



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Consideration of reports submitted by States  
parties under article 29, paragraph 1, of the  
Convention**

**Reports of States parties due in 2013**

**Serbia\***

[30 December 2013]

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\* The present document is being issued without formal editing.

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## Annexes\*

- I. Statistical data
- II. Implementation of the Convention in the territory of the Autonomous Province of Kosovo and Metohija

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\* Annexes can be consulted in the files of the Secretariat.

## **I. Introduction**

1. The initial report on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance refers to the period 2011–2013. It was composed in accordance with the Guidelines regarding the form and contents of reports, and it shall be submitted in accordance with article 29 of the Convention. The report consists of two parts. The first part contains: (a) information on enforced disappearances related to armed conflicts in the territory of the former (SFRY) and in the territory of the Autonomous Province of Kosovo and Metohija; (b) information about the general legal framework of the Republic of Serbia according to which enforced disappearances are prohibited; (c) examples of the case law in which provisions of the Convention are in force; (d) the institutional framework of the Republic of Serbia in terms of proceedings related to provisions of the Convention. The second part of the report refers to the information on the application of individual articles of the Convention (arts. 1–25). The report has two annexes: one containing statistical data and the other referring to the report of the Office for Kosovo and Metohija on the Autonomous Province of Kosovo and Metohija.

2. The report was prepared in the Office for Human and Minority Rights, in cooperation with the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Interior, the Ministry of Justice and Public Administration, the Ministry of Health, the Ministry of Labour and Social Affairs, the Office for Kosovo and Metohija, the Public Prosecutor's Office of the Republic of Serbia, the Office of the War Crimes Prosecutor, the Supreme Court of Cassation, the Appellate Courts in Belgrade, Novi Sad, Kragujevac and Niš, the Higher Court in Belgrade – War Crimes Department, the Security-Information Agency, the Military Security Agency, the Office of the Council for National Security and Protection of Classified Information, the Commission for Missing Persons, the Statistical Office of the Republic of Serbia and the civil society organizations, "Humanitarian Law Centre" and "Astra".

## **II. Background information**

### **A. Enforced disappearances related to armed conflicts in the territory of the former SFRY and in the territory of the Autonomous Province of Kosovo and Metohija**

3. Armed conflicts in the territory of the former SFRY and the conflict in the territory of the Autonomous Province of Kosovo and Metohija caused many serious consequences and mass violations of human rights. A large number of persons missing after cessation of the armed conflicts are righteously considered to be one of the most tragic consequences. Enforced disappearances are one of the worst forms of violation of human rights such as the right to life, freedom, physical and mental integrity. Resolving the issue of missing persons in the territory of the former Yugoslavia, including also the cases of disappearances and abductions in the territory of the Autonomous Province of Kosovo and Metohija, is an important, but also a political issue, because resolution of this matter largely depends on the process of reconciliation and establishment of multi-ethnic societies based on democracy, the rule of law and tolerance in the region. This is an obligation of competent authorities towards families of missing persons who have the right to know the truth about the fate of their loved ones. Withholding information about abducted and missing persons is a gross violation of human rights of members of their families, whereas abduction and other forms

of violence are crimes which all perpetrators must be held accountable for in accordance with international norms and applicable national legislation. In this regard, of particular concern are cases of disappearance and abductions in the territory of the Autonomous Province of Kosovo and Metohija, and their connection to the trafficking in human organs, which is particularly indicated to by the findings and information of the former Chief Prosecutor of the International Tribunal for the Former Yugoslavia, Carla Del Ponte, in the book *The Hunt: Me and the War Criminals*, and statements from the report of the Council of Europe Special Rapporteur, Dick Marty, on the cases of kidnapping of 300 persons of Serbian and other nationality and on their taking to Albania where they were subjected to surgery procedures for the purposes of illegal trafficking in human organs. Considering that such crimes not only represent gross violation of norms of the international humanitarian law, but also of basic human rights guaranteed by United Nations key documents, they should be a subject of special attention of the United Nations in order to ensure their detection, finding of victims' remains, and bringing of perpetrators to justice.

4. The Republic of Serbia pays special attention to resolving the issue of persons missing in armed conflicts as a humanitarian issue of paramount importance for the families of missing persons, but also in the political sense as an important indicator of real democratization of the society and country and its willingness to face the consequences of violations of human rights caused by armed conflicts.

5. It was estimated that about 40,000 persons disappeared in armed conflicts in the territory of the former Yugoslavia. The International Committee of the Red Cross (ICRC) received 34,883 reported cases, and according to the data of this organization from June 2013, there are 11,921 persons still missing in the region.

6. There are 398 persons on the list of missing persons from the Republic of Serbia in armed conflicts in the territory of Croatia (citizens of the Republic of Serbia and persons for whom their families submitted a request for search through the Red Cross). Also, the Republic of Serbia has a legitimate interest in resolving the issue of missing persons of Serbian nationality, citizens of the Republic of Croatia, that includes missing persons in the Croatian army and police operations "Bljesak (Flash)" and "Oluja (Storm)" in accordance with signed cooperation agreements, having in mind that the largest number of their families live in the Republic of Serbia as refugees, and many of them have permanently regulated their civil status in its territory. The International Committee of the Red Cross (ICRC) received reports on about 1,300 persons from both categories, whereas the number of missing persons, according to the records available to the Committee, is higher and verification of these cases according to the ICRC criteria is under way.

7. The list of missing persons of the Republic of Serbia in Bosnia and Herzegovina contains 95 persons.

8. About 5,800 persons were missing in the conflict in the territory of the Autonomous Province of Kosovo and Metohija after 1998, and the fate of 1,726 persons is still unknown, out of whom 520 persons are of Serbian and non-Albanian nationality.

## **B. The general legal framework according to which enforced disappearances are prohibited**

9. The Constitution of the Republic of Serbia<sup>1</sup> guarantees and directly implements human and minority rights guaranteed by the generally accepted rules of the international law, ratified international treaties and laws. Provisions on human and minority rights shall

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<sup>1</sup> *Official Gazette of the RS*, No. 98/2006.

be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation (art. 18, para. 2). The second part of the Constitution entitled Human and Minority Rights and Freedoms, guarantees the right to freedom and security where, inter alia, it prescribes and guarantees every person the right to personal freedom and security, that deprivation of liberty shall be allowed only on the grounds and in a procedure stipulated by the law, that any person deprived of liberty by a State authority shall be informed promptly about the grounds for arrest, charges brought against them, as well as about their rights, and they shall have the right to inform promptly any person of their choice about their arrest, that any person deprived of liberty shall have the right to file an appeal to the court which shall be obliged to urgently review the lawfulness of arrest and order the release, if the arrest was against the law, that any sentence which includes deprivation of liberty may be proclaimed solely by the court (art. 27). The Constitution prescribes special rights in case of arrest of persons without a decision of the court: the right of a person to remain silent and the right to be questioned only in the presence of a defence counsel; and to be brought before the competent court without delay (art. 29). Slavery, servitude and forced labour shall be prohibited (art. 26). The Constitution prescribes the right to rehabilitation and compensation (art. 35). Persons belonging to national minorities shall be awarded the rights that are guaranteed to all citizens (art. 75).

10. According to the Constitution of the Republic of Serbia, ratified international treaties shall be an integral part of the legal system in the Republic of Serbia, applied directly and they must be in accordance with the Constitution (art. 16, para. 2). Laws and other general acts enacted in the Republic of Serbia may not be in non-compliance with ratified international treaties and generally accepted rules of the international law (art. 194, para. 4).

11. The stated constitutional guarantees have been extended and specified by provisions of the Criminal Procedure Code,<sup>2</sup> so that any person deprived of liberty without a court order, in addition to the mentioned above, shall also have the right to promptly inform a member of their family or any other close person, at their request, about the time, place and any change of the place of arrest, as well as a diplomatic-consular representative of the country whose citizenship they have, i.e. a representative of an international organization if this person is a refugee or a stateless person; to freely communicate with their defence counsel, diplomatic- consular representative, representative of an international organization

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<sup>2</sup> At this point, the Criminal Procedure Code (*Official Journal of the FRY*, Nos. 70/2001 and 68/2002 and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010) and the Criminal Procedure Code (*Official Gazette of the RS*, Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013) are in force. The Criminal Procedure Code (*Official Gazette of the RS*, Nos. 72/11, 101/11 and 121/12) has been in force since 1 October 2013, except in proceedings related to criminal offences which are by a special law envisaged to be under the competence of the Public Prosecutor's Office with special jurisdiction, in which case the Code has been in force since 15 January 2012 (art. 608). Since 1 October 2013, if there are no amendments, the Criminal Procedure Code shall cease to be in force (*Official Journal of the FRY*, Nos. 70/2001 and 68/2002 and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010 – art. 607). Public Prosecutor's Offices with special jurisdiction are the Public Prosecutor's Office for Organized Crime and the Public Prosecutor's Office for War Crimes (art. 13, para. 2, of the Law on the Public Prosecutor's Office (*Official Gazette of the RS*, Nos. 63/2001, 42/2002, 39/2003, 44/2004 and 61/2005, 46/06, 106/06 – amended by the decision of the Constitutional Court of the Republic of Serbia, 116/08 – amended by other law, 101/2011, 38/2012 amended by the decision of the Constitutional Court, and 121/12).

and the Ombudsman; to be immediately examined, at their request, by a physician of their own choosing or, if that physician is not available, by a physician designated by the depriving authority, i.e. the investigating judge; to initiate proceedings before the court, or to file an appeal to the court that shall be obliged to urgently review the lawfulness of arrest (arts. 4–5, and similarly in article 69 of the new Criminal Procedure Code<sup>3</sup>).

