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SUBMISSION OF NON-GOVERNMENTAL ORGANISATIONS FROM THE ASPECT OF EXERCISING THE RIGHTS OF THE CHILD FOR THE 29TH SESSION OF THE THIRD CYCLE OF UNIVERSAL PERIODIC REVIEW FOR THE REPUBLIC OF SERBIA

This submission of non-governmental organisations for the third cycle of the *Universal Periodic Review for the Republic of Serbia* was made by members of the Coalition for Monitoring Child Rights in Serbia: Child Rights Centre, Uzice Child Rights Centre, ASTRA - Anti-trafficking Action, Belgrade Centre for Human Rights, with the written comments, contributions and/or support from the members of the Network of Organisations for Children: Praxis, Society for Development of Children and Youth 'Open Club', Play, EduLink, Group for Children and Youth 'Indigo', Foundation SOS Children's Village Serbia, Association for Helping Children with Special Needs, Our dreams, Centre for Work with Children, Youth and Family 'Vrdnicak', Friends of Children of Serbia, Association of Citizens 'Kokoro' - Bor, Initiative for inclusion VelikiMali, CA Parent from Sombor, Centre for the Production of Knowledge and Skills¹.

¹ Annex no.1 – List of stakeholders

Consultation Process

1. The Coalition for Monitoring Child Rights in the Republic of Serbia, under the coordination of the Child Rights Centre, has participated in the previous cycle of the Universal Periodic Review. Participation in the third cycle of the Universal Periodic Review started with a meeting organised by the House of Human Rights and Democracy on 27 April, 2017 in Belgrade. In the work of the thematic group for children, a preliminary list of topics that should be processed has been agreed, as well as the method of the report preparation. The Child Rights Centre, in cooperation with members of the Coalition for Monitoring Child Rights, developed the Draft Report, coordinated the process of its creation and compiled its final version. All interested member organisations of the Network of Children's Organisations of Serbia were invited to get involve in the process of its preparation, through selection of the final list of topics, sending written contributions and/or commenting and supporting statements to the Draft Report.

Summary

2. The Republic of Serbia did not implement the recommendations of the second cycle of the UPR to improve the situation in the domain of child rights. The Follow up Report on Implementation of Recommendations prepared by non-governmental organisations, as well as this report, follows a number of recommendations that have been assessed as priority ones, and which are still not fulfilled: the lack of the Law on the Rights of the Child, the lack of an explicit ban on corporal punishment of children in the family environment, the lack of the Law on Ombudsperson for Child Rights and others. This report opens up several important new themes (primarily segregative multiculturalism), i.e. it singles out some important sub-topics within the wider areas that were already presented in the previous cycle (placement of children under 3 years of age in social welfare institutions, poverty as a reason for the allocation of Roma children from the family).
3. There is no national policy related to children, and there are no strategic documents for certain important areas such as the protection of children victims of trafficking in human beings. Council on Child Rights of the Government of the Republic of Serbia is still not operational. Although signed, the Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure to the Committee on the Rights of the Child has not yet been ratified. These important facts result in the non-synchronisation of activities aimed at improving the position of children, which are also less intense than they were in the period before 2013. Certain processes, such as inclusive education, have been slowed down and have not yet achieved the expected results; it is assumed that the primary reason for this is the insufficiently raised awareness and the social and political will to develop a truly inclusive society in Serbia. Here we talk about children with disabilities, but also all children who need additional support and measures for full participation in society and education - children members of national minorities (primarily Roma), children from rural areas, children from extremely poor families, children victims of violence and exploitation, etc.

Adoption of the Law on the Rights of the Child

Consider as soon as possible the adoption of the Law on the Rights of the Child (131.6 and 131.26)

4. The basis for the regulation of the rights of the child by a special law was set up in 2006 in the Constitution of the Republic of Serbia. The UN Committee on the Rights of the Child assessed in its concluding observations, both in 2008 and 2017, that the legal framework governing the rights of the child was not sufficiently clear and pointed to the need to pass a special law that would regulate certain systemic issues of importance for full protection of child rights, which can not be the subject of other (systemic) laws. At the moment, the Republic of Serbia is due to adopt the new Constitution, which provides the opportunity the constitutional text to establish a general guarantee of respect for the rights of the child, to incorporate the general principles of the rights of the child into the principles of the Constitution, as well as to stipulate a special institution of the Child Rights Ombudsperson. In this way, the basis for the fundamental regulation / reorganisation of this area would be laid.
5. In the Republic of Serbia, over 100 legal texts of importance for the child rights are currently being implemented, which, due to incomplete harmonisation, leave legal gaps and regulate legal situations in which children can be found, in a manner that is not fully harmonised. This situation in a quite number of cases leads to (a) the impossibility of a reliable legal solution and (b) unbalanced practices, that is, to legal uncertainty and potentially to discrimination.

