Other assistance in natural goods in 1996** | 10 | 10 | 13 | 13 | 12 | 55 |
| **Other assistance in natural goods in 2001** | 308 | 212 | 221 | 178 | 95 | 1.295 |
| **Care and other services in the home in 1996** | - | 1 | - | - | - | 4 |
| **Care and other services in the home in 2001** | 3 | 2 | - | 3 | 2 | 21 |
| **Allowance for care by other persons in 1996** | 18 | 48 | 34 | 34 | 16 | 325 |
| **Allowance for care by other persons in 2001** | 55 | 93 | 23 | 36 | 28 | 504 |
| **Rehabilitation in 1996** | 5 | 4 | 16 | 16 | 3 | 10 |
| **Rehabilitation in 2001** | 6 | 7 | 7 | 13 | 3 | 8 |
| **Employment in protection workshops in 1996** | - | - | 5 | 5 | 4 | - |
| **Employment in protection workshops in 2001** | - | 1 | - | 1 | - | - |

Investments by the state in vocational trainings for those who did not passed through regular education and their employment was low. In the period between 1994 and end of 2001 the fiscal payments of social and child protection were delayed and their level was considerably lowered. For example, the benefit payments for care and assistance by another person were delayed 32 months. After the political changes of 2000 the Government of Serbia made up for that from donations. The regular rate of payments that followed contributed to an increase in the number of beneficiaries subscribed, but the current amount of benefits (various forms of assistance and services in everyday life) is at a level far below the actual purpose. Thus, the families are still left to bear both their expenses and obligations. The largest number of the families with a member with disabilities (79% of them according to the survey) are below the poverty line while 26% of them are in an extremely difficult economic situation. Furthermore, there is a large number of divorced parents among this segment of population.

What is the position of the families that have their children (secondary education students) placed in a boarding school that incurs share of the expenses (their full rate is 8 400 dinars) and who pay maintenance of the aids, etc.? No precise analysis of these specific expenses has been done nor has been determined the extent of such influence on the threshold of social endurance of these families. They frequently take deprivation as a normal kind of situation, which tears down their self-esteem or makes them either passive or aggressive. Such families need informative and counselling assistance that is missing. In addition to this, they lack services for adjustment and repair of the special devices and aids, translation services for the deaf language signs, services for training and hire of personal assistants, etc. In due course these kinds of service would also disburden the institutions for placement of these children and would enable their return to the families.

The study entitled *The Situation of Children in the Institutions of Social Care in Serbia*[50] has shown that "the lack of resources has questioned not just the quality of child life but also children's survival and development". Direct insight into the current state, such as damaged condition of the objects, personnel deficit, lack of teaching aids and education material, medicines, etc. has initiated several large humanitarian actions, but for the moment being just the most basic needs have been satisfied.

The current set of reform projects designed by Ministry of Social Affairs also includes methodology for early detection and protection of children at risk, as well as gradual restructuring and reduction of the existing stationary capacity in favour of alternative forms of support and simultaneous support to the institutions in their endeavour to keep developing open forms of protection.

[50] (Yugoslav) Child Rights Centre, Belgrade, 2001

*We can see from the research data obtained by Child Rights Centre*[51] *that the children placed in institutions themselves commented about the difficulties and problems encountered in their lives while bearing the conditions of institutional placement:*

- *the inadequate preparation of child when it comes to live in an institution, and support during the period of its adjustment;*
- *educational work that does not stimulate the child in mastering the skills that are necessary foran independent life after leaving the institution;*
- *the essential reduction of the child's ability to realise its right to privacy, and*
- *difficulties in establishing better communication with the teachers.*

Majority of the children with physical disabilities and those that have combined disabilities are in boarding schools to obtain their education. Attending regular schools is hindered, above all, by inaccessibility of such schools for these children and prejudices. There lack regulations and services for technical support to such children. We don't even know how many of them there are. Recently, respective data were requested from the organisations of persons with visual disabilities, and they were obtained for 25 children. Assistance extended to such children has so far been unsystematic.

The lack of early intervention reduces the child's chances to be included in a regular school education. This program is planned to be introduced soon in the school for children with visual impairements. Among projects of non-governmental organisations one must also mention the projects of UNICEF and Save the Children "Rehabilitation in Local Community - Children with Disabilities and their Parents", under which ten toy libraries were opened and inclusion of 19 children with various disabilities into ten pre-school groups was implemented beginning with the year 2000. As result, this school year saw enrolment of five ready children in regular schools.

The book entitled *Reform of Vocational Education - From Talk toward Realisation* contains data on the schools for children with "special needs", results of a survey among the teaching staff of some of them, and directions for the reform of education for these children. The obtained research data indicate that problems exist in the level of schools' equipment. According to the author's estimates the best-equipped schools only have 59% of the required conditions fulfilled. Seven special classes for pupils with impaired hearing in the regular schools have altogether 21 pupils.

Number of elementary schools for children with disabilities (per type of disability):

- impaired hearing (partial and total) 2
- visual impairements (partial and total) 1

[51] An Agenda for the Future, 2001

- physical disability 1
- mental and physical disability 2

In 16 classes of the elementary schools for children with partial visual impairements there are 140 pupils. There is one class with eight pupils who, apart from visual impairements, also have learning difficulties. In 25 classes of the schools for pupils with physical disability, there are 87 pupils plus 24 pupils with combined mental disabilities in 3 classes.

According to the same source the number of secondary schools that also have elementary school education is as follows (per types of disability):

- impaired hearing (partial and total) 4
- visual impairements (partial and total) 1
- impaired hearing and autism 1
- mental disability, visual impairements, physical disability and autism 1.

Of the total number of eight schools for pupils with impaired hearing, four have curricula of both elementary and secondary education. One of them provides education for pupils with mild learning difficulties and those with autism, in addition to those with hearing impairements. Lectures are organised for children with (partial and total) visual impairements in one school for elementary and secondary education with regular school curricula. The pupils with visual impairements are also educated in special classes of Medical Secondary School (which is a not mentioned in the book).

Review of the data about the structure and number of pupils attending secondary schools between 1994/1995 and 2000/2001 shows a relative stability starting with 1996/1997, whereas there was a slightly lower number of pupils in the previous years. The number of pupils attending schools for children with visual impairements is kept maintained between 40 and 50. The number of pupils is also constant in the schools for children with impaired hearing and corresponds to the spatial capacity available. There are 92 pupils not having learning difficulties in 13 classes of the school for children with visual impairements, as well as 34 pupils in six classes for children with mild learning difficulties. In 25 classes there are 174 pupils with impaired hearing, and 29 with additional mental disabilities in eight classes.[52] There are ten pupils with physical disability combined with mental disabilities in two classes. All these schools are in large towns, so the children are separated from their family milieus. Our education system dedicates least attention to children with combined disabilities (the same goes for professional gatherings).

[52] According to the Ministry for education and sport of Republic of Serbia, 2001

In 2001 Serbia had 750 971 children of elementary-school age, 8 060 of whom were with "special needs"[53] and included in all forms of special education and caring (which makes 15,33% of them are included in special institutions). If the rate of frequency of children with disabilities in general population is 7%, then the number of children with disabilities is supposed to be 52 568. It is not known how many of them are in regular schools or how many are not taking any education. In practice lack of observation of mandatory elementary school education is tolerated for children with sensory, physical and especially multiple disabilities. There are also cases of neglect and maltreatment of these children, but their dependency on their parents or guardians prevents them additionally to undertake something about it.

Also devastating are the figures that indicate that just 13% of the persons with disabilities have full-time employment, 10% of whom in the non-governmental sector or disabled persons` organisations and one percent in protection workshops.[54] The number of professions is small. The pupils with visual impairements are educated for telephone operators, administrative technicians, packing clerks and physical therapists with visual impairements (as it is precised in their diplomas). The pupils with impaired hearing are educated to become locksmiths, bookbinders, hairdressers, tailors of ready-made clothes, all of which professions do not make education at colleges and universities possible.

- *From the research results provided by Child Rights Centre[55] we learn that the children with disabilities, both those who live in families and those placed in institutions, have displayed a high degree of criticism regarding:*

- *accesibility to education and its quality. In that sense their assessments are similar to those of children from the general population (insufficient practical teaching, criteria for awarding marks, etc.) As a rule, they are aware of limitations in the choice of possible occupations but they believe that the titles or the wording on their certificates and diplomas visibly discriminate them (e.g. occupation - physiotherapist with impaired eyesight);*

- *the poorly developed services for support to children and parents (counselling centres, clubs).*

The number of university students with disabilities is rather very low (139 according to the records of republican organisations for disabled persons. The students from

[53] According to the UNICEF, 2001

[54] Cucić et al, Osobe s invaliditetom i okruženje, Belgrade, 2001

[55] An Agenda for the Future, 2001

Belgrade live in their families, all other students are placed in one boarding school. There are no special records kept in the Ministry of Education and Sports RS about pupils and students with disabilities (e.g. their number, loans and scholarships granted to them) because, they say, "we do not distinguish them in any way". They maintain good co-operation with Students' Association of Handicapped that has been operating for two years and which has 203 members, 126 of whom are pupils or students with disabilities. We obtained information from them that there are 45 students of that type living in the mentioned boarding school. Thirty-nine of them that fulfil the conditions (these are identical for all enrolled students in respect of studying success and material background criteria) have applied for scholarships. Therefore, even regarding this issue no respect is shown for the additional expenses that these young people have. This association organised numerous informative gatherings and campaigns for articulation of the needs and problems of these students. They also promptly submitted their amendment proposals concerning the The University Act but, unfortunately, these have not been considered and their studying conditions have thus remained the same. In fact, the curricula do not take into account whatsoever their needs, method of exam organisation, there are no textbooks written in the alphabet for visualy impaired, or interpreters for those with hearing disability, etc. On the other hand, a good deal of such facilities has been promised to them: construction of ramps for physically disabled persons at some of the faculties (only two of them currently have these) and at boarding schools, even accommodation for these students in other boarding schools, etc.

A strategic framework for the reform of the education system for children and youth with special needs is now being designed in the Ministry of Education and Sports of the Republic of Serbia. Its expert group is consulting experts, disabled persons and their parents. They will propose reformed curricula and forms of education adjusted to these children, from the pre-school to the university level. Forms of integration and inclusive education are planned wherever they could be applied. An important task is also making university education accessible to persons with disabilities (without learning difficulties). Policy of training for work, creation of new professions and providing vertical and horizontal accessibility will be taken into account.

Their specific technique in reading and writing of those with visual impairements has led to the creation of institutions that organise publishing and distribution of books and magazines written in Bray's alphabet and far more of those taped on audio-cassettes. In addition, a transfer over to digital technology is expected to take place. Several magazines for children are published. Textbooks have for many years been published by Bureau for Textbooks and Teaching Resources. Five to six textbooks for exclusive needs of the school for children with visual impairements are published every year, which is not sufficient. But the financial obstacles do not allow anything more. Several years ago printing of readers with larger characters was begun, and they were made just for Grades One and Two. A math textbook of this kind was also prepared but it has not been published. Our children with visual impairements have no access to touch picture books, atlases, and architectural models. There are no theatre or TV shows and films

accompanied by audio description or gesture speech. There are no inscriptions or light signals for persons with impaired hearing or any information in Bray's alphabet for tose with visual imairements, even in the cultural institutions. The limitations in communication could be overcome in various ways. The means include benefit tickets for public transportation in the cities and between cities, which do exist but were not observed at the time of recent economic crisis, or benefits for use of telecommunication facilities such mobile phones (visually impaired have this benefit). Personal computers allow remote communication and persons with visual impairements, through additional adjustment equipment, have possibility for independent reading and writing. Unfortunatelly this type of technical advantage is unaffordable for individuals, and it seems for the state authorities too. It is a necessary aid that ought to be available free of charge. For the moment being the technical assistance is reduced to Bray typewriter and 4-channel cassette player, but even these were not imported until 1995. With the delivery achieved last year only the needs of pupils and students enjoying priority were satisfied.

In a far poorer position are the children who enjoy such rights through the system of health care. It was difficult to achieve material resources hereabout. Thus, orthopaedic and eyesight aids were not provided for many years or were provided under considerable discrepancy in respect of the prescribed conditions. The conditions for obtaining orthopaedic aids are unfit for implementation, the procedure deadlines are too long and the quality of aids obtained are out of standard. This is partially compensated by means of humanitarian aid that disabled persons and their organisations have received mainly from foreign donators.

Although mortality rate of babies is being reduced, the number of children with disabilities keeps increasing. That is why the Ministry of Health of the Republic of Serbia joined the prevention programmes of the World Health Organisation. Although it is certain that this indeed is a priority task, that does not mean that already existing children born with physical disability need not be treated. But, what could one say when just one of the health centres in Belgrade is accessible for wheelchair patients. There are no data on the health care services used. In addition, the persons with disabilities are not specifically recorded as patients. The reason is familiar: avoiding stigma is practised. The paediatric services are exactly those who could most efficiently help identify such children and establish monitoring lists.

No case is known of any control conducted by construction work companies whether facilities for motion of disabled persons are planned and installed at public objects, although such practice is prescribed by the respective book of rules. Those people are unable to board public transportation vehicles that, otherwise, also lack any sound announcement of the stations approached. The vans provided by Public Transportation Enterprise only reduce the problem but do not resolve it.

The architectural barriers were shown at a public discussion held on 24th May 2002 under the topic *The White Spots of Belgrade* organised by Centre for Independent Life

of Disabled Persons and their partners. Slides were presented showing typical problem situations such as inappropriate objects, doorsteps, switches, kitchen and bathroom dimensions, narrow entrance halls, small lifts, inaccessible public toilettes, etc. Also presented there was the brochure entitled *The White Spots of Belgrade - Belgrade Guide for Disabled*. By way of practical fieldwork the following data were reached:

- Accessible entrance (ramp and handrail), the most essential part of the object and a toilette exist in two hotels, one restaurant, three theatres, three cinemas, four promenades, four post offices, two malls, 28 banks, one municipal hall, and Surčin Airport;
- Accessible entrance (ramp without handrail), the most essential part of the object and an inaccessible toilette cabin (with access into its lobby) exist at the railway station, in ten hotels, seventeen restaurants, one theatre, two cinemas, one promenade, four post offices, nine malls, seven municipal halls, two stadiums, and five sport halls;

Not more than one step at the entrance (with or without handrail), accessible parts of the object and an inaccessible toilette exist in one social work centre, bus terminal, fifteen restaurants, two museums, and one stadium.

One can board the commuter train (Beovoz) only at the station Vuk Monument (Vukov Spomenik) but no station is fit for exit.[56] Beginning with 15th February of this year The Association of Students with Handicaps has initiated the action for removal of architectural barriers in Belgrade. There is a plan of cultural and public objects that ought to have ramps built at. This initiative was responded to by authorised ministries and significant institutions, so a further joint engagement to that effect will follow. Projects of the type called *Town Accessible for All* have also been initiated in other towns of Serbia. In mid-1990s sound traffic lights were installed at 22 intersections and 52 pedestrian crossings. To a much smaller extent this has also been done in other towns of Serbia. Some ten years ago the first lowered sidewalk edges were also installed. A rather large action was achieved in 1995/1996, and 18 months ago the work on these problems took a planned form. At the same time the project called *Parameters Relevant for Construction of a Network for the Disabled - System of Guidance for visually impaired* was worked out in Belgrade. A walk-track for guiding of persons with visual impairements was constructed in King Milan St., and other main streets are also planned for the same type of adjustment.

The changes in the practice should be initiated through a higher awareness on the right of every person to be equal and on other human rights. Prior to 2000 the disability

[56] Maliković, Ivana, The White Spots of Belgrade, My MS World, MS Society of Serbia, September 2002, pg.16-17

problems were experienced as something that concerned a very narrow circle of people - the disabled persons' families, their associations and experts dealing with their rehabilitation, education and employment. Their position was drastically deteriorated due to the socio-economic crisis that lasted ten years. But now a need has been observed for a broader and concrete social action for creation of the conditions that would make a more complete integration of disabled persons into the community possible.

*Observed from the viewpoint of the children with disabilities themselves,*[57] *this kind of broad action also ought to consider their concrete recommendations:*

- *support for parents in preparing children for an independent life, which should commence as early as possible;*
- *encourage those in charge to introduce more innovations in their work;*
- *better access to information, better equipment, aids, and tools for mastering skills;*
- *better access to programmes available to other children, organising sport events, competitions, get-togethers.*

[57] An Agenda for the Future, 2001

# *VI*

# Education, Free Time and Cultural Activities

# THE RIGHT TO EDUCATION

***Article 28 of the Convention on the Rights of the Child***

***1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:***
***(a) Make primary education compulsory and available free to all;***
***(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;***
***(c) Make higher education accessible to all on the basis of capacity by every appropriate means;***
***(d) Make educational and vocational information and guidance available and accessible to all children;***
***(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.***
***2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.***
***3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.***

## Regulations in the FRY and the Republic of Serbia

Article 62 of the Constitution of the FRY prescribes that *schooling* shall be accessible to all under the same conditions and that elementary schooling is compulsory and free of charge. The accessibility of schooling under the same conditions and compulsory elementary schooling are also prescribed in the republican Constitution. (Art. 32, para. 1 and 2 of the Constitution of the Republic of Serbia).