12. The Criminal Code<sup>4</sup> stipulates the criminal offence “Unlawful depriving of liberty” and the penalty of imprisonment shall be imposed on anyone who unlawfully detains another, keeps him in custody or otherwise unlawfully deprives him of liberty or restricts his freedom of movement (art. 132). Imprisonment is also prescribed for the criminal offence “Abduction” (art. 134). In the criminal offence “War crimes against civilian population”, sanctions are, inter alia, imposed on anyone who, by violating the rights of the international law during the war, armed conflict or occupation, orders unlawful deprivation of liberty and detention (art. 372). In the criminal offence “Crime against humanity”, incrimination is imposed on anyone who, by violating the rules of the international law, orders as part of a wider or systematic attack against the civilian population, inter alia, detention or abduction of persons without disclosing information on such acts in order to deny such persons legal protection (art. 371).

**C. Examples of the case law where provisions of the Convention are in force and the case law where, on the other hand, have been identified violations of the Convention, reasons for these violations and measures taken to remedy the situation**

13. The Constitution stipulates that courts shall be separated and independent authorities in their work and that they shall perform their duties in accordance with the Constitution, law and other general acts, when stipulated by the law, generally accepted rules of the international law and ratified international treaties (art. 142, para. 2). Court decisions shall be based on the Constitution, law, ratified international treaty and regulation passed on the grounds of the law (art. 145, para. 2). The Public Prosecutor’s Office shall perform its function on the grounds of the Constitution, law, ratified international treaty and regulation passed on the grounds of the law (art. 156, para. 2).

14. The Higher Court in Belgrade, War Crimes Department<sup>5</sup> (hereinafter referred to as the Court) shall in the first instance be responsible to act in cases of the criminal offences referred to in articles 370 to 384, and articles 385 and 386 of the Criminal Code; serious violations of the international humanitarian law in the territory of the former Yugoslavia since 1 January 1991 that were listed in the statute of the International Tribunal for the Former Yugoslavia; the criminal offence “Helping an offender after committing a criminal offence” referred to in article 333 of the Criminal Code if committed with the aforementioned criminal offences. In terms of trials for criminal offences committed during armed conflicts in the territory of the former Yugoslavia, the Court shall not apply the Criminal Code but the Criminal Law of the Federal Republic of Yugoslavia (FRY) as amended in 1993<sup>6</sup> because maximum duration of imprisonment is 20 years.<sup>7</sup> As the Law

<sup>3</sup> *Official Gazette of the RS*, Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013.

<sup>4</sup> *Ibid.*, Nos. 85/05, 88/05-corrigendum; 107/05-corrigendum; 72/09, 111/09 and 121/12.

<sup>5</sup> Before: the District Court in Belgrade and the War Crimes Chamber of the District Court in Belgrade.

<sup>6</sup> *Official Journal of the FRY*, No. 37/1993.

<sup>7</sup> Article 1 of the Criminal Code stipulates the principle of legality – *nullum crimen, nulla poena sine lege*, and article 5 of the Criminal Code stipulates rules on the duration of applicability of the criminal

does not contain specific provisions referring to the criminal offence “Crime against humanity”, so far the Court has never had cases in which a criminal offence was qualified as a crime against humanity. Similarly, no crime against humanity and international law referred to in chapter XVI of the Criminal Law of the FRY stipulates enforced disappearance as an act of commission. Moreover, enforced disappearance is not mentioned in international treaties that were in force at the time of commission of war crimes in the territory of the former Yugoslavia whose application the Criminal Law of the FRY refers to.<sup>8</sup>

15. In order for war crimes against protected persons to exist, which most frequently occur in Court’s practice, it is sufficient that any of alternative prescribed actions have been taken, such as: murder of civilian population, torture, inhuman treatment, inflicting great suffering or violating bodily integrity and harming health, displacement or dislocation, rape, applying intimidation and terror measures, taking hostages, unlawful deprivation of liberty, deprivation of the right to a fair and impartial trial. Considering the number of prescribed acts of commission, which enables punishment of offenders to the fullest extent possible, there were no cases of alleged enforced disappearances as special acts of commission in indictments before the Court. Therefore, the Court so far mostly has not done evaluation of whether specific actions that were proved violate provisions of the international law in addition to the provisions set forth in indictments. Exceptions are the cases which invite the Court to refer to additional sources of the international law for the purposes of interpretation of applicable legal norms, as well as when this is necessary to punish perpetrators of the most serious criminal offences.

16. The Court qualified the facts which would possibly contain elements of enforced disappearance in terms of the Convention, i.e. the Rome Statute of the International Criminal Court, as unlawful detention,<sup>9</sup> taking hostages,<sup>10</sup> forced removal,<sup>11</sup> however, more often, the Court dealt in its judgements with actions taken against protected persons after their deprivation of liberty (murder, torture, inhuman treatment, violation of bodily integrity, rape).<sup>12</sup>

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law – *tempus regit actum*, i.e. rules on mandatory application of the law that is most lenient for the perpetrator.

<sup>8</sup> The Convention for the Prevention and Punishment of the Crime of Genocide, provisions on serious violations from the four Geneva Conventions of 1949, the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity of 1968, the International Covenant on Civil and Political Rights of 1966, the first and second Protocols additional to the Geneva Conventions of 1977, the Convention on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1987.

<sup>9</sup> Judgements of the District Court in Belgrade, War Crimes Chamber K.V. 4/05 (K-Po2 9/10) of 18 September 2006, and K.V. 5/05 (K-Po2 10/10) of 12 June 2008.

Unlawful deprivation of liberty is not explicitly prohibited by the provision of the international humanitarian law applicable to the internal armed conflict (art. 3 common to the four Geneva Conventions of 1949 and art. 6 of the second Protocol additional to the Geneva Conventions).

<sup>10</sup> Judgements of the District Court in Belgrade, War Crimes Chamber K.V. 5/05 (K-Po2 10/10) of 12 June 2008, K.V. 5/08 (K-Po2 27/10) of 27 May 2009, judgement of the Higher Court in Belgrade, War Crimes Department K-Po2 28/10 of 22 November 2010.

<sup>11</sup> Ibid., War Crimes Chamber K.V. 5/08 (K-Po2 27/10) of 27 May 2009.

<sup>12</sup> Ibid., War Crimes Chamber K.V. 4/06 (K-Po2 16-10) of 12 March 2009, K.V. 9/08 (K-Po2 31/10) of 23 June 2009, K.V. 5/08 (K-Po2 27/10) of 27 May 2009, K.V. 4/05 (K-Po2 9/10) of 18 September 2006, K.V. 6/05 (K-Po2 11/10) of 10 April 2007, the judgement of the Higher Court in Belgrade, War Crimes Department K-Po2 23/10 of 16 December 2011.



#### D. The institutional framework in the proceedings related to provisions of the Convention

17. The institutional framework in the proceedings related to provisions of the Convention in the Republic of Serbia are courts with general jurisdiction (the Supreme Court of Cassation, appellate courts, higher courts and basic courts), courts with special jurisdiction (the Administrative Court, the Higher Misdemeanour Court and misdemeanour courts), public prosecutor's offices with general jurisdiction (the Public Prosecutor's Office of the Republic of Serbia, Appellate Public Prosecutor's Offices, Higher Public Prosecutor's Offices and Basic Public Prosecutor's Offices), the Office of the War Crimes Prosecutor, the General Police Directorate – Criminal Force Directorate, the Border Police Directorate, the Directorate for International Operative Police Cooperation, the Security-Information Agency, the Military Security Agency, the Directorate for Execution of Criminal Sanctions, the Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection, the Red Cross Tracing Service of Serbia.

18. Given the complexity, difficulty and importance of the issue of missing persons in armed conflicts in the territory of the former Yugoslavia, the Government of the Republic of Serbia established the Commission for Missing Persons (hereinafter referred to as the Commission) in June 2006 by the Decision.<sup>13</sup>

19. The Commission's mandate is to monitor, study and prepare proposals for resolving the issue of missing persons; collect data and provide information on missing persons in armed conflicts and connected to armed conflicts in the territory of the former SFRY and the Autonomous Province of Kosovo and Metohija; participate in executing obligations resulting from international treaties and agreements referring to the resolution of the issue of missing persons; coordinate the work of competent authorities and organizations in the search for missing persons, exhumations and identifications; establish cooperation with competent authorities, families of missing persons and associations to resolve the status issues of missing persons and humanitarian issues of their families. The Commission took over all activities and obligations of the Commission of the Council of Ministers of the State Union of Serbia and Montenegro for Missing Persons which continued activities of previous governmental bodies that have been established since 1991 to resolve the issue of missing, captured and killed persons in armed conflicts in the territory of the former SFRY.

20. The Commission is an interdepartmental government body consisting of the Chairman and representatives of 10 departments.<sup>14</sup> The Chairman and members of the Commission are appointed by the Government with a special decision. The mode of operation and decision-making of the Commission are governed by the Commission's Rules of Procedure.

21. The Commission's professional, administrative and technical affairs are, for the Commission, performed by the Missing Person Unit at the Commissariat for Refugees. These tasks, in addition to the aforementioned, include keeping of unique records of missing persons in armed conflicts and connected to armed conflicts in the territory of the former SFRY in the period 1991–1995 and the Autonomous Province of Kosovo and Metohija in the period 1998–2000, keeping records on exhumed, identified and unidentified human remains from individual and mass graves, issuance of statements on facts kept in

<sup>13</sup> *Official Gazette of the RS*, Nos. 49/2006, 73/2006, 116/2006, 53/2010 and 108/2012.