Recommendations:

The Republic of Serbia should take measures to:

- **Ensure that the new Constitution of the Republic of Serbia mandatory contains general guarantees of the rights of the child, the general principles of the Convention on the Rights of the Child as a constitutional principle, as well as stipulate a special institute of the Child Rights Ombudsperson.**
- **Urgently adopt the systemic law on the rights of the child, which would define the concept of a child, the basic principles of the rights of the child, and solve other systemic issues in this domain.**

Establishment of the institution of Ombudsperson for children (protector of child rights)

Adopt the Law on the Ombudsperson for Child Rights (131.8.)

6. The Protector of Citizens in the Republic of Serbia (Ombudsman of Serbia) has wide authority and competencies defined according to international legal standards. However, when it comes to the protection of the rights of the child, the current solutions contained in the Law on the Protector of Citizens' Rights has two major shortcomings. These deficiencies were also pointed out during the adoption of the Law, and the implementation of the law in the period of 10 years of work of the institution showed that those are trully key defects:

1 - The complaint procedure is not child friendly - moreover, children can not independently submit complaints to this body, regardless of their age, which is not in accordance with international standards.

2 - The rights of the child do not have a special treatment in the organisation of the Ombudsman's work, but are organisationally incorporated in the rights of women (gender equality), which is not in accordance with the standards and requirements of the Committee on the Rights of the Child.

These problems are highlighted because practice has shown that it is of crucial importance for children to establish an institution that will have child rights as their sole object of work and protection, and children have the opportunity to file complaints independently and in a way adapted to children.

Recommendation:

The Republic of Serbia should take measures to:

- **Urgently establish a special institute of the child rights protector who, in its jurisdiction, will have the handling of complaints, as well as the defined procedure for the receipt of complaints fit for children.**

The explicit prohibition of corporal punishment of children in the family

Prohibit corporal punishment of children in all areas of life (131.27; 131.28; 131.29.)

7. In the second cycle of the UPR, the Republic of Serbia has received several recommendations for an explicit ban on corporal punishment of children in all areas of life. However, the situation related to this has not changed: systemic laws governing the field of education, social and health care exclude the use of violence and physical punishment in any form towards the pupils or users of social and health care. Nevertheless, despite the persistent and perennial insistence of a part of the professional public and the entire non-governmental sector dedicated to children, that corporal punishment in the family environment is not clearly and explicitly stated as a form of an unacceptable, degrading and child-damaging way of upbringing that is prohibited, this problem is still open - Serbian legislation does not yet have an explicit ban on corporal punishment of children.

Recommendation:

The Republic of Serbia should take measures to:

- **Explicitly, by family related legislation, prohibit corporal punishment of children in all environments, including family.**

Poverty as the cause of separating children from the family in the Roma population

Improve the rights of the Roma population, including children, and eliminate the segregation of all minority groups (several recommendations)

8. Roma children are over-represented in the social protection system in relation to the overall Roma population in the Republic of Serbia. In a simplified picture of the problem, the reasons are found in

two basic factors - the worse (marginalised) social situation of Roma families and twice as many children in the total population of the Roma population as compared to the general population. Research² data show that Roma children more often use placement services at lower age, where differences are noticeable primarily in children aged 3-10 years, while at the age of 11 and older, Roma children enter the protection system more rarely than children from the general population.

9. The data also show that children from the Roma population are not placed in institutions more intensely than children of the general population, but it is worrying that there is a statistically significant difference in the reasons of placement. Thus, the dominant reasons for the separation of Roma children are the risk of neglect (53.3%), leaving or abandoning a child (40.2%) and family poverty (34.8%), indicating the accumulation of unfavourable factors related to poverty. At the same time, poverty is not envisaged by the law as the basis for separating a child from the family, and in practice, it is considered a possible cause of child neglect. The social protection system stipulates the obligation of the state to help individuals and families who do not have the capacity to independently provide for their own needs, or to help families who are poor. Data that show that as many as 35% of separated Roma children are displaced only for reasons of family poverty, point to the poor use of social protection services and insufficiently effective social policy, and it is also an act of unlawful acting.