The previous Law on social care of children envisaged free pre-school upbringing and education for children without parental care, children with special needs and children that spent a long period of time in hospital, as well as a three-hour daily program of upbringing and education in the year prior to the first school year. A new law is now being drafted on pre-school upbringing and education (to replace the previous law), and the draft of this law retains and also broadens the aforesaid rights. To be more precise, the pre-school program is extended to four hours daily and encompasses children between the ages of five and seven years.

The realisation of the right to *elementary schooling* is regulated by the Elementary School Education Act of the Republic of Serbia, which prescribes that elementary upbringing and education shall last eight years (Art. 8 of the Elementary School Education Act of the Republic of Serbia - hereinafter ESEA of RS). Children, who reach the age of seven years before the end of the calendar year, shall enrol in school that year but children, who were not enrolled within the prescribed time due to illness or other reasons, may enrol in school after the age of seven. In exceptions, and on the basis of a decision issued by a special commission, physically and mentally healthy children, who reach the age of six years before the end of the calendar year, may enrol in school that year (Art. 39 of the ESEA of RS). A pupil, who has reached the age of fifteen years is not obliged to attend school after the end of that school year. Nevertheless, a school may allow a pupil, who has reached the age of 15 years and who has not completed his/her elementary upbringing and education and has expressed the wish, or his/her parent has expressed the wish for him/her to do so, to continue his/her schooling until the age of 17 years, by decision of the school principal (Art. 44 of the ESEA of RS). A pupil that excels in knowledge and abilities may finish school in less than eight years, but in no less than six years, provided that he/she completes two forms in one school year (Art. 62 of the ESEA of RS).

The parent, the guardian, or the guardianship body is responsible for the enrolment of a child in the first form, for his/her regular attendance and performance of other school obligations. The municipal authority shall keep records and notify the schools and the parents whose children are to enrol in school. The school, on the other hand, is obliged to inform the municipal authority and the parents about children that stop coming to school or attend classes irregularly, no later than 15 days after the date of enrolment, that is to say, from the day the child has stopped attending classes regularly.

The relevant municipal organ is obliged to report parents whose child is not enrolled in school or does not attend school regularly, within 15 days from the day they were informed (Art. 40 of the ESEA of RS). A child may be absent from school in justified cases only, and a parent is obliged to communicate the reason for his/her absence no later than eight days from that day (Art. 41 of the ESEA of RS). A pupil may not be expelled from elementary school. In exceptional cases, if a pupil commits a serious

breach of his/her school obligations, a pupil from the fifth to the eighth form may be transferred to another school, by decision of the teachers' council (Art. 43 of the ESEA of RS).

Lessons for pupils from the first to the fourth forms are held by one form teacher, and for pupils from the fifth to the eighth forms have a different teacher for each subject (Art. 25 of the ESEA of RS). The number of classes weekly, the number of pupils in a classroom and the duration of the school year is defined by law (Art. 26 to 28 of the ESEA of RS). The school may organise additional classes as a supplementary form of work with pupils, who are on prolonged medical treatment at home or in hospital (Art. 29 of the ESEA of RS). Supplementary classes are organised during the school year for pupils who are slow in mastering the class curriculum and the school program, while additional work is organised for fourth to eighth form pupils with exceptional abilities and interests. The school may also organise additional work with the pupils of fourth to eighth term that show exceptional interest and abilities. Corrective teaching is envisaged for pupils with learning difficulties (Art. 30 and 31 of the ESEA of RS). A school may also organise an experimental program to test the value of new educational contents, forms, methods and organisation of work, new teaching aids and equipment. Special schools may also be established to carry out these experimental programs (Art. 36 of the ESEA of RS).

*Pupils* have the right and obligation to attend classes regularly and fulfil their school obligations (Art. 59 of the ESEA of RS). They are evaluated in all subjects and behaviour (Art. 46 of the ESEA of RS). The pupil or his/her parent has the right to object to the evaluation of the pupil's marks and the evaluation procedure to the school principal in a within a specified time after receiving the pupil's report book or certificate. If the school principal deems it justified, he/she shall form an examination commission (Art. 63 of the ESEA of RS). The pupil may be held accountable and subject to the following disciplinary measures: a warning, a reprimand from the form teacher, or a reprimand from the teachers' council (for a minor violation of obligations); a reprimand from the school principal or a severe reprimand from the teachers' council (for a major violation of obligations). The pupil or his/her parent may submit an objection to the school principal about the pronounced measure within a specified time (Art. 64 to 66 of the ESEA of RS).

*Secondary education* is established as a gymnasium, an art school or a vocational school (Art. 3 of the Secondary School Education Act of the Republic of Serbia - hereinafter SSEA of RS). The candidate for a gymnasium or a vocational school must pass a qualification examination while in order to enrol in an art school, the candidate must pass an entrance examination. The order of candidates for enrolment is established on the basis of their success in the qualification or entrance examinations and their marks in their previous education (Art. 42 of the SSEA of RS). The law also regulates the conditions under which a school may be established and fulfil its activities, the method

of adopting the educational plan and its contents, the method of carrying out educational and upbringing activities, the method of evaluating pupils, the rights, obligations and responsibilities of the pupils, the conditions to be met by the teaching staff, the management of the school, the recognition of foreign certificates of education, and the records the school keeps and the documents the school issues. Schools are financed partly from the republican budget and partly by the municipality or the city. Part-time pupils, foreign citizens and stateless persons pay school fees, the amount of which is fixed by the Ministry of Education and Sports of the Republic of Serbia, except if otherwise arranged through an international agreement. (Art. 105 to 107 of SSEA of RS).

As for *university*, the law prescribes that the order of candidates for enrolment in the first year of studies shall be based on a candidate's success in secondary school and the results of the qualification exam or the examination to test talent and abilities, which every candidate is required take (Art. 34 of the University Act of the Republic of Serbia - hereinafter UA of RS). All candidates are required to take an entrance examination, except the fourth formers from secondary school, who came first, second or third in republican, federal or international competitions in the subject that candidates are required to take in the entrance examination. (Art. 34, para. 2 of the UA of RS). The government shall decide on the number of students, whose studies are to be financed from the republican budget, and on the number of students who are required to pay tuition fees, after receiving the view of the university (Art. 32 of the UA of RS).

## Assessment of the situation and observations

The system of education in Serbia covers pre-school, elementary, secondary and university education. The formal system of education, which includes children, pupils, students and staff, engages over 20% of the country's population, in other words, about 120 000 employees, and about 100 000 teachers and professors at all levels, in 4 746 educational facilities.

In the year 2000, Serbia had 1 239 central elementary schools, 473 secondary schools (126 gymnasiums and 311 secondary vocational schools, catering for 543 educational profiles), nine universities incorporating 85 faculties, and 49 extra-mural colleges.

The system was evaluated as uniform, centralised and inefficient and, due to the economic and political crises, international isolation and the NATO bombing, notably degraded during the nineties so that it was operating at the poverty level (data for 1999/2000).[58] The planning system, the management, the administration and the supervision of its functioning and the effects thereof, were seen to be very poorly developed and inefficient. There is no integrated information system.

[58] *Primary Education in the Federal Republic of Yugoslavia - Analysis and Recommendations*, UNICEF, Belgrade, 2001

The formal education system, with the exception, to some extent, of pre-schoolupbringing, is characterised by excessively large programs that focus on the contents and methods of traditional teaching and tutoring.

Informal education is not sufficiently developed nor is it defined or supported by legal regulations. There are serious shortcomings in educational legislation. Most of the laws regulating the domain of education were inherited from the previous period, before the year 2000. The only new law, which was not yet part of the reforms, was the University Act of the Republic of Serbia, replacing the previous law of 1998 that abolished the autonomy of the University, as well as amendments and supplements to the laws on elementary education and on secondary education, respectively. There are few legally controlled mechanisms and resources to ensure the fulfilment of the publicly declared goals - the general accessibility and quality of education.

Total funds, earmarked for education, varied from 3% to 4,5% of the GNP during the nineties and, generally speaking, diminished when the economic crisis grew worse or increased in periods of economic recovery.[59] The percentage of public spending on education in Serbia during 2001, was 6,3%, half of it being financed from local sources, and it was among the lowest in this region of Europe.

At the beginning of 2001, a comprehensive reform of education commenced, based on recommendations in international reports on the situation in the educational system in Serbia.[60] The basic aims of the reform were to reorganise and modernise the schooling system:

- As a contribution to economic recovery,
- As fundamental support to the development of democracy,
- As support for the country's future integration in Europe.[61]

The aims of the reformed system have been defined as follows:

1. The formation and development of generative and transferable knowledge, the skill of thinking and the effective solution of complex problems.
2. The acquisition of vital skills and functional literacy,
3. The development of the system of values that acknowledges diversity and respects equity, human rights and the most valuable elements of the national tradition.[62]

[59] Ibid.

[60] Reports made by OSCE, UNICEF and The World Bank

[61] Quality education for all: the road to a developed society, MPS, Belgrade 2002:

[62] Ibid.

The paths of the reform include the decentralisation of management and financing, the democratisation of the system, schools as institutions, the teaching process itself and learning and the improvement of the quality of the teaching process and learning, the content of education and the educational results.

The plans are for the transformation of the educational system to begin in 2003 so that compulsory elementary education shall last nine years (three cycles of three years each), and secondary education shall last from one to three years (secondary vocational education from one to three years, general education - gymnasiums for three years). In the same year, there will be a gradual introduction of curricular reform that should last till the year 2010. The curricular reform will entail the educational system consisting of "national" and "school" *curricula*. The national curriculum consists of basic subjects (Serbian, mathematics, foreign language and mother tongues of the national minorities) with defined aims and results, aims and results defined according to domains of education, cycles and levels, and subjects or topics (obligatory, selected or facultative) with aims and results.

The school curriculum incorporates all the activities with which the school supplements, strengthens or broadens the overall educational program. The share of the national curriculum in compulsory education cannot exceed 90%, nor it can be less than 70%; in secondary general education, this share cannot be less than 70%, and in secondary vocational education - 40%.

A new subject, "civic education", was introduced as a facultative (2001/2002), or a selected (2002/2003) subject in elementary and secondary schools, at the same time as "religious education". The programs for these subjects were compiled by a team of experts for the democratisation of education, relying on the existing programs of education on child rights, tolerance and the peaceful resolution of conflicts, non-violent communication and suchlike, which were created and tested on our population within the non-governmental sector. In the first year, 20% of children in the first year of elementary school and approximately 10% of children in the first year of secondary school attended lessons in these subjects. In the current school year, these percentages are about 40% in elementary and over 50% in secondary schools. The final solution for an education in human rights, democracy and civil society, has been planned as part of the curricular reform and will be taught through compulsory and selected subjects, a cross-curricular method and within the scope of extra-curricular activities.

Work is currently in progress to set up a uniform information system, on introducing a uniform external matriculation, and developing a unified and modernised system for the higher professional training and promotion of educational workers, and to reform college and university education.

A national plan of action on education for all, with emphasis on the following aims of the Dakar Conference:

1. To include more children of pre-school age in care and upbringing programs, particularly children from vulnerable and under-privileged groups;
2. Particularly children with special needs;
3. Children from certain ethnic minorities (Roma); and
4. Increasing of the literacy rate among adults.

The Ministry of Education and Sports has set up a special commission to work out a National Action Plan of Education for All.

Finally, during the past two years, the membership of our country has been re-established in numerous international associations and organisations that are relevant for the domain of education, and the reform is progressing thanks to their ample assistance and intense international co-operation.

***The implementation of the right to education (Articles 28 and 29)***

In spite of the legal solutions, the full accessibility and the obligation of elementary education have not been achieved. According to some data[63] for the year 2000, 97,4% of children were enrolled in elementary school and 93,8% of the children that had been enrolled in elementary school were attending the fifth year (92% in rural and 95,4% in urban areas).

However, the situation is much worse regarding children from particularly sensitive and vulnerable groups: Roma, children with special needs, and the children of refugees and internally displaced persons.

Roma have the highest illiteracy rate (according to the 1991 population count - 27%, in comparison to 7% on the national level); over 78% of them never finish elementary school, only 4% have a secondary education, and only 0,2% have a university education. This population also has a high rate of quitting school, that is, after two or three forms already.[64] According to an OECD report in 2001, about 40% of the Roma population are children under the age of 14 years, and some 7 500 of them do not go to school.

Particularly disturbing is the fact that the percentage of Roma children in special schools is exceptionally high (according to some data as high as 50% to 80%), which illustrates the complete inadequacy of the system of categorization.[65]

[63] MICS, 2000.

[64] A comprehensive analysis of the system of elementary education in the FRY, UNICEF, 2001.

[65] Currently, a Strategy of strengthening and integrating the Roma is being worked out at the federal level, and a special team has been formed at the level of Serbia to address the issue of education.

The accessibility of elementary education for children with special needs is, in fact, clearly insufficient. The estimates given by experts indicate that 85% of these children, who live with their parents, do not attend school.[66]

In many environments there are no special schools or classes, nor is there a developed or routine practice of individual support to the child in the family and/or in regular schooling, nor is there a developed system of inclusive education (some projects for inclusive education are only in their initial stages). Schools have no facilities to admit children with disabilities (from kindergarten to university).

Special schools and classes are categorised according to the type and the degree of the special needs of their pupils, and their regional distribution is uneven (mostly in central Serbia and Belgrade). Nevertheless, 95% of children with special needs, who enrol in special schools or classes, finish elementary school, but only about 30% continue their education.

In the school year of 1997/98, 78,3% of pupils aged 15 years enrolled in secondary schools (18,42% in general and 59,88% in vocational schools), and 22,63% of the relevant generations enrolled in college or university institutions (17,80% in university and 4,83% in college).[67]

[66] A comprehensive analysis of the system of elementary education in the FRJ, UNICEF, 2001.

[67] *Statistical data - Support for OECD Thematic View of Education Policy in South East Europe.*

# THE AIMS OF EDUCATION

***Article 29 of the Convention on the Rights of the Child***

***1. States Parties agree that the education of the child shall be directed to:***
***a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;***
***b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;***
***c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;***
***d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;***
***e) The development of respect for the natural environment.***
***2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.***

## Regulations in the FRY and the Republic of Serbia

The earlier Law on Social Care of Children envisaged the possibility of organising pre-school upbringing and education in the languages of the ethnic and national minorities (Article 44). The same stand exists in the draft law in pre-school upbringing and education, and also the stand that pre-school upbringing is carried out with respect for the Convention on the Rights of the Child and in keeping with the developmental qualities of children and the educational, social and cultural needs of the children and the parents (Art. 3 of the Draft).

In their basic clauses, the republican laws on elementary education define the *goals of education*. Thus, according to Article 2 of the Elementary School Education Act of the Republic of Serbia, the goal of elementary education and upbringing is the acquisition of a general education and upbringing, a harmonious development of the personality and preparation for life and further professional education and upbringing. Thus, education achieves in particular training for life, working and further education and self-education; mastering the basic elements of a modern general education; training to apply the acquired knowledge and the creative use of leisure time; developing intellectual and physical abilities, critical thought, independence and interest in new knowledge; learning about the fundamental laws of the development of nature, society and human environment; the development of humanity, truthfulness, patriotism and other ethical, personal qualities; an upbringing for cultural and humane relations among people, regardless of sex, race, religion, nationality or personal conviction; the cultivation and development of the need for culture and the preservation of cultural heritage; the acquisition of a knowledge of polite behaviour in all situations.

From the aspect of the development of the child's personality, talents, mental and physical abilities, the school is expected to monitor the pupil's development and assist him/her in the choice of further education and professional orientation (Art. 32 of the Elementary School Education Act of the Republic of Serbia, hereinafter ESEA of RS). A pupil who distinguishes him/herself with his/her knowledge and abilities can finish school within a shorter term than eight, but not shorter than six years, if he/she can complete two forms within one school year (Art. 62 of the ESEA of RS). Also children with special talents are able to attend elementary musical or ballet schools (Art. 101 ESEA of RS).

In secondary school pupils acquire general and professional knowledge and abilities for further education, or working, based on the achievements of science, technology, culture and art; the pupils receive an upbringing, cultivate moral and aesthetic values; develop their physical and the spiritual abilities of their personality; an awareness of humanistic values; personal and social responsibility and cultivates the protection of health (Art. 2 of the ESEA of RS). The legislation of the Republic of Serbia envisages school to accompany the pupil's development and assists him/her in the choice of further education and professional training (Art. 35 ESEA of RS). A school may also be established for the education of pupils with special ability that is to say talented pupils (Art. 14 ESEA of RS). In addition, the school will organise additional work for the pupil, who achieves outstanding results and shows an interest in deepening his/her knowledge.

## Assessment of the situation and observations

One of the bad examples in connection with the goals of education is the introduction of religious education in the curriculum in elementary and secondary schools (since autumn 2001) in a manner and in content that is rather contrary to the goals of education, that is the development of respect for human rights and basic freedoms (e.g. girls and boys are not treated equally), the preparation of the child for a responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sex, friendship among nations, ethnic, national and religious groups. The Centre is not pleased with the absence of an independent evaluation of the results of lessons in the subject of religious education in schools in Serbia, which, in itself, indicates a lack of willingness to objectively and openly examine the compliance of this subject with the general goals of education. A review of the state of affairs in connection with Article 29 was also partly given within the frame of Article 28 of the Convention.