<sup>14</sup> The Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Interior, the Ministry of Justice and Public Administration, the Ministry of Labour and Social Policy, the Ministry of Finance and Economy, the Office of the War Crimes Prosecutor, the Office for Kosovo and Metohija, the Commissariat for Refugees of the Republic of Serbia and the Red Cross of Serbia.

official records, payment of costs of exhumation, identification, funeral equipment and transportation of remains of identified persons, as well as of costs of services of forensic medicine experts or teams of experts engaged for the work of the Commission for Missing Persons, payment of one-off financial assistance for funeral expenses in the amount of compensation for funeral expenses determined by the law governing pension and disability insurance, allocation of funds to programmes for associations of families of missing persons in accordance with the regulations governing the funding of the programmes of public interest implemented by associations (the Law on Migration Management<sup>15</sup>).

22. Funds for the operation of the Commission are provided from the Budget of the Republic of Serbia.

23. Considering the humanitarian importance and complexity of the issue, a Working Group for missing persons in the territory of the Autonomous Province of Kosovo and Metohija was established to intensify the process of resolving the issue of the fate of missing persons in the territory of the Autonomous Province of Kosovo and Metohija, in a dialogue Belgrade–Priština 2005. Meetings of the Working Group are held under the auspices of the Special Representative of the United Nations Secretary-General (hereinafter referred to as the SRGS) in the context of Security Council resolution 1244 (1999). The Working Group is chaired by the International Committee of the Red Cross, and consists of the Belgrade and Priština delegations. The Belgrade delegation is appointed by the Government of the Republic of Serbia and it consists of the President (in terms of the function, this is the Chairman of the Commission for Missing Persons), a representative from the Office of the President of the Republic of Serbia, a representative of the Office for Kosovo and Metohija and an eminent expert, a forensic expert. The Working Group has a mandate to provide support to the search for missing persons in Kosovo and Metohija and, accordingly, inform their families. It can also deal with legal and administrative needs of families of missing persons. Its work is more closely defined by the Working Group's General Framework and Rules of Procedure.<sup>16</sup>

24. Activities of the Commission and other State authorities involved in the process are open to the public and there are no restrictions regardless of any difference, which is also illustrated by the fact that stakeholders are allowed to participate and conduct monitoring in all major segments of the process.

25. The procedure of recording missing persons is carried out according to ICRC criteria and procedures, and their books on missing persons that are published according to the geographic principle for the Federation of Bosnia and Herzegovina, Republic of Croatia and the Autonomous Province of Kosovo and Metohija, were accepted by all the parties in the process and they represent an initial and important tool in resolving the issue of missing persons.

26. The process of exhumation and identification of remains, as important segments of the search for missing persons, in the territory of the Republic of Serbia, is conducted in

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<sup>15</sup> *Official Gazette of the RS*, No. 107/2012.

<sup>16</sup> The general framework regulates the legal basis, objective, period of time, roles and responsibilities, tasks, procedures, ICRC and SRGS roles, and provides for a possibility to establish a subcommittee. Rules of procedure regulate the composition, the Chairman, the mandate and procedures, meetings, labour costs, languages, setting the agenda, submission of documents, the quorum, the method of deliberation and decision-making, etc. The general framework and the rules of procedure have been approved by the Government of the Republic of Serbia. In accordance with the Working Group's rules of procedure, the Sub-Group for Forensic Issues was established in 2005, with the mandate to manage and improve the forensic process and speed up the process of identification and exhumation, which reports to the Working Group.

accordance with the law, according to the order issued by competent higher courts, by adhering to the highest professional standards.<sup>17</sup>

27. Based on signed protocols and agreements concluded on the monitoring of exhumations in the territory of the Republic of Serbia, stakeholders' representatives may attend the activities (bodies for the search for missing persons of the Republic of Croatia, Bosnia and Herzegovina, the United Nations Interim Administration in Kosovo (UNMIK), provisional self-government institutions) and their forensic experts, at all the locations in which they showed interest. Exhumations were also attended by representatives of international institutions and organizations, the International Tribunal for the Former Yugoslavia (ICTY), the Organization for Security and Cooperation in Europe (OSCE), and ICRC, in the capacity of a monitoring body. Based on the agreement signed, participation in the process was also enabled to forensic experts from the International Commission for Missing Persons and samples for the DNA analysis were collected in accordance with their prescribed standards. Participation in exhumations was also enabled to civil society organizations and associations of families of missing persons.

28. Implementation of the aforementioned procedures achieved high results in the finding process, particularly in the process of identification of remains in the territory of the Republic of Serbia. The total of 1, 296 remains were exhumed from individual graves and three graves, and 1,086 remains were identified and handed over to the families.<sup>18</sup>

29. In the process of search for missing persons, which also includes exhumations, identifications and handover of remains, the Commission for Missing Persons informs families on the facts about deaths of their family members, provides assistance to families that need to join the process of identification, organizes takeover of remains, provides

<sup>17</sup> The Criminal Procedure Code and other regulations apply to the treatment of remains of deceased persons, and they regulate this matter (sanitary and health protection regulations). All found remains go through a criminal-technical process, and phototechnical documents on this are also made, and an investigation is managed by the judge of the competent Higher Court. The remains then undergo forensic procedure and an autopsy conducted by medical court experts. Forensic investigations are carried out in accordance with national laws, regulations and professional standards. Forensic investigations are carried out on the orders of competent courts and each party in proceedings has the right to object.

Remains are then properly labelled, buried in cemeteries, external grave positions are marked, and the place of burial is sketched, and in case of a larger number of remains, they are buried in separate plots, which is also documented. After introduction of the DNA method in the identification process in 2001, samples from all remains are taken for the DNA analysis. In cases when it is possible, or quick identification is expected, remains are kept at the institutes of forensic medicine, where they are stored in prescribed conditions, or placed in special purpose facilities (container specially equipped for this purpose). The handover of remains to families or stakeholders is carried out in accordance with prescribed procedures. Proper funeral equipment is provided, families attend the final identification carried out at the institutes for forensic medicine or in some other special purpose facility when they are presented by experts with DNA analysis results, they have an insight in the overall available photo and other documentation, transportation of remains to the place of funeral, if it is in the Republic of Serbia, or to the border in case of cross-border transportation of remains. If a family expresses a desire, they are allowed to see the remains.

<sup>18</sup> The exhumations carried out in the territory of the Republic of Serbia included exhumation of 846 remains from three graves (Batajnica, Perućac and Petrovoselo) out of which 823 remains were identified (97 per cent) and 450 remains of unknown persons were buried according to a regular procedure in city cemeteries, regardless whether they were found in rivers, or they died in medical and other institutions, out of which 265 remains were identified (59 per cent). Monitoring was enabled to all stakeholders, whereas out of 1, 296 exhumed remains 1, 086 (84 per cent) remains were identified and handed over to families which confirms a high degree of professionalism, competence and transparency in the process.

documents for taking remains into the Republic of Serbia, bears costs of transportation and part of costs of the burial of remains. Together with ICRC and associations, the Commission organizes a trip for families of missing persons to the Republic of Croatia to attend identifications and burial of remains. Also, the Commission maintains regular contacts with families of missing persons and informs them on the current status of cases and collects new information and facts that may help in resolving the fate of their missing family members.

30. The Commissariat for Refugees – Missing Persons Unit keeps documents, databases and the Archive of the Commission. As a result of its activities, the Commission has a large amount of data and extensive records, most of which are in an electronic form, a database of missing persons in the Republic of Croatia, Bosnia and Herzegovina and in the territory of the Autonomous Province of Kosovo and Metohija, and the ante-mortem database. The database has been centralized and enables effective data management and facilitates cooperation and exchange of data and information with other competent authorities and stakeholders in the process.<sup>19</sup>

31. Bilateral documents on the cooperation with other parties contain provisions relating to data protection (particularly those referring to medical records – DNA reports, etc).<sup>20</sup>

32. The Commission for Missing Persons also cooperates with associations of families of missing persons through which it executes part of its activities, provides them with financial assistance and other forms of support. In addition to the Commission, assistance to families and associations of families of missing persons is also provided by other competent departments, the Office for Kosovo and Metohija, the Commissariat for Refugees, the Red Cross of the Republic of Serbia, within their competences, including them in their assistance programmes.

33. In addition to associations of families of missing persons, this problem is also addressed by other civil society organizations, as well as documentation centres dealing with documenting serious violations of human rights in armed conflicts, transitional justice and various activities and initiatives in order to achieve lasting reconciliation in the region.

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<sup>19</sup> The Commissariat, the Commission and other public authorities are obliged to comply with provisions of the Law on Personal Data Protection in automatic data processing. Keeping uniform records on missing persons in armed conflicts and connected to armed conflicts in the territory of the former SFRY in the period 1991-1995, and the Autonomous Province of Kosovo and Metohija in the period 1998-2000, keeping records on exhumed, identified and unidentified remains from individual and mass graves, and issuing confirmations of facts for which official records are kept, are regulated by the law.

<sup>20</sup> The Agreement on cooperation concerning the search for missing persons between the International Commission for Missing Persons (ICMP) and the Commission of the Federal Government of the Federal Republic of Yugoslavia for Humanitarian Issues and Missing Persons, the Protocol on the exchange of forensic experts and expertise concluded with UNMIK, and Rules of Procedure of the Working Group's Forensic Sub-Group for Missing Persons in the territory of the Autonomous Province of Kosovo and Metohija contain provisions that directly relate to the cooperation in the forensic process and protection of sensitive data. Given the complexity of the situation in exhumation and identification of victims of armed conflicts in the territory of the former SFRY, because remains are exhumed after several years and they are in such a condition that classical methods of identification are insufficient, the method of DNA analysis created possibilities for certain identification of remains. The Commission of the Federal Government of the Federal Republic of Yugoslavia for Humanitarian Issues and Missing Persons signed the Cooperation Agreement with the International Commission for Missing Persons (in April 2002) and, thus, entered their regional DNA programme.