Recommendation:

The Republic of Serbia should take measures to:

- **Improve social protection services and *outreach* work with Roma families, in order to reduce the rate of separation of children from the family due to poverty.**
- **Improve the effectiveness of social policy measures aimed at improving the material situation of families with children, especially in the Roma population, which should include monitoring of the effects of support, which would be achieved through continuous work with families.**

Disregarding the prohibition of placement in institutions of children under the age of three and the slow development of community services

10. The Law on Social Protection stipulates that the placement of children of up to 3 years of age in the social protection system is only possible in foster families, while the placement in social welfare institutions is prohibited. According to the official data of the social protection system for 2015, children younger than 3 are still placed in this type of protection, in two institutions: within the Centre for protection of infants, children and youth Belgrade in Zvecanska St. and in the 'Kolevka' Home in Subotica. On 31 December 2015, a total of 26 children under 3 years were placed in institutions, which is a decrease compared to 2014. This means that in a total of 26 situations in 2015 the social protection system failed to do everything possible to provide a child with another type of care, which breached the law.

² Žegarac, N. In the Labyrinth of Social Protection, UNICEF, Belgrade, 2014

11. Official reports do not see a problem in this fact, thus they do not provide any additional information on the structure of children (in terms of gender, disabilities, whether they belong to minorities and other characteristics of children), and do not provide an explanation for this phenomenon. However, unlawful treatment remains, and given that it is a small number of children, it is possible to examine in detail the problem that causes the prohibition of the placement of children is not respected, in each individual case. And then, on the basis of the conclusions, to take steps to eradicate placement in institutions, as the law stipulates. The assumption is that the problem arises because of underdeveloped community service network, but it can not be reliably claimed to be the only reason.

Recommendations:

The Republic of Serbia should:

- **Examine the reasons why children under the age of three are placed in social care institutions, and take measures that will contribute to the prohibition of the placement of children of this age in social care institutions is consistently applied in accordance with the law.**
- **Define a minimum package of community services that would be financed from the national budget.**

Children migrants, asylum seekers and refugees in the Republic of Serbia

12. In the period from 2012 to 2017, in Serbia, there were 181,916 children migrants and asylum seekers (including children with escort, separated children and unaccompanied children), as follows: in 2013 - 599, 2014 - 1563, 2015 - 172,968, 2016 - 5390 and in 2017, ending with 31 May - 1396 children. The migration policy in Serbia, normatively and legally, does not recognise migrant children in an irregular situation. Unaccompanied children in Serbia, which are not registered by the Asylum Office, are in fact children migrants in an irregular situation, that is, without adequate legal status, which is why they are virtually invisible in the system and deprived of a whole set of rights.³
13. The Law on Foreigners of the Republic of Serbia does not contain a provision defining the category of juvenile without accompaniment, but recognises juvenile persons without accompaniment as persons with special needs during the enforcement of the compulsory removal procedure. Thus, the scope of standards in the procedure is limited and relates only to the procedure of forced removal, and not to the application of the law in general. The distinction of unaccompanied foreign minors with the status of asylum seekers and those who are considered irregular migrants is conditioned by their different positions, and a different legal framework is applied for them.
14. When it comes to refugee children and asylum seekers, the provisions of the Law on Asylum apply to

³ The Ministry of the Interior registers only persons who express their intention to seek asylum, while by analysing the data it can be concluded that the number of unaccompanied children on the territory of Serbia is significantly higher than the number of these children registered. This is confirmed by the data of the Commissariat for Refugees and Migration, according to which 3,055 children were staying at reception centers in Serbia by the end of January 2017, of which one quarter, or 747 of them, were unaccompanied by parents, guardians or relatives, which is several times more than the 191 unaccompanied children registered by the Asylum Office from the beginning of 2016 to the end of January 2017.

them.⁴ Since 2008, when the Law on Asylum began to apply, not a single unaccompanied or separated child was provided with refugee or subsidiary protection in Serbia. According to the Ministry of Interior, in the past four years, 17,653 unaccompanied children expressed their intention to seek asylum in Serbia.

15. Regarding the practice of misdemeanor courts in Serbia in the period from 2012 to 2016, it can be noticed that certain procedures towards unaccompanied children were conducted without proper procedural guarantees (for example, the child follows the course of the proceedings in a language it understands, to appoint a temporary representative in the misdemeanor procedure), and that they have been finalised by convicting decisions imposing a fine, a protective measure of the displacement of a foreigner,⁵ or a prison sentence (not a juvenile imprisonment).⁶
16. In the analysis of the practice of procedures related to unaccompanied children, in Serbia there are no procedures for determining the age of children, and as valid data on the age of the person only a statement is taken. This practice led to irregularities in accommodation in asylum centers and reception centers where there are no separate rooms or facilities for unaccompanied children, so the adults were accommodated with children. Life in large reception centers carries risks to the safety of the child, as well as the risks of abuse, neglect, exploitation and trafficking in human beings. Small capacity accommodation facilities, models of care similar to family and foster care are options that need to be worked on. These types of alternative care have not been sufficiently developed. It is also necessary to make more efforts to prevent the separation of the family during all phases of the crisis.