# LEISURE TIME, RECREATION AND CULTURAL ACTIVITIES

### *Article 31 of the Convention on the Rights of the Child*

***1. States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.***
***2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.***

## Regulations in the FRY and the Republic of Serbia

The right of the child to rest and leisure and to participating in play and recreational activities, is implicitly expressed in the regulations and programs of upbringing and educational work in pre-school institutions and play schools. The Republican Elementary School Education Act contains clauses on the number of lessons pupils have in the course of the week, as well as the duration of the school year (Art. 26 and 28 of the Elementary School Education Act of the Republic of Serbia, hereinafter ESEA of RS). Apart from that, schools should provide the setting for carrying out social, sports and cultural activities of pupils that contribute to developing their personalities (Art. 33 of the ESEA of RS). The Law on Social Care of Children of the RS envisages the right of children up to the age of 15 years to leisure and recreation in a children's recreational home, as well as the subsidising of the costs of children attending pre-school institutions, and their leisure and recreation, depending on the financial standing of the family (Articles 11, 34 and 35). The leisure and recreation of children up to the age of 15 years, and compensation of the costs of holidays and recreation of children in pre-school institutions are not envisaged either in the Law on Family Cash Benefits, nor in the draft law on pre-school upbringing and education. There is a proposal to consider this within the frame of the regulations on pupils' and students' living standards. The Secondary School Education Act of the Republic of Serbia also regulates the number of lessons pupils have in the course of a week and the duration of the school year, and the school provides conditions for pupils' cultural and sports activities (Art. 29, 30 and 35 of the Secondary School Education Act of the Republic of Serbia, hereinafter SSEA of RS).

As for the freedom to participate in cultural life and arts, one should mention the constitutional clauses of the Federal and Republican Constitutions on the freedom to

create and publish scientific and artistic works (Art. 53 of the Constitution of the FRY, Art. 33 of the Constitution of the Republic of Serbia).

## Assessment of the situation and observations

In practice, the conditions for the participation of children in play and recreation and the organised use of leisure time are extremely poor and depend on the financial standing of the family, and the offer of activities in the domain of culture and arts is modest and unevenly distributed.

Toys and cultural products intended for children (books, theatre and film performances, etc.) are relatively expensive and there is no consistent tax policy to support a good quality offer (e.g. the tax rate on toys does not correspond to the quality but to the nature of the material used to manufacture them).

Although the programs of pre-school education place emphasis on playing as the dominant and particularly valuable activity of the small child in terms of its development, the impoverishment of pre-school institutions and the lack of motivation of their staff have significantly degraded the once very favourable conditions for the pre-school children included in these programmes, to play.

However, the majority of the pre-school aged population of children, approx. 70%, are not included in regular programs of upbringing and have very little opportunity for play and recreation outside the family environment. Public playgrounds are few, mostly in very bad condition, and are even a threat to the safety of children. Premises for playing in childcare institutions are mostly barred to children who are not in regular attendance, and specialised programs are rarely organised in the existing institutions.

During the past few years, non-governmental organisations (e.g. the Fund for an Open Society) have assisted in the organisation of mobile and permanent playrooms and play libraries, but their duration and sustainability is now in question without the systematic support of the state.

In the last year, the relevant ministries of the Republic of Serbia invested considerable efforts in renewing playgrounds and sports grounds to make them accessible for all children. Unfortunately, although their results are evident this kind of activity is limited only to city environments.

Even though the elementary and secondary education legislation envisage the mandatory organisation of recreational activities, school premises do not always provide the conditions for them (the lack of gymnastic halls, the leasing out of these halls and the lack of properly built schoolyards). The situation is also very unsatisfactory regarding extracurricular activities and activities outside school, both in

terms of what is on offer and with regard to the pupils' ability to take part in the creation and choice of what can be organised at school.

The data collected in a survey on the experience, views and stands of the young pupils in secondary schools in Serbia and Montenegro regarding the educational system (the survey was conducted by the (Yugoslav) Child Rights Centre with the support of the UNICEF Office in Belgrade, in the course of 1999[68] provides testimony of this. These young people assessed the overall, general educational and cultural offer in their hometowns (including the choice of activities outside school) as "mediocre", and only 14% of the respondents declared that they took part in mainly traditional, cultural and educational programs (for instance, culture and arts associations); 20% did not know what was on offer, and 36% were interested in becoming involved with more up-to-date programmes. According to the data from the aforementioned survey, young people mostly spend their leisure time "at discotheques and cafes", visiting friends and going to the cinema (periodically or frequently), and far fewer visit cultural institutions like theatres, museums, exhibitions and suchlike (the average answer was 1,23 to 2,12, according to which 1 signifies "never", and 2 means "once or twice a year").

[68] M. Pešić and Dr. V. Čok (eds.), *Godišnjak (Almanac) 2000*, (Y)CRC, 2000.

# *VII*

# Child in Special Situations

# CHILD AS REFUGEE

***Article 22 of the Convention on the Rights of the Child***

***1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.***
***2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.***

## Regulations in the FRY and the Republic of Serbia

Article 66 of Constitution of FRY anticipates that *foreigner* in FR Yugoslavia enjoys freedoms, rights and obligations determined by Constitution, federal law and international treaty. A foreigner may be deported to another country solely in the cases prescribed by international treaties that commit FR Yugoslavia. Furthermore, Constitution guarantees asylum right to foreign citizens and stateless persons oppressed for reasons of advocating democratic views and for participation in movements for social and national liberation, for freedom and rights of human being, or for freedom of scientific or artistic creation.

*The status of persons enjoying asylum and of refugees* in FR Yugoslavia is regulated by the Movement and Sojourn of Foreigners Act. In FR Yugoslavia asylum will be granted

to any foreigner oppressed due to his/her advocating of democratic movements and views, for social and national liberation, freedom and rights of human being or for freedom of scientific and artistic creation. Recognition, that, is, deprivation of asylum right is decided about by the official supervising the federal body of administration competent for internal affairs. A foreigner to whom the asylum right is recognised will be provided with his/her accommodation, support funds and health care (Art. 44 to 46 of MSFA of FRY). This law also prescribes that refugee status in Yugoslavia may be granted to foreigners who have left their citizenship country or the country in which they had permanent residence to avoid oppression due to their progressive political tendencies or national, racial or religious affiliation (Art. 50 of MSFA of FRY). The children of foreigners who had their refugee status recognised enjoy all the rights as their parent does, who had that status recognised to him/her (Art. 52 of MSFA of FRY). The foreigners who had their refugee status recognised are provided with imperative accommodation, funds for imperative support and health care until they leave for another country or until the conditions for their independent support are formed, but not later than two years from the date of their submission of the request for recognition of their refugee status (the deadline limitation does not refer to foreigners incapable for economic activity and independent support). By imperative accommodation and funds necessary for their support one implies the fiscal assistance that is imperative for ensuring living premises and support of the foreigner who had his/her and his/her family's refugee status recognised. The volume of the fiscal funds ensured is determined in accordance with the number and age of his/her family members who are not citizens of FRY, as well as according to their level of welfare and capability for economic activity, depending on whether the foreigner who had his/her refugee status recognised is undergoing professional training or not. If a foreigner with his/her refugee status recognised requires accommodation in a certain institution for placement of such persons on account of his/her senior age, self-support or incapability for economic activity, by imperative accommodation and funds necessary for support one also implies benefits to cover the expenses of that kind of accommodation. The funds necessary for support and imperative accommodation of foreigners who had their refugee status recognised, as well as for compensation of the expenses are secured by the federal budget (Art. 55 of MSFA of FRY).

The armed conflicts in former Yugoslavia and the large number of refugees have led, apart from the Federal Movement and Sojourn of Foreigners Act that regulates the issue of refugees in a general manner, to the bringing of a series of special regulations referring just to *the refugees from the territory of former Yugoslavia*.

The Refugees Act that was brought in Republic of Serbia in 1992 regulates the status of Serbs and citizens of other nationalities who were forced to leave their original homes in those republics and seek refuge on the territory of Republic of Serbia due to the pressure exerted on them by Croatian authorities or authorities in other republics, threats of genocide and oppression and discrimination due to their religious and national

affiliation or political conviction. In accordance with the provisions of this particular law, refugees are provided with looking after their basic living needs and provision of social security until conditions are obtained for their return to the regions they have abandoned, that is, until conditions for their permanent social security are ensured (Art. 1 of the Refugees Act of RS). Caring for the refugees includes organised forms of giving shelter, temporary accommodation, nutrition assistance, adequate health care and material and other types of assistance. Among other benefits, refugees are also entitled to education in accordance with the law, and they exercise this on basis of their abiding place in Republic of Serbia (Art. 2 of RA of RS). The child rights are regulated in more detail by the Expelled Persons Relief Decree. The refugee children having disabilitieswill be provided with placement in pre-school institutions if special types of professional work are organised in them (Art. 16 of the Expelled Persons Relief Decree of RS). Professional assistance in accordance with the possibilities will be extended to refugee pupils and students in preparation of their qualifying, additional and other exams for the purpose of their inclusion within the regular education, and this kind of assistance is extended by schools and faculties (Art. 17 of the Expelled Persons Relief Decree of RS). The same decree also anticipates extending financial aid to the pupils and students for their nourishment and accommodation in pupil and student homes, purchase of textbooks, education accessories and other studying tools, and for their transportation to the schools or faculties (Art. 18 of the Expelled Persons Relief Decree of RS). Even special bodies for extension of assistance for continuation of the interrupted education, that is, for inclusion in the education activities, referring to heath care, social and other institutions for the purpose of providing assistance that is included within their competence, as well as for proposal of methods for ensuring permanent social security (Art. 3 of the Expelled Persons Relief Decree of RS).

The law explicitly prescribes that direct help to refugees may be extended by Red Cross, other humanitarian, religious and other organisations and citizens (Art. 3 of Act of Refugees of RS). Commission for Refugees, being a special organisation dealing with professional and other affairs that concern refugees, co-operates with these organisations and citizens. It is also prescribed that Commission, in accordance with the provisions of international conventions ratified by Yugoslavia, which regulate the position and rights of refugees, opens initiatives for seeking international aid from UN institutions and other organisations for extension of international aid, for the purpose of caring for refugees on the territory of Republic of Serbia (Art. 6 of Act of Refugees of RS).

The Federal Movement and Sojourn of Foreigners Act links the refugee status of children with the status of their parents, but does not specifically regulate a possible recognition of the refugee status to the child without parental escort, nor protection of the child whose family is not found, even though this obligation is contained in Article 22, para. 2 of the Convention. Therefore, in this respect the federal legislation is not adjusted with the obligations anticipated by the Convention. The republican regulations that refer just to the refugees from the territory of former Yugoslavia regulate the rights

to obtain humanitarian aid and the co-operation with the UN and other international organisations that is determined to be one of the obligations of the competent state bodies. Also, these regulations also contain special provisions that refer to assistance extended to children, particularly concerning their education.

## Assessment of the situation and observations

According to a 1996 report by UN High Commission for Refugees[69] the number of children refugees (up to the age of 18 years) on the territory of Yugoslavia and Serbia is as follows:
There were 170,755 of them in Yugoslavia and 161,930 in Serbia (whereas the total number of refugees on the territory of Yugoslavia reached 646 066 to 617 728 of whom stayed in Serbia). According to the data composed in 2001[70] the number of children refugees from the age of 5 to 18 years amounted to 72 625 or 19,26% of the total number of refugees (according to the registration of refugees in Serbia there were 451 980 persons in refuge or 29,89% less than the figure obtained in the previous census made in 1996). Male children had a share of 37 172 (or 51,18%) in that volume, and the balance, of course, referred to female children (35 453 of them or 48,82%). Within this total number there were 348 children without both parents (i.e. 184 boys and 164 girls), 3,439 without one of the parents (1,739 male and 1,700 female children, aged between 5 and 18 years). It is necessary to stress that children up to the age of 4 years, who were born on the territory of Republic of Serbia do not possess a formal status of refugees although their parents are refugees. This refers to 8 429 children (i.e. 4 373 male and 4 056 female), which makes 2,24% of the total number of refugees. There are nine children (4 male and 5 female) up to the age of 4 years without both parents, 184 of whom are male and 164 female between the age of 5 and 18 years, and there are 67 male and 62 female children up to the age of 4 years, plus 1 739 male and 1 700 female children between 5 and 18 years without one of the parents.

[69] *Census of Refugees and other War-Threatened Persons in Federal Republic of Yugoslavia,* Belgrade, 1996.
[70] *Registration of Refugees in Serbia, March-April 2001 by* UN High Commission for Refugees and Commission for Refugees of Republic of Serbia, Belgrade, 2001.

# CHILD'S RIGHT IN ARMED CONFLICTS, INCLUDING RIGHT TO PHYSICAL AND PSYCHOLOGICAL RECOVERY AND REINTEGRATION

***Article 38 of the Convention on the Rights of the Child***

***1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.***
***2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.***
***3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.***
***4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.***

***Article 39 of the Convention on the Rights of the Child***

***States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.***

## Regulations in FRY and Republic of Serbia

The Yugoslav Army Act provides that one's *recruitment obligation* is formed at the beginning of the calendar year in which a Yugoslav citizen reaches the age of 17 years.

During the recruitment obligation period such persons are obliged to take medical and other check-ups and psychological tests performed by military medical institutions for the purpose of determining their capacity for military service. Recruitment itself is done in the calendar year in which the conscript reaches the age of 18 years. Exceptionally, a conscript may be recruited even in the calendar year in which he reaches the age of 17 years at his own request or if, during a state of emergency or direct war threat, this procedure is ordered by the President of FRY (Art. 288 to 291 of the AYA). The federal law also prescribes *obligation of participation in civil defence and protection*, that is, the obligation of execution of certain duties in the units and bodies formed for protection and salvation of civil population and material resources against war destruction and natural and other accidents and risks. This obligation applies to all citizens: men between 15 and 60 years of age, women up to 55 years of age. The only persons released of their participation in civil defence and protection are pregnant women and mothers who have a child younger than seven years or two or more children younger than ten years of age, as well as the persons incapable of participation in the units and bodies of civil protection. Also prescribed by the mentioned Act is work duty that consists of execution of certain tasks and affairs during the state of war, the state of direct war threat or the state of emergency, and it refers to all the citizens capable of work who have reached the age of 15 years but have not been appointed for service in the Yugoslav Army (Art. 22 and 24 of the Act on Defence of FRY).

In 2002, FR Yugoslavia has also ratified the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts*, and thus has taken additional obligation that persons below the age of 18 years are not subject to mandatory recruitment and are not to have direct participation in hostilities.

Therefore, the children of FRY below the age of 18 years may not be recruited nor are other obligations referring to defence and civil protection anticipated for them. Children may only be recruited in exceptional cases as anticipated by law, in the calendar year in which they reach the age of 17 years (Art. 291, para. 2 and 3 of the AYA).

## Assessment of the situation and observations

The armed conflicts waged on the territory of former Yugoslavia have produced large consequences, but obviously largest ones for children. Numerous migrations of the population, refugees, children separated from their parents, inadequate health service, lack of continuity and quality in education, as well as enormous physical and psychological stresses incurred have affected children the most. Even now, a few years after the termination of these conflicts their consequences are felt. No recruitment of children was undertaken on the territory of FRY, so in this respect this region and the armed conflicts could be distinguished from those in other parts of the world. This is at the same time the only advantage for the local children when it comes to armed conflicts.

In respect of the practice, the situation in the last two years is much better compared to that of the armed conflicts period for the territory of former Yugoslavia. Consequences imposed by war actions are of course numerous and children, as a particularly endangered category of population in such circumstances, suffer the most. This above all refers to the child refugees and their reintegration into the new milieus. Of the total number of refugees more than 21% are children up to the age of 18 years. The demographic characteristics of the persons endangered by the armed conflicts show that the percentage of such children up to the age of 18 years is considerably large - almost 21. The youngsters who have been affected by the armed conflicts very rarely declare their readiness to return to their original places of living (a characteristic applying to this entire category of population). Thus, a total of only around 300 persons up to the age of 18 years (hardly 0,5%) chose to return. A much larger number of them prefer some type of local integration. Social threat is a large problem, above all among children lacking one parent. As much as one quarter of them (24,36%) belong to the category of socially endangered. They are predominantly still located in collective centres for placement or with their friends and relatives (more than a half of them in total). In this group there are slightly more boys than girls. The data indicate that among the socially endangered children there are more those from Croatia than from other regions of former Yugoslavia. In the period during and immediately after the armed conflicts in these regions non-governmental organisations spent much more time caring for children, considering the special circumstances.

We feel that special and all-inclusive programmes of psychosocial assistance are necessary even for victims of armed conflicts. Also, refugees (including children) are very frequently exposed to discrimination, so it would be necessary to invest greater efforts in development of tolerance, understanding and better acceptance of that segment of population.

This Centre and other non-governmental organisations have many objections concerning the Yugoslav Army Act, first of all regarding the issue of civil serving of military service for which we believe that it wasn't regulated in accordance with the international standards (see also Article 14 - Conscience objection).