### III. Information on the implementation of the articles of the Convention

#### Article 1 - Prohibition of enforced disappearance

34. The Constitution of the Republic of Serbia stipulates that when proclaiming the state of emergency and the state of war, measures may be prescribed which shall provide for derogation from human and minority rights guaranteed by the Constitution (arts. 200-201). The stated derogations shall be permitted only to the extent deemed necessary and they shall not bring about differences based on race, sex, language, religion, national affiliation or social origin (art. 202, paras. 1–2). The Constitution itemizes for which guaranteed human and minority rights measures providing for derogation shall by no means be permitted (art. 202, para. 4). The right to freedom and security governed by article 27 of the Constitution may be the subject of measures providing for derogation in case of the state of emergency or war to the extent it is necessary.

35. A possibility to suspend or restrict some of constitutionally guaranteed human rights and freedoms, in case of the state of emergency or war, on the basis of laws and regulations adopted in accordance with the law, shall be without prejudice to the constitutional and legal protection of persons from enforced disappearance, regardless of their citizenship or other property. Incrimination of the criminal offences “Unlawful deprivation of liberty and abduction” (see the reply related to article 2 of the Convention) is a clear government guarantee that there will be no derogations from “the right to non-exposure to enforced disappearance” during the onset and duration of the above-mentioned exceptional circumstances, because specified incriminations shall still remain in force. In addition, the international community’s recommendations and good practice in the fight against terrorism have an effective impact in the Republic of Serbia on the implementation of the provision of article 1 and other provisions of the Convention, because it indicates that authorizations of security and information agencies must be based on the law and on the control mechanisms defined by the law. Competent courts decide on whether these services will obtain approval to use special powers which temporarily restrict human rights. All the activities of security and information agencies in the fight against terrorism are in accordance with human rights and the rule of law principle.

#### Article 2 - Enforced disappearance – definition

36. The criminal legislation of the Republic of Serbia does not provide an explicit definition of enforced disappearance, in terms of article 2 of the Convention. However, the actions of arrest, detention, abduction, or any other form of unlawful deprivation of liberty, may provide for legal characteristics of criminal offences against freedoms and rights of persons and citizens of the Criminal Code, primarily the criminal offence “Unlawful deprivation of liberty”<sup>21</sup> referred to in article 132 and the criminal offence “Abduction”<sup>22</sup> referred to in article 134.

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<sup>21</sup> (1) Whoever unlawfully detains another, keeps him in custody or otherwise unlawfully deprives him of liberty or restricts his freedom of movement, shall be punished with imprisonment up to three years.

(2) If the offence specified in paragraph 1 of this article is committed by an official through abuse of his position or authorization, such a person shall be punished with imprisonment of six months to five years.

37. By meeting specific additional conditions, some of the actions described, in terms of article 2 of the Convention, could also result in occurrence of elements of crimes against humanity and other values protected by the international law, such as: (a) crime against humanity under article 371 of the Criminal Code – such as detention or abduction of persons without providing information on this in order to deny them legal protection, as part of a wider or systematic attack aimed at the civilian population; (b) war crimes against civilian population under article 372 of the Criminal Code – as unlawful deprivation of liberty and arrest of civilians during a war, armed conflict or occupation.

### Article 3 - Investigation

38. The criminal offences “Unlawful deprivation of liberty” and “Abduction” are in the criminal legislation of the Republic of Serbia prohibited and punished with imprisonment, arrest, detention, abduction or any other form of deprivation of liberty committed by a person or group of persons acting without an authorization, support or approval of the country.

39. Such criminal offences shall be prosecuted ex officio (art. 153). According to the Criminal Procedure Code<sup>23</sup>, prosecution for criminal offences shall be the basic right and duty of the Public Prosecutor who is in the execution of this function bound by the principle of legality<sup>24</sup> (arts. 20, 46). According to provisions of the Law on Organization and Competence of Government Authorities in War Crimes Proceedings,<sup>25</sup> the Office of the War Crimes Prosecutor shall be responsible to process and prosecute perpetrators of the criminal offences “Crime against humanity” and “War crimes against civilian population”.

(3) If unlawful depriving of liberty exceeded 30 days, or was committed in a cruel manner, or if such an act resulted in serious impairment of health of the person unlawfully deprived of liberty, or if other serious consequences resulted, the offender shall be punished with imprisonment of one to eight years.

(4) If the offences referred to in paragraphs 1 and 3 of this article result in death or a person unlawfully deprived of liberty, the offender shall be punished with imprisonment from two to 12 years.

(5) An attempt of the offence referred to in paragraph 1 of this article shall be punishable.

<sup>22</sup> (1) Whoever by use of force, threat, deceit or otherwise removes or holds another with the intent to extort money or other property gain from that person, or to coerce that person or another to do or refrain from doing something, or to endure, shall be punished with imprisonment of two to 10 years.

(2) Whoever threatens the abducted person for the purpose of accomplishing the aim of abduction with a murder or grievous bodily harm, shall be punished with imprisonment of three to 12 years.

(3) If the abducted person is held more than 10 days, or treated in cruel manner, or his health is seriously impaired, or other serious consequences resulted, or whoever commits the offence referred to in paragraph 1 of this article against a juvenile, shall be punished with imprisonment of three to 15 years.

(4) If the offence referred to in paragraphs 1-3 of this article results in death of the abducted person, or the offence is committed by a group, the offender shall be punished with imprisonment of five to 18 years.

(5) If the offence referred to in paragraphs 1-3 of this article is committed by an organized crime group, the offender shall be punished with imprisonment of at least five years.

<sup>23</sup> *Official Journal of the FRY*, Nos. 70/2001 and 68/2002 and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010.

<sup>24</sup> “Unless otherwise specified by the Law, the Public Prosecutor shall be obliged to execute criminal prosecution when there is a reasonable doubt that a specific person committed a criminal offence which he shall be prosecuted for ex officio.”

<sup>25</sup> *Official Gazette of the RS*, Nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009 and 101/2011.

40. The Police Directorate has not recorded cases related to enforced disappeared persons.

#### **Article 4 - Incrimination of the criminal offence “enforced disappearance” in the internal law**

41. Criminal legislation of the Republic of Serbia does not have a specified act of enforced disappearance in the manner defined by the Convention in article 2.

#### **Article 5 - Codification of enforced disappearance as a crime against humanity**

42. The Criminal Code defines crime against humanity in the context of enforced disappearance such as detention or abduction of persons without disclosing information on such acts in order to deny such persons legal protection, within a wider or systematic attack against civilian population. Such a criminal offence shall be punished by imprisonment of minimum five years or imprisonment of 30 to 40 years (art. 371).

43. The court will determine a penalty for an offender within the limits set forth by the law for such a criminal offence, with regard to the purpose of punishment and taking into account all circumstances, particularly the degree of culpability, the motives for committing the offence, the degree of endangering or damaging protected goods, the circumstances under which the offence was committed, the past life of the offender, his personal situation, his behaviour after the commission of the criminal offence and particularly his attitude towards the victim of the criminal offence, and other circumstances related to the personality of the offender (art. 54). The court may pronounce to the offender a penalty which is under statutory limits or a mitigated penalty when mitigation of a penalty is provided by the law, when the law provides for remittance from punishment of the offender and the court decides otherwise, or when the court finds that particularly mitigating circumstances exist and determines that the purpose of punishment may be achieved by a mitigated penalty (art. 56). The Code prescribes limits of mitigation of a penalty (art. 57).

44. The criminal offence “Crime against humanity” does not have limitations both in terms of criminal prosecution and in terms of execution of a criminal sanction (art. 108). The same applies to the right to compensation to a responsible person.<sup>26</sup>

#### **Article 6 - Criminal responsibility**

45. Principles of criminal responsibility are prescribed by general provisions of the Criminal Code according to which an offender is a perpetrator, accomplice, inciter and abettor (art. 112, para. 11). The group of criminal offences against jurisdiction stipulates the criminal offence “Failure to report preparation of a criminal offence” (art. 331), as well as the criminal offence “Failure to report on a criminal offence or offender” (art. 332), for which, as qualified forms of this criminal offence, the Code prescribes that an official or authorized person who knowingly fails to report a criminal offence he became aware of in discharge of his duty, if such an offence is punishable under the law by imprisonment of

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<sup>26</sup> Article 377 of the Law on Contracts and Torts, *Official Gazette of the SFRY*, Nos. 29/78, 39/85, 45/89 – amended by the decision of the Constitutional Court of Yugoslavia and 57/89, *Official Journal of the FRY*, No. 31/93 and *Official Journal of Serbia and Montenegro*, No. 1/2003 – amended by the Constitutional Charter.

five years and more, shall be punished with imprisonment of six months to five years (art. 332, para. 2), as well as that an official or responsible person who knowingly fails to report a criminal offence of his subordinate who committed the offence in discharge of his official, military or work duty, if such an offence is punishable by imprisonment of 30 to 40 years, shall be punished with imprisonment of one to eight years (art. 332, para. 3).