Recommendations:

The Republic of Serbia should ensure that:

- **In the first contact with children, perform preliminary identification and registration of all children, regardless of whether they are asylum seekers, refugees or migrants.**
- **Establish a human and dignified age assessment system that, in addition to physical appearance, would also take into account psychological maturity, in accordance with General Comment No. 6 of the Committee on the Rights of the Child.**
- **Juveniles who are identified in the territory of Serbia are directed to a reception station where there would exist a set of services - medical care, legal support, psychological support.**
- **Establish family models of care for unaccompanied children (small home communities, youth communities, foster families).**

⁴ *Official Gazette of the Republic of Serbia, No. 109/07. The Law on Asylum stipulates the principle of special care for particularly vulnerable categories of asylum seekers, including children, and the principle of representing unaccompanied minors.*

⁵ Verdict 2 – Case No. juv. 20/16 of the Misdemeanor Court in Prijepolje, 4 July 2016.

⁶ An analysis of the practice of the misdemeanor courts is available in: Dragičević-Dičić R. et al., *Application of the Principles of Impunity for Refugees in the Misdemeanor Proceedings*, Belgrade Centre for Human Rights, Belgrade, 2016, available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2016/11/Pri-mena-na-cela-neka-znja-vanja-izbegli-ca-u-prekrainom-postupku-sa-koricama.pdf>.

Segregative multiculturalism in the education system

17. Regarding recommendation 132.25 - *Eliminate racial segregation in schools*, so that all children, regardless of their ethnic background, have access to education, it can be noted that the situation is worsened.
18. The position and rights of national minorities in Serbia are regulated by the 2006 Constitution and the set of laws passed in the last 15 years, which closer define the realisation of certain rights of national minorities. The purpose of these regulations is to protect the ethnic, cultural and linguistic identity of national minorities in the fields of education, culture, language and informing. However, this model of protection of the rights of national minorities has shown numerous weaknesses in practice. It served as the basis for the development of segregative multiculturalism characterised by the absence of social cohesion. According to this model, in the last decade or more, in Serbia, there have been established schools on a national basis in multicultural environments. This is reflected in the fact that children of different nationalities enroll and attend different schools, that is, schools attended only by children of the same ethnicity, and thus there are informal "Serbian", "Bosniak", "Albanian", "Hungarian" and "Roma", or special schools (schools for children with disabilities in which Roma children are enrolled to a great extent), and other "schools" in which only children of one ethnicity study, but which are placed in multiethnic environments.
19. This phenomenon has become characteristic even in the multiethnic parts of Serbia where previously it did not exist and where there are no objective aggravating circumstances (e.g. language barriers) for joint attending and learning. In Serbia there are very rare schools and classes attended by children from different ethnic communities. Bilingual teaching in Serbia is very scarce: in three municipalities in the south of Serbia (Bujanovac, Presevo and Medvedja) there are only three elementary multiethnic schools attended jointly by all pupils, but they follow the course separately (elementary school "9 May" in the village of Reljane - Presevo municipality, "Gomja Jablanica" and "Sijarinska Banja" - Medvedja municipality⁷), while all other children attend classes in separate schools. Cooperation between these schools is not encouraged, although sometimes they are located next to each other, and children know each other from another context. Programs of learning about the culture and customs of others are not sufficiently represented through education, and children's image of others is most often formed on the basis of stereotypes. This phenomenon, which primarily occurs in the education system, has a negative impact on the natural relationships of children from different ethnic groups, which usually exist in other contexts, thus contributing to the reduction of cooperation and social cohesion in all other fields.
20. As a consequence of this situation in Serbia, we have a pronounced ethnic distance, intolerance and prejudice towards others deeply rooted in the value system of children and young people, and the lack of cooperation and communication between different ethnic groups living in the same local communities, and as the ultimate result, there are frequent cases of discrimination and violence motivated by diversity. The existing model of segregative multiculturalism must be replaced by an integrative intercultural model in the education system.

⁷ Study on the possibilities of improving the teaching of Serbian as a non-native language in the municipalities of Presevo, Bujanovac and Medvedja

21. There is also a problem existing in the integration process of migrant children, which can only start when a child receives the status of an asylum seeker or a refugee. However, children asylum seekers and refugees did not have an effective access to formal education until the beginning of 2017 (although Serbia faces an influx of migrants since 2008, of which there were around 17,000 children), when the Ministry of Education, Science and Technological Development started systematically to enroll children to schools. Nevertheless, despite the efforts made in 2017, out of 1,396 children living in the territory of the Republic of Serbia, only 150 go to school.
22. Children in irregular status did not have the opportunity to get involved in the formal education system precisely because of their irregular legal status, while only 8 out of 18 centers for migrant accommodation implement programs that would allow them, while staying in the territory of Serbia, to have access to at least non-formal education that includes language learning, acquisition of different skills, psychosocial empowerment, etc.