It would be essential to undertake measures at all the levels of reforms regarding social reintegration an recovery of the children who were directly affected by armed conflicts. Such programmes have been predominantly accomplished by non-governmental organisation and Institute of Mental Health through their network of specialised counselling offices in Serbia, and the Government of the Republic of Serbia concentrated on material benefits (see Article 22).

# THE RIGHT OF THE CHILD TO PROTECTION FROM EXPLOITATION AT WORK

***Article 32 of the Convention on the Rights of the Child***

***1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.***
***2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:***
***(a) Provide for a minimum age or minimum ages for admission to employment;***
***(b) Provide for appropriate regulation of the hours and conditions of employment;***
***(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.***

## Regulations in the FRY and the Republic of Serbia

Besides the general constitutional guarantees that refer to the protection of the rights of all employed persons, Article 56, para. 3 of the Constitution of the FRY prescribes special protection at the work place for youth, women and the disabled. Similar clauses also exist in the republican constitution (Art. 38, para.3 of the Constitution of the RS).

The most important guarantees that refer to the *rights of employed* people are contained in the Act on Bases of Labour Relations of FRY. This law prescribes that employees aged younger than 18 years shall enjoy special protection at work. The lowest age limit for the employment of young persons is 15 years, provided that the child is generally healthy and able-bodied (Art. 7, para. 2 of the Act on Bases of Labour Relations of FRY - hereinafter ABLR of FRY). The law also prohibits the employment of young people below the age of 18 years in work posts that consist of particularly heavy duty physical labour below ground or water or, given their psycho-physical abilities, in jobs that can harm them or expose them to any risk to their life or health (Art. 35 of ABLR of FRY). A young person below the age of 18 years is not allowed to work over-time, nor do night shifts if he/she is employed in the industrial, building or transport sector (Art. 41 ABLR

of FRY). In exceptional cases, employed young persons below the age of 18 years may be designated to work at night when it necessary to continue work that has been interrupted due to higher forces, that is to prevent damage to raw materials and other materials (Art. 43 ABLR of FRY). Misdemeanour penalties are foreseen for the employer who takes action that is contrary to these legal regulations (Art. 79 ABLR of FRY).

Likewise, the Labour Act of the Republic of Serbia prescribes the age of 15 years as the lowest age limit for employment. Apart from that, it contains almost identical guarantees regarding the duration of working hours and work in particularly heavy duty jobs for employed young persons below the age of 18 years (Art. 34 LA of RS). Republican criminal legislation contains provisions on the violation of the rights established in labour relations that are committed by a person, who deliberately disregards the law or other regulations referring to rights in labour relations and to special protection at work for young people, women and the disabled (Art. 86 Criminal Code of the RS).

## Assessment of the situation and observations

The Child Rights Centre unable to find precise data on practice in implementing the obligations arising from this article of the Convention. However, the subject of concern and efforts, numerous protests and announcements by non-governmental organisations and the Centre, was the position of Roma children. Namely, in city environments, the position of a large number of Roma children is close to slavery. They are exploited by their parents and relatives. In very many cases the children are prevented from going to school and are forced to work on the streets instead (they beg, wash cars, etc.). There were cases of these children being taken abroad to beg, steal, and even for sexual abuse. Due to legislative and material limitations, the relevant organs and centres for social work are almost powerless to essentially solve this enormous problem. Periodically, these children are removed from their parents and placed in institutions that are open and inadequate. The children then run away, return to their relatives or families and go back to work and do not attend school.

In the desire to open the question of child labour in Serbia, the Child Rights Centre has launched a project in conjunction with the international Global March Against Child Labour campaign. Within this project, the Centre translated and recommended for ratification Convention 182 of the International Labour Organisation, published a short brochure on child labour and commenced a process of lobbying for the identification of bad practice in our country. This project is a prelude to further activities that encompass the connection of this practice with the regional and world problem of the sale and trafficking of children.

Apart from that, the Child Rights Centre is already into its second year of conducting a project, intended for children outside the educational system in conjunction with the French humanitarian organisation, *Triangle*, based in Lyon.

This project is being carried out in the School for Adult Elementary Education in the Belgrade municipality of Zemun. Attending it are children aged younger than 14 years, who did not start school on time or left school. These children are often abused by their parents to do jobs in the grey economy.

The purpose of the project is to enable these children to stay in school after lessons, help them integrate into the local community, master the school curriculum and develop an interest in working on computers, strengthen their personal capabilities and prevent them from being abused by doing jobs in the grey economy.

# CHILD RIGHT TO PROTECTION FROM SEXUAL ABUSE

***Article 34 of the Convention on the Rights of the Child***

***States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:***
***(a) The inducement or coercion of a child to engage in any unlawful sexual activity;***
***(b) The exploitative use of children in prostitution or other unlawful sexual practices;***
***(c) The exploitative use of children in pornographic performances and materi*als.**

## Regulations in the FR Yugoslavia and the Republic of Serbia

*In Yugoslav law, the protection of children against sexual abuse* is prescribed, primarily, in the sanctioning of such activities under the criminal legislation in the Federal and Republican Criminal Codes.

*Federal criminal legislation* describes the crime of mediation in prostitution, performed by a person who recruits, incites, encourages or lures female persons into prostitution, or by a person who takes part in any way in handing over a female person to another person with the purpose of prostitution. The penalty is more rigorous if the act was performed with a juvenile female person (or with the use of force, threat or deception). The law also envisages sanctions if one sells, shows, or makes available to a person younger than 14 years, by public display or in some other manner, a script, picture, audio-visual or other item of pornographic content, or presents a pornographic performance (Art. 251 and 252 of the Criminal Code of FRY - hereinafter CC of FRY).

*Republican criminal legislation* envisages a group of criminal acts performed against personal dignity and morals, which includes, either as separate crimes or as more serious forms of basic crimes, various forms of sexual abuse and sexual violence against children. Thus, sexual intercourse or unnatural sexual intercourse performed by anyone who performs sexual intercourse or unnatural sexual intercourse with a minor younger than 14 years is a criminal offence. A more rigorous sentence is envisaged for a person who commits this act with a helpless minor younger than 14 years, either by using force or threatening to attack the life or body of the minor or a person close to him/her. The most serious form of this crime is if it results in serious bodily injury or seriously undermines the minor's health, or if it results in the victim's pregnancy or his/her

contraction of a serious contagious disease, or if the act is committed by several persons, or in a particularly cruel and humiliating manner, or if it results in the death of the minor (Art. 106 of the Criminal Code of the Republic of Serbia - hereinafter CC of RS). In addition, the law describes as a separate crime, the act of sexual intercourse and unnatural sexual intercourse committed through the abuse of office, the more serious form of which is when a teacher, kindergarten teacher, guardian, adopter, step-father or other person has sexual intercourse or unnatural sexual intercourse with a minor older than 14 years, through the abuse of office (Art. 107 of CC of RS). This group of crimes includes the more serious forms of basic crimes, for example rape (if committed against a female minor), coercion to sexual intercourse or unnatural sexual intercourse, sexual intercourse and unnatural sexual intercourse with a helpless person, fornication and unnatural sexual intercourse (if committed with a minor older than 14 years) (Art. 103 to 105, Art. 108 to 110 of CC of RS). The procurement of a minor or the enabling of fornication with a minor is also prescribed as a crime and a stricter penalty is envisaged for this crime if it has been committed with gain as a motive (Art. 111 of CC of RS).

*An extra-marital union with a minor* is also prohibited by criminal legislation. A penalty is prescribed for the adult, living in an extra-marital union with a minor who is older than 14 years, as well as for the parent, adopter or guardian who has allowed a minor older than 14 years to live in an extra-marital union with another person or who has induced him/her to do so, while a more rigorous penalty is envisaged for this act if it has been committed with the motive of gain. However, if the couple has married in the meantime, there will be no prosecution, and if it has already begun, the case will be dropped (Art. 115 of CC of RS).

In the context of the protection of children from sexual abuse, one should mention the crime of *incest*, i.e. sexual intercourse with a blood relation in the first degree, or with a brother/sister (Art. 121 of CC of RS).

## Assessment of the situation and observations

Both, according to information of the Centre and to reports from other organisations,[71] there is no official, systematised data about the number of children who have been victims of sexual abuse. One of the official sources of information on the violation of Article 34 of the Convention available to the Centre were the data of the Ministry of Interior of the Republic of Serbia. According to this source, the number of criminal charges pressed for crimes against minors in the period from January 1st, 1998 to October 31st, 2002, was as follows:

[71] For example, *Trafficking in Human Beings in Southeastern Europe*, UNICEF, UNOHCHR, OSCE-ODIHR, 2002.

| Art. of CC of RS | 1998 | 1999 | 2000 | 2001 | 2002 | TOTAL |
|---|---|---|---|---|---|---|
| 103 | 66 | 47 | 40 | 32 | 27 | 212 |
| 104 | 3 | 1 | 1 | 2 | 1 | 8 |
| 105 | 1 | 3 | 3 | 6 | 2 | 15 |
| 106 | 46 | 43 | 32 | 42 | 37 | 200 |
| 107 | 4 | 14 | 6 | 4 | 2 | 30 |
| 108 | 55 | 49 | 73 | 88 | 75 | 340 |
| 110 | 7 | 14 | 8 | 14 | 12 | 55 |
| 111 | 3 | 1 | 5 | 2 | 4 | 15 |
| 115 | 34 | 35 | 27 | 26 | 28 | 150 |
| 121 | 3 | 4 | 4 | 3 | 2 | 16 |
| 251 | | | 1 | | | 1 |

Also, surveys were conducted that included the field of the sexual abuse of children (Faculty of Political Sciences in Belgrade - 1998, Child Rights Centre - Belgrade 2001, Serbian Victimology Society - 2002), which, unfortunately, were only partial and only made it possible to assess certain tendencies of this phenomenon in connection with the true extent of the sexual abuse of children. On the other hand, even according to criminological literature, sexual crimes are among the most rarely reported crimes, and in this realm we are largely 'in the dark' regarding the figures.

Admittedly, certain data about the sexual abuse of children can be found in the Incest Trauma Centre NGO from Belgrade, and through the network registered with the Centre for the Development of the Non-Profit Sector.

For more data about existing practice and the problems in this field, see Article 19.

It is also important to note that the FR Yugoslavia is a signatory of the *Facultative Protocol of the Convention on the Rights of the Child, on the Trafficking in Children, Child Prostitution and Child Pornography*. The FR Yugoslavia ratified the Facultative Protocol on October 10th, 2002. Of course, the implementation of the Protocol and its harmonisation with national legislation stems from its ratification. Bearing this in mind, the Centre has pointed to the need for amending current criminal legislation in the Republic of Serbia, by introducing new and redefining certain incriminations contained in the criminal legislation, that is to say, clearly defining the essence of certain crimes, with the aim of protecting the good things that are significant for the life of children.

We have devoted special attention, in keeping with the *Facultative Protocol of the Convention on the Rights of the Child, on Trafficking in Children, Child Prostitution*

*and Child Pornography*, and, of course, bearing in mind the needs of practice in this field, to the chapter of the Criminal Code of the Republic of Serbia: "Crimes Against Personal Dignity and Morals". We have recommended to the Ministry of Justice of the Republic of Serbia, first of all, a change in the title of the chapter to: "Crimes Against Sexual Freedoms and Personal Dignity of Person", the introduction of new incriminations, such as: "sexual violence against a minor younger than 14 years", "sexual violence against a minor older than 14 years", "sexual violence against a minor through the abuse of office", "mediation in the prostitution of a minor", "the use of minors for pornography", "the production and showing of child pornography", "acquainting minors with pornography", and we have redefined the existing incriminations in this chapter of the Criminal Code of the Republic of Serbia.

# CHILD RIGHT TO PROTECTION FROM THE ILLICIT USE OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

***Article 33 of the Convention on the Rights of the Child***

***States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.***

## Regulations in the FRY and the Republic of Serbia

In the FR Yugoslavia, the production, trafficking, and supervision of the production and trafficking of narcotic drugs are regulated by the Law on the Production and Trafficking of Narcotic Drugs of the FR Yugoslavia. According to this law, *narcotic drugs* are those substances of natural or synthetic origin, the use of which may create states of addiction that are damaging to the health or may in some other way undermine human integrity in the physical, psychological or social sense. Substances are listed as narcotic drugs by a federal body, through an announcement in the Official Gazette of the FR Yugoslavia. The *trafficking of narcotic drugs* includes importing, exporting, transit, sale and any other manner of trafficking of narcotic drugs (Art. 2 and 3 of the Law on the Production and Trafficking of Narcotic Drugs of the FR Yugoslavia).

*The production and trafficking of narcotic drugs* may only be performed for medical, veterinarian, educational, laboratory and scientific purposes, on the basis of approval, that is a permit issued by a federal body. The production of opium by the cutting of poppy capsules, the cultivation of the coca-plant, making preparations with psychoactive effects from the cannabis plant and the production and importing of narcotic drugs as listed by a federal body, are prohibited by law (Art. 4 and 6 of the Law on the Production and Trafficking of Narcotic Drugs of the FR Yugoslavia). The law regulates conditions for the production and trafficking of narcotic drugs and the way this is documented, as well as the relevant bodies' procedure regarding confiscated narcotic drugs.

*Protection from the illicit use of narcotic drugs and psychotropic substances* is also regulated by criminal legislation (Art. 245 and 246 of the Criminal Code of the FR Yugoslavia), through the sanctioning of unauthorised production, processing, sale or

offering for sale, purchase, possession or transportation for the purpose of sale, or other forms of unauthorised trafficking of substances and preparations declared as narcotic drugs or psychotropic substances. The more serious form of this crime is if it is performed by several persons who have joined together with the purpose of performing such acts, or if the perpetrator has organised a network of salesmen or mediators, or if the crime has been committed with an especially dangerous drug or psychotropic substance. It is also a crime to lead others to use narcotic drugs or psychotropic substances, give them to others, put premises at someone's disposal or, in some other way, enable the use of narcotic drugs or psychotropic substances, combined with the fact that a heavier penalty for this act is envisaged for cases when they are committed against minors.

As far as *alcoholic drinks* are concerned, the criminal legislation of the Republic of Serbia sanctions the act of serving alcoholic drinks to minors, when this is performed by a person who serves an alcoholic drink to a minor under 16 in a quantity that may lead to intoxication, in a catering or some other vendor that sells alcoholic drinks (Art. 132 of the Criminal Code of the Republic of Serbia).

## Assessment of the situation and observations

A general assessment of the implementation and respect of Article 33 of the Convention is that, in Yugoslavia (Serbia), the rights of children in this domain are greatly jeopardised. Since the middle of the 1970s, the abuse of psychoactive substances in this region has grown to almost epidemic proportions. The basic characteristics of the current situation are as follows:

1. The problem is widespread;
2. The age threshold of first use is moving towards ever younger and older age categories;
3. The problem is present in all environments and regions, all social layers and groups (following a line of decentralisation and demetropolisation);
4. The combined abuse of psychoactive substances is present in adolescence ("poly-addiction");
5. The most commonly abused psychoactive substances are: legal ones - alcohol and volatile solvents, and illegal ones - cannabis preparations (marijuana and hashish), heroin, "ecstasy", cocaine, amphetamines (*speed* has appeared on the "market" in the last few months). Abuse also includes sedatives as medical preparations.
6. Society still has no consistent and organised response to the problem of addiction to psychoactive substances. The capacity for treatment is insufficient, a small number of therapy models are implemented, measures of primary prevention are chaotic, without continuity, stereotypical and obsolete, and sometimes even in direct opposition to the rights of children and human rights in general. Rehabilitation and re-socialisation is completely neglected by the state and

boils down to "experimenting" by two (as far as the author knows) non-governmental organisations. What is most important, there is no sign of the creation of a national program for solving this problem.

As for the reporting of cases of addiction to psychoactive substances, the Health Protection Act of RS (from 1996), and the Law on Health Records (from 1978 and 1986), require cases of contagious and non-contagious diseases to be reported. Besides these laws, rules of procedure have been adopted for keeping records in health institutions. According to law, every health institution is obliged to report patients who are suffering from a disease that is of great social and medical importance (drug addiction is included here) to a regional health institution, and the regional to the republican institution. The report forms currently in use are about 30 years old, because new ones have not yet been introduced, nor are there instructions for their use (in which diagnoses are reported, considering that the MKB 9 was replaced with the MKB 10, which has a completely different concept, frequently overlooking the fact that modern science is not concerned only with addiction to narcotic substances).

Although the law envisages mandatory reporting by health institutions, this is not the case in practice. It may be said that only the City Institute of Health Protection in Belgrade is fulfils its obligation towards the republican institute, and that the Institute for Diseases of Addiction and the Institute for Mental Health in Belgrade, where these patients are treated, fulfil it most of the time. For example, 2 769 cases, 2 516 of them from Belgrade, were reported to the republican health protection institute by 2001, inclusive, in the region of central Serbia. The frequency for central Serbia is 425 cases per year, of which 397 are in Belgrade. There is no data about Vojvodina and Kosovo.