46. Criminal responsibility, including the responsibility of superiors, for enforced disappearance, in terms of the criminal offences “Crime against humanity” and “War crimes against civilian population”, shall envisage both responsibility of a direct perpetrator as well as of the order-issuing party that is here equated with the perpetrator (and not inciter) of a criminal offence. The stated applies equally to military and other State authorities. In addition, the Criminal Code also stipulated special criminal offences “Organizing and inciting to genocide and war crimes” incriminating conspiracy for committing, inter alia, the criminal offences “Crime against humanity” and “War crimes against civilian population”, organization of groups to commit those criminal offences, membership in such a group, as well as calling for and inciting to commission of such offences (art. 375), and the criminal offence “Failure to prevent crimes against humanity and other values protected under the international law” envisaging, so-called command responsibility or responsibility of a military commander or a person who in practice is discharging such a function, or other superior, for forces under his command, who failed to undertake necessary measures and prevent commission of such criminal offences (art. 384). An attempt of a criminal offence and co-perpetration shall be punishable according to general criminal provisions (arts. 30 and 33).

## **Article 7 - Penalties**

47. The criminal offence “Unlawful depriving of liberty” is by the Criminal Code punishable with imprisonment of up to three years (art. 132, para. 1). If this offence is committed by an official through abuse of a position or authorization, such a person shall be punished with imprisonment of six months to five years (art. 132, para. 2). If unlawful depriving of liberty exceeded 30 days or was committed in a cruel manner, or if such an act resulted in serious impairment of health of the person unlawfully deprived of liberty, or if other serious consequences resulted, the offender shall be punished with imprisonment of one to eight years (art. 132, para. 3). If the offences referred to in paragraphs 1 and 3 result in death of the person unlawfully deprived of liberty, the offender will be punished with imprisonment of two to 12 years (art. 132, para. 4). The offender will be punished for an attempt of committing an offence (art. 132, para. 5).

48. The criminal offence “Abduction” shall be punishable with imprisonment of two to 10 years (art. 134, para. 1). Whoever threatens the abducted person for the purposes of accomplishing the aim of abduction with a murder or grievous bodily harm, shall be punished with imprisonment of three to 12 years (art. 134, para. 2). If the abducted person is held more than 10 days, or treated in a cruel manner, or his health is seriously impaired, or other serious consequences resulted, or whoever commits the offence against a juvenile, the offender shall be punished with imprisonment of three to 15 years (art. 134, para. 3). If abduction resulted in death of the abducted person, or the offence is committed by a group, the offender shall be punished with imprisonment of five to 18 years (art. 134, para. 4). If the offence was committed by an organized crime group, the offender will be punished with imprisonment of minimum five years.

49. The criminal offence “War crimes against civilian population” (art. 142 of the Criminal Law of the FRY; art. 372 of the Criminal Code) shall be punished with imprisonment of minimum five years and maximum 20 years, and the criminal offence



“Crimes against humanity” (art. 371 of the Criminal Code) shall be punished with imprisonment of minimum five to 20 years, or imprisonment of 30 to 40 years.

50. The rules on deciding on a penalty and application of mitigating and aggravating circumstances are explained in detail in a response related to article 5 (see paragraph 43).

## Article 8 - Limitations

51. Limitations on criminal prosecution are stipulated in provisions of articles 103 and 104 of the Criminal Code, whereas limitations on enforcement of a penalty are stipulated in provisions of article 105 of the Code. The criminal offence “Unlawful deprivation of liberty” is a permanent criminal offence that exists as long as the passive subject is deprived of liberty, and in this respect, limitations shall start to run from the moment when the unlawful situation has ceased to exist. Since the criminal offence “Abduction” implies unlawful deprivation of liberty, the abduction is also a permanent criminal offence and limitations on criminal prosecution shall, in terms of this criminal offence, start to run from the moment the unlawful situation has ceased to exist.

52. In relation to the criminal offence “Unlawful deprivation of liberty”, criminal prosecution cannot be executed after the expiry of the period of three years after commission of the offence referred to in paragraph 1, five years after commission of the offence referred to in paragraph 2, 10 years after commission of the offence referred to in paragraph 3, and 15 years after commission of the offence referred to in paragraph 4. In relation to the criminal offence “Abduction”, criminal prosecution cannot be executed after the expiry of the period of 10 years after commission of the offence referred to in paragraph 1, 15 years after commission of the offence referred to in paragraph 2 and paragraph 3, and 20 years after commission of the offence referred to in paragraphs 4 and 5.

53. Limitations shall be interrupted with every procedural action taken to detect a criminal offence or identify or prosecute an offender for a committed criminal offence, and with each interruption, limitations shall start to run again, and they shall come into effect (so-called absolute limitations) after expiry of double time required by the law for limitations on criminal prosecution.

54. Criminal prosecution for the criminal offence “War crimes against civilian population” and “Crimes against humanity” shall not be limited.

55. Limitations on enforcement of the penalty of imprisonment shall depend on the duration of the pronounced penalty, and not on the duration of legally imposed penalty, shall start to run on the day the judgement pronouncing the penalty becomes final, and shall come into effect after specific time determined by the law (arts. 105 and 107 of the Criminal Code). Also, regardless whether this concerns the criminal offence “Unlawful deprivation of liberty” or “Abduction”, limitations on the execution of the pronounced penalty shall come into effect after expiry of:

- (a) Two years from the conviction to the term of imprisonment up to one year;
- (b) Three years from the conviction to the term of imprisonment over one year;
- (c) Five years from the conviction to the term of imprisonment over three years;
- (d) Ten years from the conviction to the term of imprisonment over five years;
- (e) Fifteen years from the conviction to the term of imprisonment over 10 years;
- (f) Twenty years from the conviction to the term of imprisonment over 15 years.

56. Limitation on execution of a penalty shall be terminated with any action of a competent authority taken for the purposes of executing a penalty, and with every

interruption, limitations shall start to run again, and they shall come into effect in any case (absolute limitation) after expiry of double the time period required by the law for limitations on the execution of a penalty.

57. Execution of a penalty against the criminal offences “War crimes against civilian population” and “War crimes against humanity” shall not be limited.

58. According to the Law on Contracts and Torts, a claim for damages towards a person responsible shall be limited after expiry of the time period determined for limitations on criminal prosecution, and termination of limitations on criminal prosecution shall also imply termination of limitations on a claim for damages (art. 377).

## Article 9 - Jurisdiction

59. The Criminal Code regulates applicability of the criminal legislation in the territory of the Republic of Serbia, applicability of the criminal legislation to a citizen of the Republic of Serbia who commits a criminal offence abroad, as well as applicability of the criminal legislation of the Republic of Serbia to a foreign citizen who commits a criminal offence abroad (art. 6,<sup>27</sup> art. 8<sup>28</sup> and art. 9<sup>29</sup>). The Code prescribes special conditions for criminal prosecution in respect of a criminal offence committed abroad (art. 10<sup>30</sup>).

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<sup>27</sup> (1) Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence in its territory.

(2) Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on a domestic vessel, regardless of where the vessel is at the time of committing of the criminal offence.

(3) Criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence in a domestic aircraft while in flight or domestic military aircraft, regardless of where the aircraft is at the time of committing of the criminal offence.

(4) If criminal proceedings have been instituted or concluded in a foreign country in respect of the cases specified in paragraphs 1 through 3 of this article, criminal prosecution in Serbia shall be undertaken only with the permission of the Republic Public Prosecutor.

(5) Criminal prosecution of foreign citizens in the cases specified in paragraphs 1 through 3 of this article may be transferred to a foreign State, under the terms of reciprocity.

<sup>28</sup> (1) Criminal legislation of Serbia shall also apply to a citizen of Serbia who commits a criminal offence abroad other than those specified in article 7 hereof, if found on the territory of Serbia or if extradited to Serbia.

(2) Under the conditions specified in paragraph 1 of this article, criminal legislation of Serbia shall also apply to an offender who became a citizen of Serbia after the commission of the offence.

<sup>29</sup> (1) Criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence against Serbia or its citizen outside the territory of Serbia other than those defined in article 7 hereof, if they are found on the territory of Serbia or if extradited to Serbia.

(2) Criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence abroad against a foreign State or foreign citizen, when such an offence is punishable by five years' imprisonment or a heavier penalty, pursuant to laws of the country of commission, if such a person is found in the territory of Serbia and is not extradited to the foreign State. Unless otherwise provided by this Code, the court may not impose in such cases a penalty heavier than set out by the law of the country where the criminal offence was committed.

<sup>30</sup> (1) In the cases referred to in articles 8 and 9 hereof, criminal prosecution shall not be undertaken if:

- (a) The offender has fully served the sentence to which he was convicted abroad;
- (b) The offender was acquitted abroad by final judgment or the statute of limitation has set in respect of the punishment, or was pardoned;
- (c) To an offender of unsound mind a relevant security measure was enforced abroad;
- (d) For a criminal offence under foreign law criminal prosecution requires a motion of the victim, and such motion was not filed.

60. The Law on International Legal Assistance in Criminal Matters<sup>31</sup> does not make affording of international legal assistance conditional on the existence of a treaty, and in such cases the principle of factual reciprocity, i.e. domestic legislation applies. The International Convention for the Protection of All Persons from Enforced Disappearance is an integral part of the Republic of Serbia's law system and in cases in which no corresponding treaty with another State exists, it is regarded a legal basis for affording international legal assistance in respect of subject matters it regulates, if certain other State makes legal assistance conditional on the existence of a treaty.

61. A form of the realization of criminal legislation of the Republic of Serbia includes special agreements which the Office of the War Crimes Prosecutor has signed with prosecutor's offices of other countries. In practice such agreements often serve as the basis for resolving, in addition to other matters, the matter of establishing the identity of missing persons, possible prosecution of offenders in cases with the elements of enforced disappearance, and detection of grave locations with the remains of those persons. Such agreements have been signed with Montenegro and Croatia.