Recommendations:

The Republic of Serbia should take measures to:

- **Introduce bilingual teaching as an incentive environment for the application of an integrative intercultural model in schools in multicultural environments.**
- **Incorporate contents and programs on the culture of nations living in Serbia, values of intercultural society, tolerance and peaceful coexistence with members of other nations, within the regular curriculum, at all levels of education and for all children.**
- **Ensure the systemic implementation of the right to education for all children who are on the territory of the Republic of Serbia, regardless of their legal status, legal status of their parents or the period of retention in the country.**

Educating children about the rights of the child, or human rights in the education system

23. The obligation of states to ensure the education of children on the child rights, as well as the dissemination of information on the Convention on the Rights of the Child is defined in Articles 4, 29 and 42. In its Concluding Observations from 2008, the Committee on the Rights of the Child has recommended the Republic of Serbia to include education on the rights of the child into the regular education system, and the same recommendation was repeated in 2017. In the same direction are the recommendations of the Committee of Ministers of the Council of Europe, which, at the 120th session and by consensus, adopted the recommendations for education for democratic citizenship and human rights education, and adopted the *EDC/HRE Charter*. In the Report on the screening for the negotiation chapter 23 in the process of Serbia's accession to the European Union, "a very low level of awareness of children and young people about their rights" was noted.
24. Responding to this international commitment, the Republic of Serbia has drafted three important documents⁸ defining that education on child rights is systematically introduced as part of

⁸ Framework of the national curriculum - the basis of learning and teaching, Framework of the subject curriculum - compulsory subjects in elementary education and Framework of the subject curriculum - compulsory subjects in general secondary education.

compulsory education for all children and at all levels of education, through general interdisciplinary competence "Responsible Participation in Democratic Society" and definition of the subject "Civic Education" as a compulsory one. Since then, these documents have not been adopted, that is, they remained at the draft level, and the discussion on them has been stopped, thus formally stopping work on the overall curricular reform.

25. Also, the Ministry of Education, Science and Technological Development supported the implementation of several projects of civil society organisations, including the project "Child Rights Education", implemented by the Uzice Child Rights Centre with partners, aimed at establishing child rights education in the framework of the regular teaching process. Despite significant results, these projects include a limited number of schools and children, thus we can not claim that the Republic of Serbia responded to this recommendation of the Committee and systematically regulated the issue of education on the rights of the child.
26. In addition, it is evident that there are no professional capacities for the introduction of education on the rights of the child. Teachers, educators and other employees in the educational system in Serbia do not have training on the child rights in their initial vocational training. A number of teachers and educators have undergone various trainings of this type within the professional training programs, which are mainly organised by civil society organisations, but which certainly are not sufficient to enable them to provide quality education to children about their rights in their professional work. Also, the teaching of the subject "Civic Education" is most frequently realised by the teachers of other subjects who have incomplete hours of classes. Their training is modest and is reduced to a training of several days, which certainly is not enough for a quality teaching of this course, and which is one of the main reasons why the expected outcomes of this course have not been achieved.

Recommendations:

The Republic of Serbia should take measures to:

- **Reform a curriculum that will ensure that education on the child rights is represented within the educational system through interdisciplinary competences and the mandatory Civic Education course at all levels of education and for all children.**
- **Introduce education on the rights of the child into the initial professional training program for the educational personnel.**

Accessibility of education for children from vulnerable groups (children with disabilities, children in rural areas, Roma children)

Improving the rights of children with disabilities, children from Roma population, including the elimination of the segregation of all minority groups (several recommendations)

27. In the past few years the Republic of Serbia has made great efforts to combat discrimination against Roma. Nevertheless, they remain one of the most endangered and discriminated groups in Serbia.

This applies in particular to Roma children, who face daily the difficulties in achieving basic rights, including the right to education. The Republic of Serbia has taken significant steps to provide access to education for Roma children, reduce school drop-out and early school leaving, but these efforts were not sufficient to significantly change the negative statistics that accompany these problems. According to various reports of UNICEF, the Child Rights Centre and other civil society organisations, we can conclude that the Roma make up the largest number of children leaving school before the final grade; only every other Roma pupil enrolled in elementary school (according to some reports even every third), finishes that school; the percentage of Roma children attending preschool education is very low - only 8% of Roma children are covered by the pre-school education. The percentage of Roma children enrolling in schools ranges from 56 to 73%, which is significantly less than children from the general population.⁹