Therefore, although there are laws, the majority of health institutions neither respect nor implement them, or if reporting is performed in practice, there are no precise criteria for sending these reports, so it is up to every institution or physician to decide how to fill in a report. There is also the problem of (non-)reporting of cases from private medical practice, where the number of persons who report for treatment should not be neglected.

Protection from the illicit use of narcotic drugs is regulated by criminal legislation. These crimes are listed in accordance with international conventions that the FR Yugoslavia has ratified. Since the Ministry of Interior of the Republic of Serbia processes cases of law breaking, it is there that the number and characteristics of these cases are recorded. This data is then sent on to the prosecution that starts criminal proceedings before a court.

Figures for 1996 and 2001 are as follows:
The Ministry of Interior of the Republic of Serbia - 1996: the amount of confiscated narcotic drugs was the largest in the past ten years. In 1 003 (784) raids, a total of 1 369 kg of various narcotics was confiscated (741 kg in 1995). Of this amount, 651,999 kg

was heroin (nine times more than in 1995), 638,489 kg of marijuana, 233,12 grams of cocaine, 2 519 kg of hashish, 99 tablets of ecstasy, 53 kg of codeine. 388 (417) criminal charges were brought against 483 (507) persons, and 230 persons were taken into custody.

Belgrade department of the Ministry of Interior of the Republic of Serbia:

| Year | Number of raids | Heroin | Marijuana | Hashish | Cocaine | Ecstasy | Codeine and other drugs |
|---|---|---|---|---|---|---|---|
| **1996** | 673 | 13,7 kg | 22,98 kg | 2,5 kg | 101 kg | 99 pcs | 53,07 kg |
| **2001** | >1000 | 7 kg | ? | ? | ? | Increase | ? |

The Belgrade department of the Ministry of Interior of the Republic of Serbia has so far registered 11 000 persons for drug-related crimes.

The Niš department of the Ministry of Interior of the Republic of Serbia:

| Year | Heroin | Cocaine | Marijuana | Hashish | Ecstasy |
|---|---|---|---|---|---|
| **2000** | 1.972,42 gr | 108,33 gr | 102,203 kg | / | / |
| **2001** | 1.237,80 gr | / | 44,135 kg | 0,996 gr | 155 pcs |

In 2000, 55 criminal charges were pressed on the basis of Art. 245 and 246 of the Criminal Code of RS, and 67 in 2001.

The nature of these figures is for internal use and they are not fully accessible to the broader public, they have not been fully systematised and are not analysed in a wider context.

The legal regulations are (completely) anachronous and it may be said that they are more the cause of problems in the conduct of criminal proceedings. There is also a lack of legal regulations that pertain to other aspects of this problem - for example those that would address so-called *new designer drugs*, the accumulation of profits and "money laundering".

The Criminal Code of the Republic of Serbia describes as a crime the serving of alcoholic drinks to minor persons (under the age of 16). Article 132 of the Criminal Code of the Republic of Serbia is practically useless because it is imprecise (in terms of

quantity): *...whoever serves a minor with an alcoholic drink...in a quantity that may lead to the intoxication of the minor person....* As far as the author learned from the figures of the Ministry of Interior of the Republic of Serbia, no one has been sentenced on this basis.

Generally, there are three forms of criminal offences connected with the abuse of and addiction to drugs (psychoactive substances):

1. Criminal activities with the purpose of acquiring narcotic drugs;
2. Criminal activities committed under the influence of a narcotic drug;
3. Criminal activities in connection with the production, distribution, sale or the enabling of the use of narcotic drugs.

The first two forms are sanctioned by other articles of the Criminal Code of the Republic of Serbia, and, as it was already said, Articles 245 and 246 regulate the third field.

As for sanctioning these crimes, they include prison sentence and security measures of mandatory medical treatment (this measure has a medical aspect and is characterised as an additional sanction because it is issued exclusively together with a sentence or a suspended sentence).

Legislation that relates to primary, secondary or tertiary prevention (financing, implementation, evaluation), models of security measures of mandatory medical treatment and forced treatment, assessment of working abilities and suchlike, are altogether missing or are appallingly imprecise. Legislation that relates to therapy models (methadone program and other programs of substitution/sustaining, psycho and social therapy, family therapy, detoxification methods, etc.) is either obsolete or non-existent. Ethical issues represent a separate problem, and are related to certain methods of therapy that are currently implemented and with the fact that there are no licenses for working in the field of addiction (there are no tests for private physicians, who provide services in this field).

As for indicators monitored by official/public bodies and institutions, the situation is as follows:

1. Number of persons who are addicted to drugs:

These figures include only those persons who sought treatment or were treated for acute intoxication, the reporting of whom is mandatory according to the law. Following are the official figures of health institutions from Belgrade (the Institute for Diseases of Addiction, the Institute for Mental Health), Niš, Novi Sad, the Institute for Public Health and the Federal Institute for Health Protection. Also, for the sake of comparison, we present here the results of surveys that have been carried out in certain towns, organised by local community and health institutions' representatives. In spite of their methodological irregularities (small, non-representative and heterogeneous sample) and, above all, ethical doubts, we have also presented the results of a pilot-survey by

the Republican Commission for the Prevention of Diseases of Addiction, in order for these to be compared with other research.

*Institute for Public Health*
*Number of cases with basic diagnoses F10.2 and F11.2 (for the region of central Serbia, without Vojvodina and Kosovo)*

| | **1996** | **2000** (data for 2001 has not yet been systematised) |
|---|---|---|
| **F 10.2** | | |
| **Male** | 2.550 | 4.210 |
| **Female** | 339 | 474 |
| **Age 7 - 19** | 22 | 174 |
| **Total** | 2.889 | 4.684 |
| | | |
| **F 11.2** | | |
| **Male** | 427 | Not monitored |
| **Female** | 52 | |
| **Age 7 - 19** | 47 | |
| **Total** | 479 | |
| | | |
| **F 11.25** | 1997. Vojvodina | (Novi Sad) |
| **Male** | 13 | 32 |
| **Female** | 3 | 10 |
| **Total** | 16 | 42 |

Report about the state of patients suffering from diseases that have a greater social and medical significance (code 304.0)[72]

[72] No records for code 303, because the law does not regulate reporting.

*Figures of the Republican Health Protection Institute "Batut"*

| **Region** | **1996** | **1996** | **2001** | **2001** |
|---|---|---|---|---|
| | Number of patients | Number of new cases | Number of patients | Number of new cases |
| **Central Serbia** | 1.249 | 301 | 2.769 | 425 |
| **Belgrade** | 1.180 | 297 | 2.516 | 397 |
| **Kolubara region (Valjevo)** | No data | No data | 0 | 0 |
| **Danube valley district** | 7 | - | 15 | 5 |
| **Braničevo district** | - | - | 12 | 5 |
| **Šumadija district (Kragujevac)** | 55 | 2 | 110 | 2 |
| **Morava valley district (Ćuprija)** | 2 | 1 | 55 | 0 |
| **Moravica district (Čačak)** | - | - | - | - |
| **Raška district (Kraljevo)** | 4 | 0 | 25 | 9 |
| **Jablanica district (Leskovac)** | - | - | 13 | 7 |
| **Pčinj district (Vranje)** | 4 | 4 | 23 | 7 |
| **Bor, Zaječar, Pirot** | 1 | 1 | | |

According to the figures of the Belgrade City Institute for Health Protection, statistics department - Source: population registry of drug addiction

Incidence and prevalence of registered drug addicts in Belgrade, in the period from 1996 to 2001.

| | Year | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 |
|---|---|---|---|---|---|---|---|
| **Incidence** | **Number** | 292 | 287 | 288 | 152 | 470 | 397 |
| | **Rate**[73] | 17,94 | 17,6 | 17,61 | 9,28 | 28,75 | 24,24 |
| **Prevalence** | **Number** | 1459 | 1400 | 1633 | 1748 | 2173 | 2516 |
| | **Rate**[74] | 89,62 | 85,84 | 99,88 | 10,72 | 132,66 | 153,6 |

Incidence grew from 18 to 24, i.e. by around 30%, while prevalence grew from 89 to 153, i.e. by more than 40%. Currently registered are between 1 and 2 patients per 1 000 citizens, which is 0,15% of Belgrade's population.

The average age of registered drug addicts, according to sex, in Belgrade for 1993, 1997 and 2001:

| Year of registering | 1993 | 1997 | 2001 |
|---|---|---|---|
| **Male** | 33,6 | 24,9 | 24,1 |
| **Female** | 31,4 | 26,3 | 24,7 |
| **Total** | 32,9 | 25,2 | 24,2 |

Average occurrence of registered drug addicts, according to age groups, in Belgrade from 1997 to 2001:

| | Year of registering | | |
|---|---|---|---|
| **Percentage (%)** | **1997** | **2000** | **2001** |
| **0-14** | 0 | 0 | 0 |
| **15-19** | 13,94 | 17,62 | 14,86 |
| **20-24** | 44,95 | 40,98 | 47,61 |
| **25-29** | 21,25 | 27,18 | 25,69 |
| **30-39** | 14,98 | 11,04 | 10,33 |
| **40+** | 4,88 | 3,18 | 4,03 |

[73] Rate per 100,000 citizens of Belgrade

[74] Rate per 100 000 citizens of Belgrade

The number of registered drug addicts in Belgrade, according to year of registration and diagnoses, in the period from 1996 to 2001:

| **Diagnosis according MKB-9** | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Year of registering** | **304** | **304.1** | **304.2** | **304.3** | **304.4** | **304.6** | **304.7** | **304.8** | **304.9** | **SUM** |
| **1996** | 256 | 5 | 1 | 0 | 0 | 2 | 17 | 6 | 5 | 292 |
| **1997** | 119 | 3 | 0 | 1 | 2 | 0 | 0 | 3 | 159 | 287 |
| **1998** | 152 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 133 | 288 |
| **1999** | 77 | 40 | 0 | 1 | 0 | 1 | 9 | 2 | 22 | 152 |
| **2000** | 318 | 50 | 0 | 0 | 0 | 0 | 14 | 2 | 86 | 470 |
| **2001** | 245 | 119 | 1 | 2 | 0 | 0 | 12 | 1 | 17 | 397 |

Every year, 382 patients report for treatment in the Institute for Diseases of Addiction (450 in 1996, 846 in 2001). During 2001, the Institute conducted a survey among 1 843 2nd grade high-school pupils, within the City Hall's prevention program:

SMOKING: 55,6% have tried it, 54% - first cigarette before the age of 15, 25% before the age of 13; 25,5% smoke every day; 57% smoke more than 10 cigarettes per day.

| | Alcohol | Glue |
|---|---|---|
| Tried it: | 91,0% | 2,1% |
| Before age 10: | 18,6% | before age 13: 50% |
| Before age 12: | >25% | |
| Before age 14: | >50% | Marijuana: |
| Drinking daily: | 3,2% | tried it: 16,1% |
| Several times a week: | 7,1% | first consumption most often at age 15-16 |
| Once a week: | 18% | continued taking: 7,4% |
| Never got drunk: | 47% | |
| Got drunk one time: | 20,3% | |
| More than ten times: | | |

| | **Heroin** | **Ecstasy** | **Cocaine** | **Sedatives** | **LSD** | **Tramadol** |
|---|---|---|---|---|---|---|
| **Tried** | 0,69% | 0,53% | 0,53% | 0,53% | 0,37% | 0,32% |

0,4% of those questioned use some kind of drug every day.

Within the project "Health Behaviour of the Student and High-School Population", conducted by the Students' Polyclinic in 1999, data was acquired about the use of drugs among high-school pupils:

"Did you try marijuana at least once?"

| | Male | Female | Total |
|---|---|---|---|
| **Yes** | 176 - 6,75% | 71 - 2,81% | 247 - 4,81% |
| **No** | 2.379 - 91,25% | 2.438 - 96,36% | 4.817 - 93,77% |

Age at first taking of marijuana:

| Age | Male | Female | Total |
|---|---|---|---|
| **12** | 6 - 3,68% | 0 | 6 - 2,59% |
| **13** | 35 - 21,47% | 13 - 18,84% | 48 - 20,69% |
| **14** | 63 - 38,65% | 27 - 39,13% | 90 - 38,79% |
| **15** | 53 - 32,52% | 25 - 36,23% | 78 - 33,62% |

Average age X = 13,96 years. Also recorded was the first use of marijuana at the age of 7.

"How often do you take marijuana now?"

| | Male | Female | Total |
|---|---|---|---|
| **Never** | 101 - 44,30% | 38 - 41,30% | 48 |
| **Every week** | 23 - 10,09% | 12 - 13,04% | 35 |
| **Every day** | 15 - 6,58% | 4 - 4,35% | 19 |
| **Every month** | 30 - 13,16% | 12 - 13,04% | 42 |

"Where did you take marijuana for the first time?"

| | Male | Female | Total |
|---|---|---|---|
| **At a party** | 50 - 21,93% | 17 - 18,48% | 67 - 20,94% |
| **At school** | 25 - 10,96% | 9 - 9,78% | 34 - 10,63% |
| **At an excursion** | 8 - 14,53% | 2 - 11,11% | 10 - 13,70% |
| **In the park** | 12 - 21,82% | 5 - 27,78% | 17 - 23,19% |

This survey also disclosed that 0,25% of high-school pupils have tried cocaine, 1,5% glue, 1,23% some other drug. The most common combination was alcohol with sedatives (19,51%).

Novi Sad - number of clinically registered cases:

1997 - 45
1998 - 56
1999 - 49
2000 - 81

Research on a sample of 300 elementary and 300 high-school pupils in Novi Sad (Prof. Dr. N. Vučković):

| | **Heroin** | **Ecstasy** | **Marijuana** | **LSD** |
|---|---|---|---|---|
| **Elementary school** | 0,5% | 0,8% | 15,8% | 0,3% |
| **High school** | 1,2% | 1,7% | 21% | 0,4% |

In the period from 1985 to 1996, the Novi Sad department of the Ministry of Interior of the Republic of Serbia recorded a 300% increase in the number of persons apprehended for the possession or sale of drugs. The Emprona NGO from Novi Sad estimated that more than 10 000 persons were abusing psychoactive substances in this town.

Since 1990 (1991), 700 patients have been treated in Niš at dispensaries from drug abuse or addiction.

In a survey conducted with 594 high-school 2nd-graders in Pančevo in June 2002, organised by a local team of experts and carried out by the JAZAS youth, the following results were obtained:

- 63,3% of those questioned smoke cigarettes, 29% of them every day;
- more than 50% of the respondents had more than one drunken episode, 20% of them more than four.
- boys get drunk more often (72%), but also more than 50% of girls have got drunk at least once;
- 15,7% of pupils have tried marijuana (20% of boys and 14% of girls); 2% of them use it every day;
- the first try of marijuana most often occurred outdoors (33%), at parties (28,4%), at school (17,4%), at the age of 15 on an average;
- 4,6% of pupils have used other drugs, usually just once;
- the frequency of drunkenness and smoking marijuana increases with the increase of pocket money and frequency of going out in the evenings;

It is important to mention that the results of the survey were not obtained through regular, official channels (which do not exist), but through the personal efforts of the author.

A survey by the committee for the prevention of diseases of addiction from Dimitrovgrad, with more than 200 elementary and more than 300 high-school pupils, has shown that only 13 pupils had no experience with psychoactive substances. 87% of them tried marijuana and 78% of them alcohol, at the average age of 15 years.

The average age when first taking drugs:[75] Novi Sad - 15,4; Kragujevac - 16,1; Belgrade - 16,2; Niš - 16,8.

A pilot-survey by the Republican Commission for the Prevention of Diseases of Addiction was carried out in May 2002, in six districts in Serbia (towns: Jagodina, Leskovac, Pirot, Šabac, Zaječar, Bajina Bašta) on a total of 1 459 pupils of the 7th and 8th grade of elementary school and all four grades of high school. The sex ratio was approximately the same. A test was used for the detection of drugs in urine (methamphetamine, benzodiazepines, cannabis, opiates) and a modified ESPAD questionnaire. Mod.I.D./2002, which was composed of 47 questions.

Results of the questionnaire:

| **Substance** | Cigarettes | Alcohol | Marijuana | Heroin | Cocaine | Ecstasy |
|---|---|---|---|---|---|---|
| **Tried** | 47,3% | 76,7% | 8,4% | 0,7% | 0,4% | 0,6% |
| **Age of first use** | 13,71 | Around 13 | 15,31 | 16 | 16,33 | 15,45 |

It is also important to mention that 17,1% of pupils were not honest while answering questions about marijuana, and 16,4% about heroin. Also, the fact that pupils were not separated according to age groups, i.e. grades, is a methodological problem.

Results of urine tests: out of 66 positive results (4,88%), the most frequent was methamphetamine (59% cases), benzodiazepines (18,18%), marijuana (16,67%) and opiates (6,06%). Listing by towns - the largest number of positive findings was is Jagodina (6,69%), the smallest in Šabac (2,71%). What draws attention is the large number of positive findings for methamphetamine, which is a cause for great concern (and for the assumption that the use of methamphetamines has spread throughout Serbia, very quickly). It is also possible that the tests were invalid, i.e. that they provided a large number of false positive results for methamphetamine. This finding is also in contradiction to the results of the questionnaire.

[75] Source: RAR project UNICEF, Belgrade.