62. The Republic of Serbia shall not allow extradition of accused or convicted persons when there is a doubt that a request was made in order to prosecute or punish a person because of their sex, race, faith, nationality, ethnicity, political stand or affiliation with a certain social group, or if fulfilment of such request would harm such a person because of any of the stated reasons. This is a binding obligation for Serbia under the national legislation, signed bilateral treaties and relevant multilateral convention joined by Serbia.

63. National legislation is subordinate to concluded international treaties also in respect of all stated forms of international legal assistance, i.e. provisions of the Law on International Legal Assistance in Criminal Matters apply only in cases when no ratified international treaty exists or when they do not regulate a certain matter.

## **Article 10 - Treatment of suspects**

64. The Constitution of the Republic of Serbia prescribes that depriving of liberty shall be allowed only on the grounds and in a procedure stipulated by the law. Any person deprived of liberty by a State body shall be informed promptly about the grounds for arrest or detention; charges brought against them, and their rights, and shall have the right to inform any person of their choice about their arrest or detention without delay. Any person deprived of liberty shall have the right to initiate proceedings where the court shall urgently review the lawfulness of arrest or detention and order the release if the arrest or detention was against the law. Any sentence which includes deprivation of liberty may be proclaimed solely by the court (art. 27). Any person under reasonable doubt of committing a crime may be remanded to detention only upon the decision of the court, should detention be necessary to conduct criminal proceedings. If the detainee has not been questioned when making a decision on detention or if the decision on holding in detention has not been carried out

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(2) In the cases referred to in articles 8 and 9 hereof criminal prosecution shall be undertaken only when criminal offences are also punishable by the law of the country where committed, save subject to permission of the Republic Public Prosecutor or when thus envisaged by a ratified international treaty.

(3) In the case referred to in article 9, paragraph 2, hereof, if the act at time of commission was considered a criminal offence under general legal principles of the international law, prosecution may be undertaken in Serbia following the permission of the Republic Public Prosecutor, regardless of the law of the country where the offence was committed.

<sup>31</sup> *Official Gazette of the RS*, No. 20/2009.

immediately after the pronouncement, the detainee must be brought before the competent court within 48 hours from the time of sending to detention which shall reconsider the decision on detention. A written decision of the court with explanation for reasons of detention shall be delivered to the detainee not later than 12 hours after pronouncing, and a decision on the appeal to detention shall be taken by the court and delivered to the detainee within 48 hours (art. 30). The court shall reduce the duration of detention to the shortest period possible, keeping in mind the grounds for detention. Sentencing to detention under a decision of the court of first instance shall not exceed three months during investigation, whereas the Higher Court may extend it for another three months, in accordance with the law. If the indictment is not raised by the expiration of the said period, the detainee shall be released. The court shall reduce the duration of detention after the bringing of charges to the shortest possible period, in accordance with the law. Detainee shall be allowed pretrial release as soon as grounds for remanding to detention cease to exist (art. 31).

65. Persons deprived of liberty must be treated humanely and with respect to dignity of their person. Any violence towards persons deprived of liberty and extorting a statement shall be prohibited (art. 28).

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

67. If there are grounds for suspicion that a criminal offence has been committed, the Criminal Procedure Code prescribes that the police is required to implement necessary measures to locate the perpetrator of the criminal offence, for the perpetrator or accomplice not to go into hiding or abscond, to detect and secure traces of the criminal offence and objects which may serve as evidence, as well as to collect all information which could be of benefit for the successful conduct of criminal proceedings (art. 225).<sup>32</sup>

68. The Criminal Procedure Code prescribes measure for ensuring defendant's presence and unobstructed conduct of criminal proceedings: summoning, bringing in, prohibition of approaching, meeting or communicating with a certain person, prohibition on leaving a dwelling or a place of temporary residence, bail and detention (arts. 133-147).<sup>33</sup>

69. Detention may be ordered against a person for whom there exists grounded suspicion that he has committed a criminal offence if he is in hiding or his identity cannot be established or if there exist other circumstances indicating a flight risk; if there exist circumstances indicating that he will destroy, conceal, alter or falsify evidence or traces of a criminal offence or if particular circumstances indicate that he will obstruct the proceedings by exerting influence on witnesses, accomplices or concealers; if particular circumstances indicate that he will repeat the criminal offence, or complete an attempted criminal offence, or commit a criminal offence he is threatening to commit; if in the capacity of defendant who has been once duly summoned he is clearly avoiding appearing at the trial; if the criminal offence with which he is charged is punishable by a term of imprisonment of more than 10 years, or a term of imprisonment of more than five years for a criminal offence with elements of violence, and if this is justifiable in view of particularly grave circumstances of the criminal offence; if he has been sentenced by a court of first instance to a term of

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<sup>32</sup> *Official Journal of the FRY*, Nos. 70/2001 and 68/2002, and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010.

<sup>33</sup> *Ibid.*

imprisonment of five years or more, and if this is justifiable in view of particularly grave circumstances of the criminal offence (art. 142).<sup>34</sup>

70. The Criminal Procedure Code regulates in detail treatment of detainees (arts. 148–153).<sup>35</sup>

71. Access to consular assistance for a person questioned because of a suspicion that he has committed a criminal offence of forced disappearance is exercised in accordance with the Vienna Convention on Consular Relations.<sup>36</sup>

72. All bilateral agreements, i.e. consular conventions, which the Republic of Serbia concludes with other countries, in the part related to consular access, are in accordance with the Vienna Convention on Consular Relations.

73. According to the Criminal Procedure Code, a diplomatic-consular representative of foreign countries signatories of appropriate international conventions, are entitled – with the knowledge of investigating judge – to visit the detainees who are nationals of their State and conduct unsupervised conversations with them. The investigating judge will inform the warden of the custodial institution where the defendant is detained about the visit of a diplomatic-consular representative (art. 150).<sup>37</sup>

74. As regards duration of detention of a person to be extradited, according to the Law on International Legal Assistance in Criminal Matters, such detention may last till the enforcement of a decision on extradition, but not longer than one year from the beginning of the detention (art. 22).

### **Article 11 - Competence of State authorities in criminal proceedings and the right to a fair trial of a person against whom criminal proceedings are initiated**

75. According to the Constitution, courts shall be autonomous and independent in their work and shall adjudicate based on the Constitution, law and other general acts, when this is stipulated by the law, generally accepted rules of the international law and ratified international treaties (art. 142, para. 2). Court decisions shall be based on the Constitution and law, ratified international treaty and regulation passed on the grounds of the law (art. 145, para. 2).

76. Everyone shall have the right to a public hearing before an independent and impartial tribunal established by the law within reasonable time which shall pronounce judgement on their rights and obligations, grounds for suspicion resulting in initiated procedure and charges brought against them. Everyone shall be guaranteed the right to free assistance of an interpreter if the person does not speak or understand the language officially used in the court and the right to free assistance of an interpreter if the person is blind, deaf, or dumb (art. 32, paras. 1–2). The right to fair trial is guaranteed under the provisions of the Constitution (arts. 27 through 36), the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (art. 6)<sup>38</sup> and numerous arrangements stipulated in the Criminal Procedure Code<sup>39</sup> which

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> *Official Journal of the SFRY – International treaties and other agreements*, No. 5/66.

<sup>37</sup> *Official Journal of the FRY*, Nos. 70/2001 and 68/2002, and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010.

<sup>38</sup> *Official Journal of Serbia and Montenegro – International treaties*, Nos. 9/2003, 5/2005, 7/2005.

provide for defendant's efficient participation in criminal proceedings, adversarial structure of the proceedings, equality of arms in the trial, protection of human rights and efficient conduct of criminal proceedings, including the presumption of innocence<sup>40</sup> and the right to professional defence<sup>41</sup> (arts. 3, 4, 6, 8, 10, 11, 13, 14, 16, 18, 68, 69 and 217).

77. According to the provisions of the Criminal Procedure Code, the Public Prosecutor shall be authorized to manage pre-investigation proceedings; request undertaking of an investigation and guide preliminary criminal proceedings; file and represent an indictment or motion to indict before a competent court; file appeals against court decisions which are not final and submit extraordinary legal remedies against final court decisions; and conduct other actions specified by this Code (art. 46).<sup>42</sup> A public prosecutor may order the police to undertake certain actions aimed at detecting criminal offences and locating suspects. If there are grounds for suspicion that a criminal offence prosecutable *ex officio* has been committed, the police shall be required to implement necessary measures to locate the perpetrator of the criminal offence, for the perpetrator or accomplice not to go into hiding or abscond, to detect and secure traces of the criminal offence and objects which may serve as evidence, as well as to collect all the information which could be of benefit for the successful conduct of criminal proceedings (art. 225).<sup>43</sup>

78. According to the provisions of the new Criminal Procedure Code, the Public Prosecutor shall also be authorized to decide not to undertake or to defer criminal prosecution, to conduct investigations and conclude plea agreements and agreements on giving testimony (art. 43).<sup>44</sup>

79. According to the criminal legislation of the Republic of Serbia, military authorities have no jurisdiction to conduct investigation and criminal prosecution against persons charged with a criminal offence in connection with enforced disappearance.

80. The Law on the Serbian Armed Forces<sup>45</sup> defines the powers of the military police which performs police activities in the Ministry of Defence and the Serbian Armed Forces. As a police authority in the Ministry of Defence and the Serbian Armed Forces, authorized officials of the military police primarily undertake *ex officio* actions against an employee of the Ministry of Defence and the Serbian Armed Forces for whom there is a grounded suspicion that he has committed a criminal offence to the detriment of the Ministry of Defence and the Serbian Armed Forces, as well as to the detriment of civilians (art. 53).

<sup>39</sup> *Official Gazette of the RS*, Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013.