28. When talking about the education of children from rural areas, the state of Serbia has made accessible basic education for almost all children through a relatively well-organised school network. A significantly different situation is when it comes to pre-school education - children from remote villages, underdeveloped municipalities and rural areas have a very difficult access to preschool education due to the lack of preschool institutions and reduced capacity in the existing ones, so their coverage is 29%.¹⁰ However, the most significant problem encountered by children from rural areas is the low quality of education. Even when we have schools in these areas, they are often not well suited for basic educational work. Worn-out objects, unhygienic conditions, lack of education materials and teaching tools, lack of educated staff (non-professional teaching) are the main disadvantages that are an obstacle to ensuring the adequate quality of teaching for these children. Announced redefinition of school networks will extinguish small, rural schools, which are not sustainable from the point of view of the state, which will significantly reduce the availability of education for children from rural areas.
29. Education of children with disabilities also does not progress at the desired pace. Thus, even the problem of physical availability of objects is still present, as no progress has been noted regarding the recommendation given in the second cycle of the UPR - Remove barriers that impede effective access to education for boys and girls with disabilities (132.87.). The situation remains unchanged, with a single but not systematic solution of a seemingly simple problem. We remind again that the making of public facilities accessible is compulsory both under the laws regulating civil engineering, and according to educational laws.
30. Although much has been said about this in the previous period, early intervention as a model of support for children with disabilities has not yet come to life. Admission of children to pre-school education is difficult due to the lack of physical (spatial) adjustments, as well as poor equipment and insufficient training of personnel.

Recommendations:

The Republic of Serbia should take measures to:

- **Consistently implement the policy of inclusive approach to education, without exception, improve the prevention of early school drop-out of vulnerable groups of children, especially Roma, and strengthen cross-sectoral cooperation to support children with disabilities in exercising the right to education and to improve the quality of education.**

⁹ Investing in early development and learning of children, UNICEF, Belgrade, 2014

¹⁰ Investing in early development and learning of children, UNICEF, Belgrade, 2014

- **Ensure the consistent application of a law requiring all schools (educational institutions) to be accessible to persons with difficulty in movement and in other ways adapted to children with disabilities.**
- **Urgently begins with the systematic development and networking of early development services for children with disabilities.**

Protection of children from trafficking in children in Serbia

31. In the last ten years children have a large share in the identified victims of trafficking in human beings in Serbia. With the exception of 2014, the share of identified child victims ranges between one third and one half (49% - 2013, 15.2% - 2014, 60% - 2015, 38% - 2016). Children victims of trafficking are mostly girls (85%) and citizens of Serbia. Also, for most of them, Serbia was the destination country, i.e. less than a third of the identified children were exploited or there was the intention of their exploitation in a foreign country (Switzerland, Italy, Austria, etc.). The majority of children are exposed to some type of sexual exploitation (46%), whether sexual exploitation is the only goal of trafficking or it is a multiple exploitation, where sexual exploitation is always present along with other forms. Forced begging is following with 22%, and every year there are cases of labour exploitation, forced marriage, coercion to commit crimes and unlawful adoption where children are victims. Particularly disturbing is that, first and foremost, police and judiciary do not have the capacity to identify potential victims of trafficking among juvenile offenders, so juveniles are also being punished for coercive crimes.
32. There are no specialised services and assistance programs for children who survived trafficking in human beings, as well as specialised accommodation in Serbia. Therefore, child victims are referred to services and accommodation intended for children without parental care and children victims of various forms of violence, they are accommodated in foster families or returned to their families even when there are reasonable doubts that family members have sold or exploited a child (in that sense, recommendations 132.50 and 132.51 of the Council are not fulfilled). In practice, there is rarely an assessment of the risk of returning a child to the family after leaving the trafficking chain in the context of parents' involvement in the sale of children.
33. In the past few years, the number of reports of suspected human trafficking among migrants and refugees has increased, especially during 2015 and 2016, but only a small number has really been identified: one victim in 2015 (adult) and two in 2016 (underage). The identification of victims of trafficking in human beings continues to be a challenge, especially among children seeking asylum and refugee children. Information from institutions that have been in contact with refugees and migrants indicate that a small number of people working in the field are trained to identify victims of trafficking in human beings.
34. Regarding the mechanism for the protection of victims of trafficking in human beings in the judicial process, the situation has not improved, despite the recommendations of the Committee on the Rights of the Child. Namely, the results of the analysis of the position of victims of trafficking in human beings in court proceedings¹¹ indicate that there is still insufficiently effective prosecution in

¹¹ ASTRA has been conducting a systematic analysis of court proceedings since 2011.

the field of trafficking in human beings, victims are exposed to secondary victimisation, not all mechanisms for protecting the identities and the victims-witnesses, and victims' rights during court proceedings are not fully realised, even when the underage are at stake. The right to compensation still remains the weakest link in exercising the rights.