It is certain that research has been conducted in other towns, but it is very difficult to obtain these results. Also present is the problem of methods used during research, and there is a great probability that the results cannot be compared because of the different methods used (the validity of the results may also be brought into question).

One can also say that there are still problems with the updating of reports. Records are regularly updated only in Belgrade, while on the level of the republic (and therefore of the federation), records are not updated in spite of the republican institute's will to update - regional institutes are simply not sending data. Even a superficial analysis of data from the region points to the neglect of this problem. One may draw the conclusion that legal regulations must be honoured, in order (at least) for a true picture about the number of treated persons to be obtained. Also, this data must be separated from the "mass" of other figures, because it is currently very difficult to obtain them (this should be the task of a specialised service, a commission at republican level). We should also point out that a "central registry of diseases of addiction" does not exist, and that certain health institutions have been "fighting" for years over where it will be located - the assumption is that this would be a way for taking a leading role in this field.

As for morbidity and mortality caused by drug (ab)use, statistical yearbooks about the health of the population and health protection in the FR Yugoslavia of the Federal Bureau for Health Protection and Promotion, provide little useful data about addiction, despite the host of information about the state of the nation's health. The 1997 yearbook (with figures from 1996), did not elaborate on how many people died of addiction-caused diseases in its list sorted according to the cause of death, sex and age, but included them generally, under mental disorders (F00-F99). The list of ailments, disorders and injuries diagnosed by non-hospital services, contains no information (because the health institutions failed to update it), although there are "columns" 113 (alcoholism - F 10) and 114 (drug addiction - F 11, F 19). The list of in-patients only provided cumulative data about those who had been treated in hospitals for mental and behavioural disorders (39 889). The following data was listed in the 1999 yearbook.

Neuropsychiatric non-hospital service - mental disorders and neurological diseases:

| | **1989** | **1990** | **1991** | **1992** | **1993** | **1994** | **1995** | **1996** | **1997** | **1998** | **1999** |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Neuroses and personality disorders** | # | # | # | # | # | # | # | # | # | # | # |
| **Alcoholism** | 47 | 43 | 39 | 32 | 25 | 25 | 25 | 25 | 17 | 12 | 12 |

# only cumulative data, useless for analysis according to groups. Figures are in thousands of appointments.

Neuropsychiatric in-patient service - number of patients treated for mental disorders and neurological ailments:

| | 1988 | 1990 | 1993 | 1995 | 1996 |
|---|---|---|---|---|---|
| **Alcoholism F 10** | 11.200 | 9.238 | 3.494 | 4.446 | 4.194 |
| **Drug addiction F 10 - 19** | 452 | 569 | 381 | 405 | 543 |

The Statistical yearbook for 2000 (printed in 2002), states that Yugoslavia (Serbia) has 74 beds for treating addicts: 2 512 patients were discharged, after 46 254 days in hospitals. 10 027 cases of alcoholism (6 196 in central Serbia and 3 617 in Vojvodina) were recorded in Serbia by non-hospital services, and 2 247 cases of "drug addiction" (dg. F 11 - F 19), of which 1 583 in central Serbia and 571 in Vojvodina.

Failure to record fatalities connected with drug use is in disproportion with unofficial data from the field, which shows that the number of such cases is enormous. So, the Belgrade Emergency Centre listed 16 cases of death in the territory of Belgrade in 2001, out of a total of 320 interventions in the field (most often during the night - in apartments, in the streets, parks, catering vendors and other places). During 2001, 242 persons, mostly from Belgrade, were treated for acute intoxication at the Military Hospital in Belgrade, of which 140 cases were heroin overdoses. The Belgrade Police Department estimated that there are between 23 and 37 deaths caused by drug intoxication every year in Belgrade. In Niš, the average is three deaths per year, primarily because of the low purity of "street" heroin (around 3%). Data in this field must be processed in a systematic manner, and methods must be found to present the situation objectively.

The trend of more frequent confiscation and cases of drug-related crime is obvious in the above text, which points to the increasing problem. But, we must also add a comment about the insufficient systematisation of police reports.

There is no official data about the number of criminal charges. Unofficially, the Ministry of Interior of the Republic of Serbia was unable to confirm whether a single charge had been pressed. At the same time, it is a well-known fact that no catering facility or shop demands an identification card or any other form of confirmation of age, when alcoholic drinks are ordered or purchased, nor is it in any way indicated that minors are not served with alcohol. Another problem is the issue of jurisdiction over checking for cases of such a violation of the rules - whether the police, inspections or a third party should do this.

Although the Ministry of Education and Sports is in charge of creating the curriculum, and it has been recommended that these problems be included in it, the clear definition

of how this field will be approached is still in the planning phase and there are currently no mechanisms for monitoring implementation. Additionally, there are no clear and detailed manuals for organising these activities. The brochure issued by the Ministry several years ago is general in character, without concrete practical instructions for facilitating these activities (creative workshops, lectures, etc.). The recommended methodology is obsolete and does not provide a good framework for program work. To our knowledge, there has been no evaluation of performance and acceptance by pupils.

A preventive program was carried out in certain elementary and high schools in Serbia during 2001 and a part of 2002, within the drive of the Directorate for Sports of the Ministry of Education and Sports of the Republic of Serbia, entitled *Play For Life - No Drugs and Play For Life - Without Alcohol*. Activities were conducted through creative workshops (2 000 pupils participated), lectures and sports manifestations, coupled with the distribution of propaganda material (posters and leaflets, brochures) and media support. Also carried out was a survey about drug abuse among the young, among 7 200 pupils in 120 schools and six districts in Serbia (the results are not known). A total of 61 drives took place with 25 000 children participating (data from the campaign team's press statement). Around 100 educational workers (school psychologists, pedagogues and teachers) completed courses during 2000 and 2001, on training how to conduct preventive activities in schools, organised by the "DUGA" (Rainbow) NGO, while the "Step by Step" NGO carried out training programs with young people in Belgrade and some other Serbian towns, teaching them how to educate their peers.

Also encouraging is the work of the Ministry of Education and Sports on the publication of the so-called "blue book" - a calendar of programs (including a program for the prevention of diseases of addiction) which will be recommended to schools. However, it can be said that schools lacking continuous preventive programs, with modern concepts, which would be, if not mandatory, then at least encouraged by the Ministry (and not only verbally).

Here, it is also necessary to mention the controversial drive to test pupils for drug use, organised by the Republican Commission. Announcements with inconsistent explanations were given in the media throughout a long period of time, and they aroused resentment among the experts and approval among the parents, produced divided opinions among the pupils and fear of possible consequences. The drive was carried out in spite of everything, with 1,500 pupils in six Serbian towns, and the results are listed in the above text.

In the formal sense, many organisations exist that are responsible for the prevention of diseases of addiction. Almost every town in Serbia has a co-ordination committee for the prevention of diseases of addiction; a republican committee for their prevention has also been formed; certain ministries are carrying out or planning drives; several domestic NGOs, with the help of UNICEF, are carrying out certain drives and

programs; the media are covering this problem more openly. However, any serious analysis of the quality and effects that most of these activities and programs have, will point to serious flaws:

- either there has been no evaluation of the activities conducted or, if there has, it is not valid and the effects of the drives are unknown;
- the drives are usually intermittent, without a long-term clear strategy;
- the drives included only a small number of the young;
- they were mainly general in character, without focusing on specific groups of young people (especially those under particular risk, from the margins of society, refugees, etc.);
- the parents were mostly avoided, or they failed to take part in the drives;
- the drives were one-dimensional, without synchronised activities in several fields (health, education, judiciary, police, centres for social work, etc.);
- the drives were carried out with limited budgets and with a great deal of improvisation.

Unfortunately, the only available budget for the realisation of preventive activities, is that of the Co-ordination Committee for preventing the abuse of psychoactive substances of the Belgrade City Hall's Executive Committee. Belgrade City authorities have put aside 1 500000 dinars for the program "The Prevention of Drug Abuse in the Local Community", which is still being carried out by the Institute for Diseases of Addiction. Around 180 000 dinars was designated from the 2002 city budget for the marking of June 26th, World Day Against Drug Abuse, and the marking was helped by the Belgrade office of the UNICEF, with 30,000 dinars. The sum of 2 500 000 dinars has been designated for a one-year campaign against marijuana, the beginning of which was planned for December 2002/January 2003, and which yet has to be approved by the City Hall's Executive Committee. Beside several attempts to learn about it, the budget of the campaigns "Play for Life - No Drugs" and "Play for Life - Without Alcohol" has remained unknown. The same applies for funds spent for the testing of the pupils' urine for drugs.

In spite of the existence of at least two health (psychiatric) institutions for treating juveniles, there is much difficulty when a juvenile addict has to be hospitalised. Institutions often declare that they have no jurisdiction and send the patient to another institution. As for dispensary treatment, the situation is somewhat better - doctors mainly accept juveniles for treatment. In general terms, the facilities for treating persons who have problems with drugs (whether the case is abuse or addiction) are insufficient, both in Belgrade and in the whole of Serbia. The Institute for Diseases of Addiction in Belgrade has 16+8+20 beds for treating these patients (including alcoholism). 20 beds have not been used for a while because of a leak in the roof. Around one half of the patients treated there are not from Belgrade. Since there are more patients than beds, one must wait for two to three weeks before being admitted. The Institute of Mental

Health in Belgrade has been admitting drug addicts to its alcoholism clinical ward for four or five years, now. Because of the fact that the ward is open-type, and other objective limitations, including the experience about problems in treatment becoming more complicated if there are several youngsters in the same ward, it is the stand of the ward's staff that there should be no more than five or eight young people in the ward simultaneously (its capacity is 28 beds). The Institute also plans to open a day hospital for treating young people with this problem, and preparations are under way. The situation is especially problematic when juveniles (and addicts in general) have serious psychiatric disorders (psychoses, depression with suicidal tendencies, etc.), and when their hospitalisation is necessary. Institutions that treat addiction give priority to the treatment of the psychiatric disorder and send the patient to general-type psychiatric institutions, and these, on the other hand, give priority to the treatment of addiction, and there the circle closes - the patient is out in the street, and he/she is only provided with basic, dispensary help. Otherwise, in 2001, seven of Belgrade's health institutions (the Institute for Diseases of Addiction, the Institute for Mental Health, the Military Hospital, the Institute for Contagious and Tropical Diseases, the Students' Polyclinic, the Trauma Centre, the Psychiatric Institute) treated 1 635 persons with problems related to drug use (addiction, intoxication, psychiatric complications).

On the basis of the above listed, we would like to conclude the following:

1. Children and their rights, which are guaranteed by Article 33 of the Convention on the Rights of the Child, are mainly neglected, although (at least) formally there is a legal framework;
2. Children are not protected against the use of alcohol because they can get it everywhere, without any limitation. Although there are laws (Art. 132 of the Criminal Code of the Republic of Serbia), they are imprecise and easily refuted in court. No criminal or felony charges have been pressed on the basis of this article;
3. There is no national/state program with a clear strategy for the suppression and prevention of drug abuse. The state's drives are sporadic, partial, temporary, sometimes hasty and counterproductive;
4. Data in this field is unsystematic, often acquired by dubious methods, out-of-date, hard to acquire, sometimes even arbitrary. There is no central registry or database; the flow of information is difficult. For example, official records do not provide information about the age structure of children who have this problem;
5. It is very difficult to provide care for children with this problem, and there is no institution that would deal with this problem specifically;
6. Although there are several programs of prevention in progress, none of them are focused specifically on children, i.e. on the pre-school and early school age where the effects would be best, in view of the fact that children of this age still have no stand about this issue;

7. However (methodologically) dubious, available data points to the fact that the problem of drug abuse and addiction is widespread among youngsters and is acquiring dangerous proportions. Smoking tobacco and drinking alcohol is a very common habit (with a large majority of youngsters), while the abuse of marijuana is spreading;
8. Children are in no way protected against the (damaging) influence of tobacco and alcohol advertisements. There are examples of alcohol and cigarettes advertisements on large billboards, only several meters away from a school entrance.

It is therefore necessary:

- to modernise legal regulations and build mechanisms for honouring them and for their implementation;
- to provide conditions for carrying out a modern, adequate and continuous program of prevention;
- to increase capacities for the treatment of youngsters, who already have this problem.

# THE RIGHT OF THE CHILD FOR PROTECTION FROM ABDUCTION AND TRAFFICKING

### *Article 35 of the Convention on the Rights of the Child*

***States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.***

## Regulations in the FRY and the Republic of Serbia

On the national level, measures for preventing the abduction, sale or trafficking of children primarily consist of prescribing the criminal offences, whereby sanctions are imposed for such acts. The *criminal offence of abduction* is prescribed in republican legislation, and it is committed by force, threat, deception or in some other way by abducting or detaining a person with the intention of depriving them of freedom until the perpetrator extorts money or some other form of gain from the abducted person or someone else, or by forcing the abducted person or someone else to commit another act, or not, or to submit to some act. The more serious form of this offence is when it is committed with the threat of murder or serious bodily harm to the abducted person, or if the act is committed against a minor (Art. 64 of the Criminal Code of the Republic of Serbia - hereinafter CC of RS).

As for *the sale or trafficking of children* and other forms of child abuse, the penalties for such acts are envisaged among the acts that refer to sexual and other abuses of minors and to abandoning or neglecting them by those persons who are obliged to take care of them. In addition to this, in keeping with international conventions referring to the abolition of slavery, slave trafficking and acts that are analogous to slavery, the Criminal Code of FRY envisages sanctions for placing another person in a state of slavery, trafficking with persons who are in a state of slavery, inciting another person to sell their freedom or the freedom of a person they support, as well as for the transport of persons who are in a state of slavery. A more serious form of this crime exists in the case when it is committed against a minor (Art. 155 of CC of FRY).

## Assessment of the situation and observations

There is no systematised or reliable data on the number of child victims in human trafficking, where this article and Article 34 of the Convention are concerned. This subject is certainly a burning topic in the Balkans and many organisations, governmental and non-governmental, domestic and foreign, are endeavouring to assist in resolving this problem. However, one of the obstacles they face in creating a strategy

to solve this question is the absence of data. Perhaps, the situation is best illustrated in the latest report by UNICEF, the UNOHCHR and the OSCE, which said, "There is practically no information on human trafficking and the commercial sexual abuse of children. Stories about child prostitution at bus and railway stations, particularly of Romany children, are common. It is assumed that Romany children, little girls, are sold in Italy for the sexual industry and begging..."[76] Aware of the gravity of this problem, the federal and republican governments, with the help of international organisations (OSCE) have undertaken some steps to resolve this problem and create a national action plan.

The Ministry of Interior of the Republic of Serbia possesses data that in the period from January 1st 1998 to October 31st 2002, under Article 64 of CC of RS, 16 criminal offences were committed against minors, as follows: in 1998 - five, in 1999 - one, in 2000 - two, in 2001 - five, and in 2002 - three.

The Child Rights Centre, in collaboration with the UK Save the Children Fund, has initiated a project connected with the trafficking and sale of children so that there will be more data in the report for 2003.

[76] For example, Trafficking in Human Beings in Southeastern Europe, UNICEF, UNOHCHR, OSCE-ODIHR, 2002.

# THE RIGHT OF THE CHILD TO PROTECTION AGAINST OTHER FORMS OF ABUSE

## *Article 36 of the Convention on the Rights of the Child*

## *States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.*

## Regulations in the FRY and the Republic of Serbia

This article of the Convention on the Rights of the Child refers primarily to the measures being undertaken to prevent *all forms of exploitation*. Even though this also involves legal provisions, we are unable to identify the relevant clauses that have not been mentioned within the framework of the analysis of the remaining articles of the Convention on the Rights of the Child that refer to the exploitation of children.

# CHILD RIGHTS IN THE SYSTEM OF JUVENILE JUSTICE

***Article 40 of the Convention on the Rights of the Child***

***1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.***
***2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:***
***a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;***
***b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:***

***(I) To be presumed innocent until proven guilty according to law;***
***(II) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;***
***(III) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;***
***(IV) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her***

***behalf under conditions of equality;***
***(V) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;***
***(VI) To have the free assistance of an interpreter if the child cannot understand or speak the language used;***
***(VII) To have his or her privacy fully respected at all stages of the proceedings.***
***3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:***
***a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;***
***b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.***
***4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.***

## Regulations in the FRY and the Republic of Serbia

The Constitution of the FRY (Articles 23 to 29) ensures some of the rights guaranteed by this article of the Convention. The constitutional provisions, among other things, envisage that:
- Anyone being deprived of their freedom shall immediately be informed in their own or in a language that they understand of the reasons why they are being deprived of their liberty, and that they have the right to request the official organs to inform their closest relations about their arrest;
- Anyone under arrest shall immediately be informed that they are not obliged to say anything;
- Anyone who has been arrested has the right to engage a defence counsel of their own choosing;
- Anyone in custody shall be handed a decision with a statement of reasons at the

moment of their being placed in custody or within 24 hours of being taken into custody, at the latest;
- Respect for human integrity and dignity in criminal and all other procedure is guaranteed, in the event of the deprivation or limitation of liberty, for the duration of the penalty;
- All violence committed against anyone who is deprived of their liberty, or force to extract confessions or statements, is prohibited and shall be sanctioned;
- No one shall be subjected to torture, humiliating punishment, or acts;
- Everyone is guaranteed the right to appeal or resort to other legal means against a decision that resolves their right or their interest, in the interest of the law;
- No one can be punished for an act which, before it was committed, was not defined as a punishable act by a law or a regulation based on a law, nor can a sentence be delivered that was not foreseen for this act;
- No one can be considered guilty of a criminal offence until it is established by the valid decision of a court;
- Every one is guaranteed the right to a defence counsel and the right to have a defence counsel before a court or other organ authorised to conduct proceedings;
- No one, within the reach of the court or other organ authorised to conduct proceedings, can be sentenced if it is impossible for them to be questioned and to defend themselves;
- Everyone has the right to have a defence counsel of their own choice present at their questioning, and federal law determines in which cases the accused shall have a defence counsel.