<sup>40</sup> "Everyone is considered innocent until proven guilty by a final decision of the court. Public authorities, the information media, citizens' associations, public and other figures are required to adhere to the rules referred to in paragraph 1 of this article, as well as to abstain from violating other rules of proceedings, the rights of the defendant and the injured party, and the independence, authority and objectiveness of the court by their public statements about pending criminal proceedings."

<sup>41</sup> "The defendant is entitled to defend himself on his own or with the professional assistance of a defence counsel, in accordance with the provisions of this Code."

<sup>42</sup> *Official Journal of the FRY*, Nos. 70/2001 and 68/2002, and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Official Gazette of the RS*, Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013.

<sup>45</sup> *Ibid.*, Nos. 116/2007, 88/2009 and 101/2010.

## Article 12 - Obligation of undertaking investigation and further proceedings in a case of enforced disappearance

81. The Criminal Procedure Code prescribes that everyone should report a criminal offence which is prosecutable *ex officio* (art. 223).<sup>46</sup> A criminal complaint shall be submitted to the competent public prosecutor, in writing or orally. If a criminal complaint is submitted orally, a transcript will be made thereof and the submitter will be cautioned about the consequences of false reporting. If the criminal complaint is communicated by telephone an official note will be made. If a criminal complaint was submitted to the court, police, or an incompetent public prosecutor, they will receive the complaint and deliver it to the competent public prosecutor immediately (art. 224).<sup>47</sup> If there are grounds for suspicion that a criminal offence prosecutable *ex officio* has been committed, the police shall be required to implement necessary measures to locate the perpetrator of the criminal offence, for the perpetrator or accomplice not to go into hiding or abscond, to detect and secure traces of the criminal offence and objects which may serve as evidence, as well as to collect all the information which could be of benefit for the successful conduct of criminal proceedings (arts. 225–227).<sup>48</sup> The public prosecutor shall be required to conduct criminal prosecution where there are grounds for suspicion that a certain person has committed a criminal offence prosecutable *ex officio* (art. 20).<sup>49</sup> The Code prescribes in which circumstances the public prosecutor shall reject a criminal complaint, and what action he shall undertake when unable to assess from the criminal complaint if its assertions are probable or if the data in the complaint do not provide sufficient grounds to decide whether to conduct an investigation, or if he finds out in some other way that a criminal offence has been committed, and particularly when the perpetrator is unknown, the public prosecutor may collect the necessary data himself or through other authorities (art. 235).<sup>50</sup>

82. Legal redress available to an injured party is stipulated in the provisions of the Criminal Procedure Code, which prescribes the rights of an injured party as a subsidiary prosecutor, in cases when the public prosecutor finds that there are no grounds to undertake prosecution in respect of a criminal offence prosecutable *ex officio*, in which case he shall be required to notify the injured party thereof within eight days and to advise him that he is entitled to assume prosecution himself; the court shall be required to act in the same way if it issues a ruling discontinuing the proceedings because the public prosecutor has dismissed the charges (art. 61, para. 1).<sup>51</sup> An injured party as a subsidiary prosecutor shall exercise the same rights as the public prosecutor, except those that the public prosecutor has in his capacity as a public authority (art. 64, para. 1).<sup>52</sup>

83. Protection of witnesses shall be warranted by the provisions which prescribe court's duty to protect an injured party or witness from an insult, threat and any other attack (art. 109).<sup>53</sup> The court will caution or fine a participant in proceedings or other person who, before the court, insults an injured party or a witness, threatens him or endangers his safety, and in case of violence or a serious threat will notify a public prosecutor in order that he

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<sup>46</sup> *Official Journal of the FRY*, Nos. 70/2001 and 68/2002, and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

may undertake criminal prosecution. Upon the motion by investigating judge or the president of the panel, president of the court or public prosecutor may request that the police undertake special measures to protect an injured party or a witness (art. 109).<sup>54</sup> If there exist circumstances which indicate that by giving public testimony a witness would expose himself or persons close to him to a danger to life, health, freedom or property of substantial size, and particularly in relation to the criminal offence of organized crime, corruption and other exceptionally severe criminal offences, the court may authorize one or more measures of special protection by issuing a ruling determining the status of a protected witness. The measures of special protection include questioning the protected witness under conditions and in a manner ensuring that his identity is not revealed, and measures for his physical protection during the proceedings (art. 109a).<sup>55</sup> The method of handling and storing the files, the data on the protected witness and the other is regulated by the Code (arts. 109a–109f).<sup>56</sup>

84. Protection of witnesses is possible also through the application of provisions under which the transcripts of the testimonies of witnesses may, if so decided by the panel, be read out also in cases when their appearance before the court is impossible or would be substantially hampered by their advanced age, illness or other important reasons (art. 337).<sup>57</sup>

85. The court shall be required to protect its reputation and the reputations of the parties and other participants in proceedings from insults, threats and every other attack (art. 173).<sup>58</sup> If it is necessary in order to protect the interests of juveniles, privacy of participants in proceedings, or when so necessary in view of special circumstances because of which public could harm the interests of justice, the authority which conducts an evidentiary action shall order persons he is questioning or examining or who are attending evidentiary actions or are examining the case file to maintain confidentiality of certain facts or data learned on the occasion, and warn them that disclosure of a secret represents a criminal offence under the law. Such order will be entered into transcript of the evidentiary action, or will be marked on the case-file documents which are being examined and accompanied by a signature of the person warned (art. 261).<sup>59</sup> From the commencement of the hearing until the conclusion of the trial, the panel may ex officio or upon a motion by a party or the defence counsel, but always after they had stated their positions, exclude the public from the entire trial or a part thereof, if it is necessary for the purpose of protecting the morality, the interests of juveniles or private lives of the participants in the proceedings or when the court regards it necessary in view of special circumstances because of which public could harm the interests of justice (art. 292).<sup>60</sup>

86. Special provisions governing protection of juveniles as injured parties in criminal proceedings are prescribed under the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles<sup>61</sup> (arts. 150-157).

87. Non-procedural protection of participants in criminal proceedings is prescribed under the Law on the Protection Programme for Participants in Criminal Proceedings.<sup>62</sup> This Law governs terms and procedures for providing protection and assistance to

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<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> *Official Gazette of the RS*, No. 85/2005.

<sup>62</sup> Ibid.



participants in criminal proceedings (a suspect, defendant, witness collaborator, witness, injured party, expert witness and expert person) and their close persons who are facing a danger to life, health, physical integrity, freedom or property due to testifying or providing information significant for the purpose of proving of a criminal offence.

88. Preventing and obstructing proving actions shall be a criminal offence also according to the Criminal Code (art. 336).<sup>63</sup> Under the criminal offence “Violation of confidentiality of proceeding”, the Code prescribes that whoever without authorization discloses information on the identity or personal data of a person protected in criminal proceedings or under a special protection programme, shall be punished by imprisonment from six months to five years, and if such act results in serious consequences for the protected person or the criminal proceedings are prevented or hindered to considerable extent, shall be punished by imprisonment from one to eight years (art. 337).

### **Article 13 - Extradition of a person**

89. Criminal offences regulated under the Convention are deemed, according to the legislation of the Republic of Serbia, extraditable criminal offences, i.e. criminal offences in connection with which international legal assistance shall be afforded. Namely, such offences are associated with extradition, i.e. other forms of international legal assistance in criminal matters, in accordance with the legislation of the Republic of Serbia, i.e. signed international treaties. Such criminal offences need not have the same statutory title and it is sufficient that their actions constitute a criminal offence under the law of both parties.

90. The criminal offence “Enforced disappearance” in terms of article 2 of the Convention shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives, so that, accordingly, a request for extradition based on such an offence may not be refused on these grounds alone. Although national legislation and international treaties on the extradition of defendants and convicted persons do not individually specify criminal offences subject to extradition, enforced disappearance in terms of article 2 of the Convention shall be regarded an extraditable criminal offence on the basis of national legislation and international treaties on extradition. The Republic of Serbia as a State which does not make extradition conditional on the existence of a treaty recognizes the criminal offence of enforced disappearance as a criminal offence in connection with which extradition of defendants and convicted persons shall be allowed. The Law on International Legal Assistance in Criminal Matters and signed international treaties stipulate conditions, i.e. presumptions for the

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<sup>63</sup> “(1) Whoever gives or promises a gift or other benefit to a witness or an expert witness or another party to the proceedings before a court or other government authority, or by force or threat of force against such person with intent to induce such a person to give false testimony and thereby affect the outcome of the proceedings, shall be punished with imprisonment of six months to five years and shall be punished with a fine.

(2) Whoever with intent to prevent or hinder proving, conceals, destroys, damages or makes partially or completely unusable another person’s document or other items serving as proof, shall be punished with a fine and by the imprisonment from three months to three years.

(3) The penalty specified in paragraph 2 of this article shall be also imposed on whoever removes, destroys, damages, moves or relocates a boundary stone, a soil survey sign or any other mark indicating ownership of real property or easement for use of water, or who with same intent falsely places such mark.

(4) If the offence specified in paragraph 2 is committed in criminal proceedings, the offender shall be punished with imprisonment from six months to five years and shall be punished with a fine.”

extradition, including the prescribed penalties (imprisonment of one year or more) as well as the imposed penalty (not less than four months) (art. 13).

#### **Article 14 - Mutual legal assistance**

91. So far the Republic of Serbia has not had examples and data regarding cooperation in mutual legal assistance related to the criminal offences connected to enforced disappearance.