35. Trafficking in children is a criminal offense under the Criminal Code of the Republic of Serbia, as well as the presentation, acquisition and possession of pornographic material and the exploitation of a minor for pornography, but not the sale of children per se. In that sense, it can be said that the recommendation of the Council 131.24 is not fully met.
36. A new Strategy and Action Plan for the Prevention and Combating Trafficking in Human Beings and Protection of Victims in the Republic of Serbia, where one goal specifically refers to the protection of children from trafficking in human beings, has not yet been adopted, although they were drafted in 2013. In four years during which the adoption of the Strategy and the Action Plan were constantly delayed, the system for combating trafficking in human beings stagnated because in the meantime the former coordination bodies stopped working and the new ones envisaged by the Strategy has not yet been established. In this respect, it can be said that the recommendations of the Human Rights Council related to the adoption of the Strategy, as well as the strengthening and intensification of activities and capacities in the field of combating trafficking in human beings have not been met (recommendations 132.48 and 132.49).

Recommendations:

The Republic of Serbia should take measures to:

- **Without delay adopt the Strategy for Combating Trafficking in Human Beings in the Republic of Serbia and the National Action Plan, because without these documents, the system of combating trafficking in human beings and protection of victims is collapsing.**
- **Develop specialised support and protection programs tailored to the needs of child victims, as well as appropriate accommodation for this vulnerable group.**
- **Adopt amendments to the Criminal Code in order to criminalise the sale of children.**
- **Urgently start applying in practice the provisions of the Law on Special Measures to Prevent the Commission of Criminal Offenses Against Sexual Freedoms against Juveniles, in relation to the keeping of records and the register of perpetrators.**
- **Develop and use indicators to identify children and adult victims at all stages and for all forms of trafficking in human beings. Those should be clearly defined, both at the preliminary and at the level of final identification. In addition, new methods should be developed to enable self-identification of (possible) victims.**

The problem of missing babies

37. The problem of "missing babies" refers to cases of babies who have been pronounced stillborn or reportedly died immediately after the birth, starting from the 1950s, but for which parents believe they were actually stolen. The European Court of Human Rights issued the verdict (which became

final on 9 September, 2013) in the Zorica Jovanović v. the Republic of Serbia case,¹² obliging the Republic of Serbia, in addition to individually compensating the plaintiff, to establish within one year from the day the verdict was valid a mechanism that will allow other parents to find out the truth about their children they consider missing. However, although nearly four years have passed, this mechanism has not been established. On the agenda of the National Assembly, the Draft Law on the Establishment of Facts on the Status of Newborn Children for whom is Suspected of Missing from the Maternity Ward in the Republic of Serbia, has been in place for a long time. However, during the drafting of this law, the views of parental associations were not taken into account, and the emphasis in the legal solution is not to establish the truth about missing babies, but on the financial compensation to the parents, which is not in accordance with the verdict of the European Court.

Recommendation:

The Republic of Serbia should:

- **Consistently implement the verdict of the European Court of Human Rights on cases of babies missing from the maternity ward in Serbia**

Children in conflict with the law

38. *The Law on Juvenile Offenders and Criminal Protection of Juveniles* has been in force since 1 January, 2006. Bearing in mind the situation then and needs in the system of juvenile justice, the legislator considered it necessary to stipulate a special type of institutional measure of referral to a special facility for treatment and training, as well as the creation of a special department at the Special Hospital in Belgrade where the security measure of mandatory psychiatric treatment and custody in a health institution imposed on a minor are executed. Unfortunately, eleven years after the beginning of the implementation of the law, this institution and a special department have not been established. This creates significant problems in judicial practice because juvenile judges in specific situations make a choice of possible criminal sanctions, i.e. those that can be performed, which in the particular case is not the most adequate.
39. On the other hand, the *Law on Juvenile Offenders and Criminal Protection of Juveniles* remained unclear as to whether there is a category of unaccountable and significantly reduced accountable juvenile offenders. Given the above, it is controversial whether the basic condition for changing the security measures is 1) mandatory psychiatric treatment and custody in a health institution, and 2) mandatory psychiatric treatment at liberty for adults: unaccountability or significantly reduced accountability, may exist for juvenile offenders. Solving this issue, i.e. precise definition is of extraordinary importance given the planned reform of juvenile criminal legislation. But before that, it is necessary to clearly determine the existence of the "guilt" of the juvenile perpetrator of the criminal offense, bearing in mind the development of juvenile criminal law in the last decades and the very concept of "child-friendly justice" itself.