Apart from that, everyone is guaranteed the right in proceedings before a court or some other organ of state that decides on their rights and obligations to use their language and to learn of the facts in those proceedings in their language (Art. 49 of the Constitution of the FRY).

Regulations of the Serbian Constitution also contain similar guarantees (Art. 22 to 26 of the Constitution of the Republic of Serbia).

The Criminal Code of the FR Yugoslavia regulates more closely the particular criminal legislative status of perpetrators of criminal offences who are younger than 18 years. These regulations are given in a separate chapter and are applied for child-perpetrators of criminal offences, along with the relevant clauses of the Republican Criminal Code, while the other criminal legislative clauses contained in the federal and republican laws are applied only if they are not in contradiction to the particular clauses that refer to juveniles (Art. 71 of the Criminal Code of FRY).

*Criminal sanctions* cannot be applied to a child that was below the age of 14 years at the time of committing a criminal offence. A child, who is between the ages of 14 to 16 years (i.e. a younger juvenile) at the time he/she committed a criminal offence, may only be given a educational measure, while a child that was over 16 but below the age

of 18 years (i.e. an older juvenile) may receive a educational measure. In exceptional cases, he/she may receive a prison sentence (if he/she committed a criminal offence for which a penalty of more than five years' of imprisonment is foreseen and, due to the severe consequences of the act and the high degree of criminal responsibility it would not be justified to deliver a educational measure). According to the law, *the purpose of a educational measure and juvenile prison* within the framework of the general purpose of criminal sanctions (the suppression of socially dangerous acts that violate or threaten the social values that are protected under criminal legislation), is to provide care and assistance to child-perpetrators of criminal offences, by supervising them, their vocational training and the development of their sense of personal responsibility, to ensure that they receive an education, are corrected in their behaviour and develop normally. In addition, the purpose of juvenile prison is to exert a stronger influence on the child-perpetrator not to commit crimes in future, as well as on other children not to commit criminal offences. The law envisages three types of educational measure: disciplinary measures (a warning and placement in a disciplinary centre for juveniles), measures of surveillance (strict supervision by the parents or the guardian, intense supervision in another family and intense supervision by the guardianship organ) and institutional measures (placement in an educational institution, placement in a correctional centre and placement in a special institution). Likewise, conditions are foreseen for the pronouncement of each of these measures, as well as for the possibility of the court terminating the execution of the educational measure or replacing it with another, more adequate educational measure. Educational measuresare foreseen in the Federal Criminal Code, and they are prescribed in greater detail in the Republican Criminal Code and the Law on the Execution of Penal Sanctions (Art. 72 to 75 CC of FRY).

In the case of *criminal proceedings against child-perpetrators of criminal offences*, we apply provisions from a separate chapter in the Criminal Procedure Code of the FR Yugoslavia (in the further text CPC of FRY - XXIX - Art. 464 to 504), and the remaining clauses of that law - unless they are in contradiction to these clauses. From the aspect of the obligation of the state under this article of the Convention, the aforesaid solutions of CPC of FRY will be of special significance.

In compliance with the Criminal Code of FRY, according to which criminal sanctions cannot be applied to a child that is not yet 14 years of age, CPC of FRY envisages that when it is established in proceedings that the child was not yet 14 years old when the criminal offence was committed, the criminal proceedings shall be terminated and the guardianship organ shall be informed of this (Art. 465 of CPC of FRY).

*The state prosecutor may decide not to request the start of criminal proceedings* even though there is evidence that a child older than 14 years has committed a criminal offence, for which a penalty is prescribed of up to three years in prison, if he/she considers that it would not be advisable to conduct proceedings, given the nature of the criminal offence and the circumstances under which it was committed, as well as the

earlier life of the child and his/her personal qualities. In order to establish these circumstances, the state prosecutor can request information from the parents or the guardian, other persons and institutions. The state prosecutor can also request the view of the guardianship organ in order to ascertain the appropriateness of initiating proceedings against a juvenile (Art. 480 of CPC of FRY).

*This codex contains an explicit ban on judging a child in his/her absence*. The organs that take part in the proceedings, are obliged to proceed carefully in taking action at which the child is present, particularly when questioning him/her, bearing in mind the emotional development, sensitivity and personal qualities of the child, so that the conduct of proceedings does not influence his/her development, and they shall take care to prevent the child from behaving in an undisciplined manner. (Art. 466 of CPC of FRY).

If criminal proceedings are being conducted, for which the penalty is a prison sentence of more than three years, the child must have a defence counsel from the start of preliminary procedure, as he/she shall for a criminal offence, for which the sanction is a milder one if the judge assesses that the child needs a defence counsel. Only a lawyer can serve as the defence counsel of a child (Art. 467 of CPC of FRY).

With the exception of the clauses of the Criminal Procedure Code of FRY that envisage *exemption from the duty of testifying*, no one shall be exempt from the duty of testifying about the circumstances required for evaluating the emotional development of a child, being informed about his/her personality and the circumstances in which he/she lives (Art. 468 of CPC of FRY). Apart from the facts that refer to the criminal offence, the clauses dealing with preliminary procedure particularly emphasise the duty of establishing the age of the child, the circumstances needed for evaluating his/her emotional development, examining the environment and circumstances in which the child lives and other circumstances referring to his/her personality. In order to establish those circumstances the child's parents, guardian and other persons, who can provide the necessary information, shall be questioned and, if necessary, the guardianship body will be required to submit a report. And, if the child has already been issued with a educational measure, a report shall be supplied on the implementation of that measure. The juvenile judge shall obtain information about the personality of the child and may require a professional worker (social worker, an expert on children with special needs and others), if there is one in the court, to obtain information, and he/she may entrust this task to the guardianship body. When it is necessary for court-appointed experts to examine the child's health condition, his/her emotional development, psychiatric traits or inclinations, doctors, psychologists or pedagogues will be appointed to do this, and these tests can also be done in a health institution (Art. 483 of CPC of FRY).

*If a child has committed a criminal offence together with an adult person*, the proceedings against him/her, as a rule, will be conducted separately. In cases when they are combined with proceedings against an adult person, the rules that are applied in such proceedings are also regulated by this law (Art. 469 of CPC of FRY).

Whenever proceedings are initiated against a child, the state prosecutor will inform the guardianship organ (Art. 471 of CPC of FRY). The child is summoned through his/her parents, or legal representative, except when this is impossible because of the urgency of procedure or other circumstances. With regard to the sending of decisions and other written documents, the law explicitly states that written documents cannot be conveyed to a child by posting them up on the courthouse notice-board (Art. 472 of CPC of FRY). Also, the progress of proceedings regarding a child cannot be publicised without the court's permission, and in the case when such permission is given, the name of the child cannot be disclosed nor can other data, on the basis of which one may draw a conclusion as to whom this refers, be revealed (Art. 473 of CPC of FRY). The public shall always be excluded from the trial of a child (Art. 494 of CPC of FRY).

This law particularly envisages the obligation of all organs involved in proceedings concerning a child, as well as other organs and institutions that are requested for information, reports or views, to take immediate action so as to complete the proceeding as swiftly as possible (Art. 474 of CPC of FRY). *In order to complete proceedings as swiftly as possible* the law envisages the shortening of certain deadlines in relation to those that apply in proceedings against adult persons, as well as the obligation of the juvenile judge to inform the president of the court every month about which cases are not yet completed and about the reasons why the proceedings in certain cases are still under way. It is the duty of the president of the court, if necessary, to take steps to hasten the proceedings (Art. 491 of CPC of FRY).

*During preliminary procedure*, the juvenile judge can order the child to be placed in a shelter, correctional or similar institution, or to be placed under the supervision of the guardianship organ, or in the care of another family, if this is necessary, so as to separate it from the environment in which he/she has lived, or in order to provide assistance, protection or accommodation (Art. 485 of CPC of FRY). In exceptional cases, the juvenile judge may decide to have the child placed in custody, where it will be held separately from adult persons, except in cases where the confinement of the child is to last for a longer period and it is possible to accommodate an adult person who would not have a harmful influence on the child, with him/her. (Art. 487 of CPC of FRY).

A *juvenile judge* conducts proceedings against a child, or a juvenile trial chamber, or a court may be designated that in the first instance will be authorised to deal with all criminal cases against children from the area of jurisdiction of several courts. Lay judges, who take part in proceedings in cases dealing with children, are appointed from the ranks of professors, teachers, child-carers and other persons who have experience in the upbringing of children (Art. 475 of CPC of FRY).

This body of laws also envisages the obligation of the institution, where the educational measure is being carried out, to submit a report on the child's conduct to the court that issued the measure, every six months, and as for the execution of the other educational

measuresinformation is obtained through the guardianship organ or through the professional worker (social worker, expert on children with special needs), if there is one in the court (Art. 503 of CPC of FRY).

When the conditions, provided in the law for amending the decision on the issued educational measure, are fulfilled a decision is issued by the court that in the first instance brought the decision on the educational measure - if it finds this necessary, or if this is recommended by the state prosecutor, the head of the institution or guardianship organ entrusted with the supervision of the child. In passing such a decision, the court shall hear the state prosecutor, the child, the parents or the guardian or another person, and will obtain the necessary reports from the institution in which the child is serving his/her educational measure, from the guardianship organ or other organs and institutions. In keeping with these rules, the court will issue a decision on terminating or amending the educational measure (Art. 504 of CPC of FRY).

## Assessment of the situation and observations

A superficial analysis of the position of a minor in conflict with the law in the Republic of Serbia indicates that this area has been beset with considerable problems that experts have been pointing to, for many years. We shall mention only the most important ones.

First of all, it is the out-dated legislative regulation that still exclusively envisages the application of a "protective model" in the treatment of minors in criminal legislation. In such an established model there are two dominant, polarised forms of protection of a minor: institutional protection and measures of open protection. Between these two, there are no other forms whatsoever, nor are there programmes. Here, we are primarily thinking of programmes of intensive work with children in crisis, support programs for the family and the child, programs intended for helping children who are leaving institutions to become more independent ("half-way houses"), which can also be applied for children with behavioural problems and in that sense serve to forestall institutional care, semi-institutional forms of protection (day care centres for children with asocial behaviour), programs and models that provide alternatives to classical criminal proceedings (divertional programs) and others. The fact that there have been attempts to introduce new contents and programs in working with this group of juveniles does not diminish the importance of these assertions. However, they were swiftly discarded because they did not have the support of the state or the local community, or even of professionals within the system. However, the experience gained in applying these programs can be useful because if nothing else, we do not have to start from the beginning everywhere, we only have to look back and re-examine that experience within the contours of a new set of circumstances.

As for the violation of the rights of a minor we also need to stress that there are clauses in the criminal legislation of the Republic of Serbia, which envisage certain forms of

protection that were never put into practice, such as the measure of placement in a disciplinary centre, or the measure of increased supervision in another family. The failure to provide conditions for these measures to be applied in practice undoubtedly represents a violation of the rights of children in conflict with the law on the part of the state.

Besides these two measures of open protection, other measures of a non-institutional character are often criticised by the professional public, especially the judiciary. The assessment of experts usually boils down to views that these measures are ineffective, particularly measures of increased supervision by parents. It is also said that the centres of social work do not recommend controlling these measures, and they do not monitor the changes in the minor's behaviour, so that in over 90% of cases they end with the expiry of the period of time for which they were pronounced. Similarly, the absence of individual plans for working with children is the most significant shortcoming in the work of the centres of social work, in the majority of cases.

From the point of view of statistics, institutional measures in the FRY were pronounced in 3 to 4% of cases, and juvenile prison in up to 1,7% of the cases in the period from 1996-2001. Although they were pronounced in few cases, percentage-wise, there were numerous shortcomings in carrying them out. The absence of individual work, problems in schooling and professional training, the adoption of plans of protection without the participation of those juveniles, thereby violating their right to participation and expressing their opinion, the non-existence of programs and institutions for working with children with combined disabilities, whether it refers to mental problems or the behavioural disorder was combined with drugs and alcohol were only some of the problems in protecting children in institutions of this type. Both the state and institutions and centres of social work bear responsibility for this situation.

Otherwise, in the Republic of Serbia, centres of social work decide (and this includes obtaining the opinion of the relevant ministry for children up to the age of 14 years) or the courts rule on sending children and young people, whose behaviour is contrary to the generally accepted rules of social behaviour in particular situations, to the appropriate correctional centre. The two guidelines for sending a child to a correctional institution are based on the criminal legislative, or social, and the family legislative principle. According to the former, this measure can be pronounced on juveniles who are criminally responsible and who need constant supervision by professional people. The latter basis gives the guardianship organs the chance to send children up to the age of 14 years that are not criminally responsible but have committed criminal offences, as well as children and young people whose lives and development are already in jeopardy and have been deviant for years, to this kind of institution. This possibility offers vast opportunities for abuse and can represent a violation of the rights of the child.

The legal system of the Republic of Serbia calls this type of institution an "Institution for the Education of Children and Youth" and currently there are three such facilities operating in Serbia - in Belgrade, Niš and Knjaževac. In the course of a project

conducted by the Centre under the heading "The Situation of Children in Institutions of Social Care in Serbia" during 2001, the members of the expert team inspected these institutions that are otherwise under the jurisdiction of the Ministry of Social Affairs of the Republic of Serbia (currently in the one in Belgrade, the Centre is conducting a project called "The Transformation of Institutions for Children and Young People and the Development of Alternative Forms of Protection"). The aim of the Centre is for the transformation of this institute to serve as a model for the remaining institutions of this kind and purpose. The existing organisational and functional form of this institute dates from 1991. The users of the "services" of the institute, according to special regulations, are children who have received the educational measure of being sent to a correctional institution, children who have been sent to the institute because of a disorder in their social behaviour, following a decision by the guardianship organ, and those found wandering in the street, begging or in other cases for which they need to be admitted and given temporary shelter.[77] The capacity of this institution, which contains 96 beds, is rarely full up. Numerous factors contribute to this, among which one should highlight the characteristics of so-called "open institutions' and the absence of intensive and programmed upbringing, educational, entertainment and recreational contents. This has led to the permanent fluctuation of children as a result of which the number of children registered and physically present varies daily. At the time of the inspection (August 2002) there were 41 children in this institution. Of this number, 14 (34%) had received educational measures, and the remainder (66%) were being sheltered by decision of the guardianship organ. The structure of the juveniles with educational measures contained a high percentage of children diagnosed with psychiatric disorders (31% of them), or with minor disabilities (25%). Also, records are kept of minors addicted to psychotropic substances. In the group of minors who had not received educational measures, the number with psychiatric diagnoses or slight mental disabilities was even more evident (84%). One may rightly assume that the fundamental reason for their being sent to this institute lies in the fact that there is no specialised institution to provide adequate treatment for this population in the Republic of Serbia although it is foreseen in the law. The circle of problems this Institution encounters in its work, like all those of its kind, has imposed the need for its transformation, which is now in progress. We hope that we shall respond to the needs of the children that are sheltered in it.

Apart from the said Institute, during this project, the members of the expert team also visited two institutions under the jurisdiction of the Ministry of Justice of the Republic of Serbia, the House of Correctional Education in Kruševac and the Juvenile Prison in Valjevo. In these institutions, institutional treatment consists of placement in a house of correctional education, or serving a sentence of juvenile prison. Here, we consider it important to stress that the divided legislative authority, two ministries, is not the best

[77] Within the framework of the Institute for the Training of Children and Youth "Beograd" there is a Shelter for Children and Youth with Behavioural Disorders.

solution for these institutions to function effectively. Here, we also mention some of the views of the children in the house of correctional education that the Child Rights Centre collected and analysed at the beginning of the year 2000, and which it published together with other results in the publication called 'Agenda for the Future'.