Recommendation:

The Republic of Serbia should:

¹² Complaint No. 21794/08 http://www.zastupnik.gov.rs/uploads/jankovic_z_pr_21794-08_ser.pdf

- **Consistently implement the Recommendation of the Committee on the Rights of the Child and start the urgent adoption of the new Law on Juvenile Offenders and Protection of Juveniles in Criminal Proceedings, in which, among other things, it will clearly resolve the above issues, and for which it committed itself with the Government's Action Plan for the Chapter 23 in the process of Serbia's accession to the European Union, especially recognising that sanctions or measures towards minors must not be exercised in a manner that emphasises their coercive character or which presents unjustified risk of physical or psychological harm.¹³**

¹³ The Committee of Ministers of the Council of Europe adopted a document: *European Rules for juvenile offenders subject to sanctions or measures* (Recommendation CM/REC (2008)11) giving guidelines to all member states of the Council of Europe for the further development of national systems for the proceedings with "children" in conflict with the law.

Annex no. 1 – List of stakeholders

Coalition for Monitoring Child Rights in Serbia

In 2007 the Child Rights Centre formed the Coalition for Monitoring Child Rights in Serbia (Coalition) and it is a leading organisation since, which consists of civil society organizations which work with issues of improving, promoting and protecting human rights and child rights.

Coalition compiled the first Alternative Report to the Convention on the Rights of the Child and Optional Protocol with active involvement of children.

Afterwards, were prepared **Alternative reports** on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict for the period 2003-2007 and presented them to the Committee in 2009.

The Coalition was actively involved in all stages of **the second cycle of the Universal Periodic Review of the Republic of Serbia**, by intensive lobbying that child rights and issues of importance to children are represented in this process in proper amount. Results of the monitoring process of the Coalition are used in the process of preparing a Report on the progress in the process of joining the European Union.

Office for Human and Minority Rights of the Republic of Serbia, as the body responsible for preparing the report before international bodies, in November 2012 has formed the working group for preparation of The Second and the Third periodic report on the implementation of the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in which, in accordance with the participatory principle of preparation of the report, included the Coalition through its representative.

Directly or through the Child Rights Centre, the Coalition participated in the development of the Common Core Document of the Republic of Serbia for the purpose of reporting before international treaty bodies, both in its initial version which was drafted in 2008, and in its revision in 2012

Coalition also prepared The Second and the Third Periodic Alternative Report to the Committee on the Rights of the Child on implementation of the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, presented to the Committee in 2016.



CHILD RIGHTS CENTRE (1997) www.cpd.org.rs is a civil association whose aim is the implementation of the Convention on the Rights of the Child. The Centre's activities are focused on the introduction and implementation of laws, policies and practices that enable improvement of the welfare of the child, the protection of their rights and their full participation in society. The Centre organises many trainings in the field of child rights for other civil society organizations as well as professionals in the field of justice, social protection, police, media, education, etc. The Centre has implemented a significant number of important projects in order to amend the legislative practice, to spread the idea of protecting the rights of the child, investigate the situation of children and the situation of vulnerable groups of children. Independently or in cooperation with other organisations the Centre has published over 100 publications.



NGO ASTRA – Anti Trafficking Action (2000) www.astra.rs is dedicated to the eradication of all forms of trafficking in adults and children, both active in the provision of direct assistance to victims, education, prevention, public awareness raising, reintegration, research and reporting. Within the program of direct assistance to victims ASTRA provides to its clients psychological, medical and legal assistance, emotional support and other forms of assistance in the long process of recovery and social reintegration. As of May 2012, ASTRA is managing a unique European number for missing children.



UZICE CHILD RIGHTS CENTRE (1998) www.uecpd.org has a mission to improve the position of children in society. All the Centre's activities are based on principles promoted by the Convention on the Rights of the Child, which makes the Convention promoted as the fundamental document on the rights of the child. The Centre is particularly engaged in issues of respect for the rights of the child to education and respect for the rights of the child in the education system. It organises trainings, conferences and other professional gatherings on the subject of child rights for teachers, professional associates and other persons employed in education, children and parents.



BELGRADE CENTRE FOR HUMAN RIGHTS (1995) www.bgcenter.org.rs is a non-partisan, non-political and non-profit association of citizens concerned with the advancement of theory and practice of human rights. The principal goals of the Centre are advancement of knowledge in the field of human rights and humanitarian law, development of democracy, strengthening of the rule of law and the civil society in Serbia and other countries in transition from authoritarianism to democracy. During decades of its existence the Centre has endeavoured to raise the awareness of citizens on the importance and dimensions of the idea of human rights and individual freedoms and to establish a favourable climate for their full respect and enjoyment.

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