*Although in their evaluation of the general state of child rights they mainly share the opinion of their peers, children in conflict with the law also encounter very specific problems that indicate the serious violation of some specific rights.*

*Whether they have received educational measuresof increased supervision (in the family) or are in institutions of correctional education, juvenile offenders agree in the view that:*

- *They did not have a fair investigative procedure (in 42% or in 68% of cases);*
- *They did not have a fair court trial (in 32%, or 30% of cases).*

*The possibility of maintaining regular contact with the family is one of the burning problems indicated by children with a educational measure in an institution. Although they agree that they have that right, they say they are completely dissatisfied with the rule allowing them two phone calls to their parents a month.*

*The legally permitted use of the truncheon by guards is silently accepted as a educational measure by the juvenile offenders, but they consider that overstepping official authority (in the number of blows) occurs much more frequently than not.*

*Another thing that is also alarming is the assessment of children in institutions of correctional education that the degree of protection from physical and sexual abuse by their peers in the institution is less than by the guards.*

*If one considers the general picture that is linked to the situation in institutions (poor financial and hygiene conditions, difficulties in educational and rehabilitation work), as well as these specific indicators, then we cannot be surprised by the fact that all of 93% of the respondents believe that their sojourn in the institute helps. If this is indeed so, we ask ourselves in the name of the children, what the effects would be if they were adjusted to standards.*

As for procedure with minors who are in conflict with the law, it is regulated, as we have already stated, by the clauses of the Criminal Procedure Code of the FR Yugoslavia, to be more precise, chapter XXIX of this Code. The most frequent problem in the application of this law is that the defence counsels in these proceedings do not often provide their clients with the best representation - the reason partly being that they are not particularly specialised in this area. In practice, there are cases where appeals are not even submitted against convictions even when the sentence involves being sent

to juvenile prison, or that there is no response to the state prosecutor's appeal seeking a severer sanction.

Ineffectiveness is another problem. Proceedings may last up to two years, documents sent to the court of appeal are delayed, execution is delayed. This is coupled with threatening the child's right to privacy. The media often mention the names of the parents, concrete details of the event, and a whole media story is created that seriously jeopardises the right to privacy.

The non-existence of special courts for minors is another problem. What is good is that court protection is provided for child offenders as opposed to misdemeanour proceedings, in which judges and the misdemeanour council act as administrative organs. The lowest age limit defined for delivering criminal sanctions is 14 years. There are recommendations for this limit to be lowered with several alternatives: absolute reduction, only for certain offences or after previously examining the emotional development of the concrete child.

For criminal offences that carry the penalty of a fine or a prison sentence of three years, the state prosecutor, who decides according to the principle of opportunity, does not always get the adequate co-operation of centres of social work and other relevant institutions.

Probation regarding a educational measure in an institute of correctional education has not become practice because it mainly overlaps with the revisibility of the educational measure, or the possibility of terminating or amending the decision on the pronounced educational measure or decision not to execute the pronounced measure.

The occupational training and education of a minor, who has been issued with a educational measure is not at a satisfactory level. There are problems with educational programs and profiles, the verification of diplomas, the interest shown by students, financial resources and the education of staff.

The training of personnel from the system of juvenile justice has been carried out by means of a number of seminars and these were mainly connected with the new Criminal Procedure Code. The Child Rights Centre organised a series of seminars attended by juvenile judges, misdemeanour judges, public prosecutors, representatives of the police and centres of social work.

Bearing in mind the entire circle of problems, the representatives of the Child Rights Centre and the expert team, formed within the framework of the project entitled "The Rights of the Child and Juvenile Justice", which was launched in 2001, drafted the Model Juvenile Justice Law, which, in order to underline the significance of the criminal legislative position of minors and younger adult persons, also contains

criminal, substantive and proceeding norm arranged into the unique proposal of a legal document. We believed this kind of solution to be logical and justified and also functionally linked to the need to afford juveniles special protection, whether they appear as the party against whom criminal proceedings are being conducted, or as victims in criminal proceedings. This Model Law is based on modern solutions in comparative law and the need for steadily complying national legislation with the clauses of Article 37 and 40 of the Convention on the Rights of the Child, and other international instruments that concern the position of children in the system of juvenile justice.

And finally, we add proposals, which minors (the wards of the Correctional Centre in Kruševac) sent to decision-makers in this area:

- *Specialisation and adequate selection of juvenile judges;*
- *Obligatory presence of a parent when questioning children during the investigation procedure;*
- *Recording the questioning session;*
- *Respect for regulations and the "rules of service" and shortening the investigation procedure;*
- *Training inspectors, policemen and judges in the treatment of the Child-offender;*
- *Founding an independent body for controlling the work of the police and the court;*
- *Penalties for police brutality.*

# CHILD AS MEMBER OF A MINORITY GROUP

### *Article 30 of the Convention on the Rights of the Child*

***In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.***

## Regulations in the FRY and the Republic of Serbia

By means of basic provisions of the Constitution of FRY it was proclaimed that FR Yugoslavia recognised and guaranteed the *right of national minorities* to preserve, develop and express their ethnic, cultural, linguistic or other particularity, as well as to use national symbols - in accordance with international law (Art. 11 of Constitution of FRY). In the provisions that refer to freedoms, rights and duties of a human being and citizen, apart from the constitutional guarantee of freedom of expressing one's nationality affiliation and culture and of usage of one's language and alphabet (Art. 45, para. 1 of the Constitution of FRY), also determined is the right of members of national minorities to education in their own language in accordance with law, as well as to public information in one's own language (Art. 46 of the Constitution of FRY). Members of national minorities are also entitled, in accordance with law, to establish educational and cultural organisations or associations that are financed on the principle of voluntarism, and the state may provide assistance to them (Art. 47 of the Constitution of FRY). Also significant is the right of members of national minorities to set up and maintain unhampered mutual relations in Yugoslavia and beyond its borders with members of their own nation living in other countries, and to participate in international non-governmental organisations, but not to the expense of FRY or the republic - its member (Article 48). The Constitution also guarantees the freedom of belief, public and private expressing of religion and performing of religious rituals (Art. 43 of the Constitution of FRY).

The *warrantee of the freedom of expressing national affiliation and culture* and the freedom of using one's own language and alphabet, as well as the right to education in one's own language in accordance with law are also regulated by the Constitution of RS (Art. 49, para. 1 and Art. 32, para. 4). The Constitution also guarantees the freedom of religion, expression of religion and performance of religious rituals, and anticipates that religious communities are separated from the state and they may establish religious schools (Art. 41 of the Constitution of RS).

*The right of children - members of national minorities to education in their own language* is regulated in more detail by the republican laws on education.

Thus, Article 5 of the Elementary School Education Act of the Republic of Serbia determines that the curriculum for members of national minorities will also be implemented in one's mother tongue, or bilingually if at least fifteen pupils apply for enrolment to Grade One. However, under consent by the Minister of Education, a school may implement a curriculum in the language of national minorities or bilingually even for less than fifteen pupils enrolled for Grade One. When a curriculum is implemented in Serbian language, implementation of the mother tongue curriculum with elements of national culture is ensured for the pupils - members of national minorities. Furthermore, the sanction provisions of this Act anticipate removal of the principal from school activities until a decision is taken in a disciplinary procedure, as well as the teacher, professional associate and lecturer who, among other things challenges the moral values and equality of nations and national minorities or who, by his/her behaviour or organisation of the pupils for political causes induces national or religious intolerance (Art. 73 of the AES of RS). The Act of Secondary School also anticipates a possibility of holding lectures in the language of national minorities, that is, bilingually if at least fifteen pupils in a Grade One class decide accordingly. Under consent by the Ministry of Education and Sports lectures may be held in the language of national minorities or bilingually even for less than fifteen pupils. When a pupil - member of a national minority attends education in Serbian language he/she will be entitled to study his/her mother tongue with elements of national culture (Art. 5 of the Secondary School Education Act of RS).

Within the new legislation activity the state authorities are investing their efforts to incorporate the principle of tolerance and respect for minority rights. A good example of that is the Act on Protection of Rights and Freedoms of National Minorities brought at the federal level in 2002, that earned very favourable estimates by the Council of Europe.[78]

## Assessment of the situation and observations

According to the data from the 2002 census, members of 19 national minorities and ethnic communities live on the territory of Serbia[79] without Kosovo. The total number of members of national minorities and ethnic communities who live on the territory of Serbia without Kosovo is 928 982. The largest population segment is that of Hungarian national minority - 293 299 inhabitants or 31,57% of the total number, then follow Bosnians with a share of 136 087 or 14,65%, Romas 108 193 or 11,65%, Croats 70 602

[78] By this law Roma people got the status of the national minority in the FRY fot the first time

[79] Prvi rezultati popisa po opstinama i naseljima Republike Srbije, Federal Institute for Statistics and Institute for Statistics of RS, 2002

or 7,6%, Albanians 61 643 or 6,64%, Slovaks 59 201 or 6,37%, and the remaining portion refers to other national minorities or ethnic communities (Vlachs, Bulgarians, Macedonians, Ruthenians, Backa Croats, Muslims, Rumanians, Russians, Czechs, Ukrainians, Slovenians, Goranci[80] and Germans). However, according to experts the number of Romas must be much larger because a large portion of their population was not included in the census taking for various reasons. According to the estimate of UNDP more than 400 000 Romas live on the territory of Serbia.

If we apply the percentage of 22 as the share of children and youngsters up to the age of 19 years in the total population of Serbia we could then conclude that around 204 000 members of national minorities are below the age of 19 years. But, it is necessary to point out that the position of all the national minorities and ethnic communities is not same. According to experts, members of Roma minority are in the most difficult position.

Although the data concerning the position of Roma population are rather scarce and/or outdated, we will nevertheless mention some of them to illustrate that position and indirectly the position of children. An analysis by UNDP about the position of Romas in Yugoslavia throws additional light on this issue, especially when they are compared with those of Romas living in central and eastern Europe.[81]

According to this analysis 80,9% of Romas is formally unemployed, 27,4% of them are without full-time employment, 7,9% receive regular salary at their jobs, 42,6% achieve additional income by engaging in collection recyclable waste.[82] According to the author of the analysis, the basic causes of the adverse position of Romas are as follows:

- A low level of their education and professional skill;
- Discrimination of some employers, and
- Increase of the overall rate of unemployment.

When speaking about the level of Roma population's education level we can only rely on the data of the 1991 census. Namely, according to them 47,3% of Romas was either uneducated or had just one to three years of elementary school education, 27,4% had between four and seven years of same education, 17,2% have completed their elementary school education, 4,6% secondary school education, and only 0,2% had college or university level education.

[80] Goranci - who inhabit southern part of Kosovo, are of Slavic origin and Moslem religion. Their family name ends in the same suffixes as Albanian surnames.

[81] Position of Romas in the FRY comparing to the Romas in central and eastern Europe, UNDP, Brussels, 2002

[82] "Life of Romas in Belgrade suburbs", "Argument" Research, Belgrade, 2001

A large percentage of Roma children do not attend schools or drop out in Grades Three or Four of elementary school. Girls are in a much worse situation, as their number of school drop-outs is even larger. Their parents withdraw them from schools at an early stage and prepare them for early marriage or for household duties.

According to the indications presented in this UNDP analysis, 80% of the pupils attending "special schools" are of Roma origin. Inadequate diet and hunger are displayed among 47,2% of Roma population children. An irresponsible approach to one's own health and children's health, lack of systematic check-ups and questionable attitude of the broad community toward health institutions (participation in service expenses, restrictive list of free medicines obtainable by means of prescriptions, and alike) contribute largely to the poor health of Roma children. Most frequently they are not protected against children and infective diseases, and prevention check-ups for these children are almost non-existent. Early start of biological reproduction among young Roma girls is a general phenomenon.

When speaking about discrimination, judging by the media and the reports of non-governmental organisations the state authorities has not practised nor inspired discrimination, but they did tolerate it through inefficient prosecution and punishment of perpetrators.[83] The most frequent victims of discrimination on basis of their national affiliation are Romas, both the adults and the children, whereas events of anti-Semitism and intolerance toward the Chinese are notified (the Centre is not familiar with any data concerning the share of persons below 18 years of age in this segment of population).

According to a survey conducted by Federal Ministry of National and Ethnic Communities regarding ethnic intolerance, 3% of the respondents expressed their extreme ethnic distancing, 58% moderate one, and only 10% of them have no feeling of distancing from members of other national, religious and ethnic communities.

Although the mentioned federal Act on Protection of Rights and Freedoms of National minorities (Article 9) recognises the right of members of national minorities to "free choice and use of personal name and names of one's children, as well as the right to inclusion of these names in all public documents, official records and collections of personal data according to the languages and orthographies of national minority members, there have been cases of rejection concerning registration of new-borns' names in accordance with the traditions of minority peoples.[84]

[83] See Human Rights in Yugoslavia 2002, Belgrade Centre for Human Rights, Belgrade, 2003

[84] "Alternative Report on the Application of the Framework Convention in the FRY by the Humanitarian Law Centre" in Human Rights in Yugoslavia 2002, Belgrade Centre for Human Rights, Belgrade, 2003

The Centre feels that it is necessary to mention another two important things. One of them is that in July 2002 it was for the first time ever in domestic court practice (through a ruling by Municipal Court in Šabac) unambiguously determined that racial discrimination represents violation of personal right. The other one is that non-governmental organisations, above all the Humanitarian Law Centre from Belgrade, have pointed out on several occasions by means of their statements that, apart from individuals, even state authorities (members of the Ministry of Interior of the Republic of Serbia) have maltreated, slapped the faces and insulted minor-age Romas.

The conclusion of the Child Rights Centre would, therefore, be that efforts in the legislative activities are very much respected but the practice is far from being satisfactory, so state authorities ought to invest additional efforts for improvement thereof.

*LEGISLATION*

- The Criminal Code, Sl. glasnik RS, Nos. *16/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 80/02*

- The Federal Criminal Code, Sl. list SRJ, Nos. *35/92, 16/93, 37/93, 24/94, 61/01*

- The Criminal Procedure Code, Sl. list SRJ, Nos. *70/01, 68/02*

- The Inheritance Act, Sl. glasnik RS, No. *46/95*

- The Act of Litigation Proceedings of the FRY , Sl. list SRJ *27/92, 31/93, 24/94, 12/98, 15/98, 3/02*

- The Marriage and Family Relations Act, Sl. glasnik RS, Nos. *22/93, 25/93,35/94, 46/95, 29/01*

- The Yugoslav Citizenship Act, Sl. list SRJ , Nos. *33/96, 9/01*

- The Act on Abortion in Medical Facilities, Sl. glasnik RS, Nos. *16/95*

- The Act on Elementary Schools, Sl. glasnik RS, Nos. *50/92, 53/93, 67/93, 48/94, 66/94, 22/02*

- The Act on Secondary Schools, Sl. glasnik RS, Nos. *50/92, 53/93, 67/93, 48/94, 24/96, 23/02, 25/02*

- The Act on Bases of Labour Relations, Sl. list SRJ, Nos. *29/96, 51/99*

- The Labour Act, Sl. glasnik RS, Nos. *70/01, 73/01*

- The Act on Protection of Rights and Freedoms of national Minorities, Sl. list SRJ, Nos.*11/02*

- Law on the production and trafficking of narcotic drugs of the FR Yugoslavia, Sl. list SRJ *46/96, 37/02*

- The Act on the Association of Citizens in Societes, Social Organisations and Political Organisations, Sl. list SRJ *16/93, 31/93, 41/93, 50/93, 24/94, 28/96, 73/00*

- The Yugoslav Army Act, sl. list SRJ, Nos. *43/94, 28/96, 44/99, 74/99, 3/02, 37/02*

- The Act on Defence, Sl. list SRJ, Nos. *43/94, 44/99, 3/02*

- The Act of Registry Books, Sl. glasnik SRS *15/90*

- The Environment Protection Act, Sl. glasnik RS *66/91, 83/92, 53/93, 67/93, 48/94, 44/95, 53/95*

- The Unique Registration Numbers of Citizens Act, Sl. glasnik RS, Nos. *53/93, 67/93, 48/94*

- The Health Protection Act, Sl. glasnik RS, Nos. *17/92, 26/92, 50/92, 52/93, 25/96, 18/02*

- The Act on Social Organisations and Citizens Associations, Sl. glasnik SRS, Nos. *24/82, 39/83, 17/84, 50/84, 45/85, 12/89, Sl. glasnik RS, Nos. 53/93, 67/93, 48/94*

- The Act on Medical Insurance, Sl. glasnik RS, Nos. *18/92, 26/93, 53/93, 67/93, 48/94, 25/96, 46/98, 54/99, 29/01, 18/02, 80/02*

- The Act of Social Protection and Ensuring Social Security of republic of Serbia, Sl. glasnik RS *36/91, 79/91, 33/93, 53/93, 67/93, 46/94, 48/94, 52/96, 29/01*

- The General Administrative Procedure Act, Sl. list SRJ, Nos. *33/97, 31/01*

- The Act on Judges, Sl. glasnik RS, Nos. *63/01, 42/02*

- The Enforcement of Criminal Sanctions, Sl. glasnik RS, Nos. *16/97, 34/01*

- The Constitution of the Federal Republic of Yugoslavia, Sl. list SRJ, No. *1/92, 34/92, 29/00*

- The Constitution of the Republic of Serbia, Sl. glasnik RS, No. *1/90*

- The Act on Movement and Residents Aliens Sl. list SFRJ Nos. *56/80, 53/85, 30/89, 26/90, 53/91, Sl. list SRJ; Nos.16/93, 31/93, 41/93, 53/93, 24/94, 28/96*

- The Refugees Act, Sl. glasnik RS, Nos. *18/92, 45/02*

- The Act on Financial Support fo Familias with Children, Sl. glasnik RS, No. *16/02*

- The Act of Pupil and Student standards of Republic of Serbia, Sl. glasnik RS *81/92, 49/93, 53/93, 67/93, 48/94*

- The University Act, Sl. glasnik RS, No. *20/98, 21/02*