92. The Law on International Legal Assistance in Criminal Matters and international treaties which the Republic of Serbia has signed or to which it has acceded allow the greatest measure of mutual assistance, besides in cases of extradition also in respect of other forms of international legal assistance in criminal matters. This relates, above all, to ceding and undertaking criminal prosecution against defendants, enforcement of foreign criminal judgements, as well as to general forms of international legal assistance including execution of procedural actions such as service of summons and documents, examination of defendants, examination of witnesses and experts, site inspection, search of premises and persons, temporary seizure of objects; application of measures such as surveillance and recording of telephone and other conversations, controlled deliveries, rendering simulated business services and conclusion of simulated legal affairs, engagement of an undercover agent, automatic computerized search and processing of data; exchange of information and service of documents and objects related with the criminal proceedings in the requesting State, submission of data without a letter rogatory, use of audio and videoconference links, creation of joint investigation teams; temporary surrender of persons deprived of liberty to be examined before the competent authorities of the requesting State (arts. 2 and 83).

#### **Article 15 - International cooperation in providing legal assistance in connection with enforced disappearance**

93. In November 2001, the Republic of Serbia adopted the Law on the Ratification of the European Convention on Mutual Assistance in Criminal Matters, with the Additional Protocol,<sup>64</sup> and in May 2006, the Law on the Ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.<sup>65</sup>

94. In cases when there is no ratified international treaty or when certain matters are not regulated by it, the procedure for affording international legal assistance in criminal matters shall be regulated by the Law on International Legal Assistance in Criminal Matters.

95. For the statutory regulation of cooperation and more efficient resolving of the issues of persons gone missing in armed conflicts in the territory of the former SFRY and conflict in the territory of the Autonomous Province of Kosovo and Metohija, the Republic of Serbia also signed several bilateral agreements and documents:

- The Agreement between the Federal Republic of Yugoslavia and the Republic of Croatia on Cooperation in the Search for Missing Persons<sup>66</sup> and the Protocol on Cooperation between the FRY Commission for Humanitarian Questions and Missing Persons and Republic of Croatia Commission for Imprisoned and Missing Persons.<sup>67</sup> These documents regulate in more detail the obligations and manner of joint work by

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<sup>64</sup> *Official Journal of the FRY – International Treaties*, No. 10/2001.

<sup>65</sup> *Official Journal of Serbia and Montenegro – International Treaties*, No. 2/2006.

<sup>66</sup> Signed in Dayton, United States of America, on 17 November 1995.

<sup>67</sup> Signed in Zagreb, on 17 April 1996.

competent authorities for tracing persons gone missing in the armed conflicts in the territory of the former SFRY in the period 1991–1995

- UNMIK–FRY Common Document,<sup>68</sup> the Protocol on Joint Verification Teams on Hidden Prisons; the Protocol on the Exchange of Forensic Experts and Expertise; the Protocol on Cross-Boundary Repatriation of Identified Human Remains;<sup>69</sup> the General Framework and the Rules of Procedure of the Working Group for persons unaccounted for in connection with events in Kosovo, within the Belgrade-Priština dialogue. These documents regulate in more detail cooperation with UNMIK in resolving the issues of missing persons in the territory of the Autonomous Province of Kosovo and Metohija
- The Agreement between the Federal Republic of Yugoslavia and ICRC<sup>70</sup>
- The Agreement on Cooperation in Search for Missing Persons between the International Commission on Missing Persons (ICMP) and FRY Commission for Humanitarian Questions and Missing Persons,<sup>71</sup> which regulates cooperation in the process of exhumation and identification of remains by DNA analysis
- The Protocol on Cooperation between the Commission on Missing Persons of the Government of the Republic of Serbia and the Commission on Missing Persons of the Government of Montenegro<sup>72</sup>
- The Protocol on Cooperation between the Government of the Republic of Serbia and the Council of Ministers of Bosnia and Herzegovina, still pending.<sup>73</sup>

### **Article 16 - Prohibition of expulsion, refoulement or surrender of a person to another State where such a person would be in danger of being subjected to enforced disappearance**

96. The Constitution of the Republic of Serbia prescribes that a foreign national may be expelled only to a State where there is no threat of his persecution based on his race, sex, religion, national origin, citizenship, association with a social group, political opinions, or when there is no threat of serious violation of rights guaranteed by this Constitution (art. 39).

97. The Law on Asylum<sup>74</sup> prescribes that no person shall be expelled or returned against his/her will to a territory where his/her life or freedom would be threatened on account of his/her race, sex, language, religion, nationality, association with a social group or political opinions (art. 6, para. 1).

98. The Law on Foreign Nationals<sup>75</sup> stipulates that a foreigner must not be expelled forcibly to a territory where he may be prosecuted for his race, sex, religious or national affiliation, citizenship, association with a social group or political opinions (art. 47, para. 1).

<sup>68</sup> Signed in Belgrade, in November 2001.

<sup>69</sup> Signed in Belgrade, on 11 February 2002.

<sup>70</sup> Signed in Belgrade, on 14 June 1994.

<sup>71</sup> Signed in Belgrade, on 5 April 2002.

<sup>72</sup> Signed in Belgrade, on 25 April 2012.

<sup>73</sup> Under its Conclusion 05 No. 018-1714/2012 of 9 March 2012, the Government of the Republic of Serbia endorsed text of the stated Protocol which was proceeded to the Council of Ministers of Bosnia and Herzegovina on 2 April 2012.

<sup>74</sup> *Official Gazette of the RS*, No. 109/2007.

<sup>75</sup> *Ibid.*, No. 97/2008.

99. Stated statutory provisions shall not apply to a person with respect to whom there are reasonable grounds to believe that he/she constitutes a threat to national security, or who has been convicted of a serious crime by a final court judgement, for which reason he/she constitutes a danger to the public order, subject to a material limitation that no person shall be expelled or returned against his/her will to a territory where there is a risk of his/her being subjected to torture, inhumane or degrading treatment or punishment.<sup>76</sup>

100. Extradition of a defendant or a convicted person constitutes a form of international legal assistance and it is prescribed in detail by the Law on International Legal Assistance in Criminal Matters (arts. 13–40). The relevant proceedings are undertaken before the investigating judge and review panel of the court in the territory of which the person whose surrender is requested temporarily resides or happens to be and the minister in charge of justice. If the preconditions for the extradition are fulfilled, the court shall issue a ruling on the fulfilment of preconditions for the extradition and proceed it to the minister in charge of justice who shall issue a decision under which extradition shall be allowed or denied; if preconditions for the extradition are not fulfilled, the court shall issue a ruling by which extradition shall be denied (arts. 18 and 31).

101. The security measure of expulsion of a foreigner from the country is regulated by the Criminal Code and it is ordered by the court against a foreigner who has committed a criminal offence. In deliberating to order this measure, the court shall take into consideration the nature and gravity of a committed offence, motives for committing of the offence, manner of commission and other circumstances for declaring the foreigner a *persona non grata* in Serbia. This measure may not be ordered against an offender enjoying protection pursuant to the ratified international treaties (art. 88).

102. Injunctive relief of the removal of a foreigner from the country is regulated by the Misdemeanour Law<sup>77</sup> and may be ordered against a foreigner who has committed an offence which makes him a *persona non grata* in the country. Special law may prescribe conditions under which the enforcement of injunctive relief referred to in paragraph 1 of this article (57) may be deferred for a certain time. Injunctive relief of removal is ordered by the court (art. 47).

103. The legislation and practice of the Republic of Serbia authorities regarding terrorism, national security and “emergencies”, in the case of terminating stay of foreign nationals in the Republic of Serbia or ordering injunctive relief of the removal or security measure of expulsion, i.e. prohibition of the entry into the country or extradition, have no effect on the enforcement of the extradition ban in the relevant case.

104. The Law on the Bases Regulating Security Services of the Republic of Serbia<sup>78</sup> provides for the establishment of the National Security Council which, inter alia, takes care of agreed application of regulations for the protection of human rights potentially affected by information exchange or by other operational actions (art. 5). The Council also considers assessments by competent security services and bodies, determines whether there are special reasons important for the national security, which would constitute a hindrance for extradition of a person to other States and submits corresponding opinion to the Ministry of Justice and Public Administration which issues a decision on possible extradition of that person to another State. It is noted that the Security-Information Agency does not make meritorious decisions in the stated procedures considering that such decisions are in the competence of other State bodies.

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<sup>76</sup> Law on Asylum, art. 6, paras. 2–3; Law on Foreigners, art. 47, paras. 2–3.

<sup>77</sup> *Official Gazette of the RS*, Nos. 101/2005, 116/2008, 111/2009.

<sup>78</sup> *Ibid.*, Nos. 116/2007 and 72/2012.

## Article 17 - Prohibition of a secret or unofficial detention

105. The Constitution of the Republic of Serbia guarantees every person's right to freedom and security (see paragraph 9).

106. The Criminal Procedure Code prescribes, inter alia, that a person deprived of liberty without a court decision shall be promptly informed that he is not obliged to say anything, and that everything he says may be used as evidence against him in proceedings, that he is entitled to be questioned only in the presence of a defence counsel he chooses or a defence counsel whose fees shall be paid from the State budget, if he is unable to pay for it. In addition to the rights enjoyed by a defendant and a suspect, such a person shall also enjoy additional rights: to demand that a family member or other person close to him be notified without delay about the time, place and any changes regarding his deprivation of liberty, as well as a diplomatic and consular representative of the State of which he is a national, or a representative of an international organization, in case of a refugee or a stateless person, the right to have unobstructed conversation with his defence counsel, a diplomatic and consular representative, a representative of an international organization and the Ombudsman, the right to demand to be examined without delay by a physician of his own choosing, and if that physician is not accessible, by a physician designated by the arrest authorities, i.e. investigating judge, the right to initiate proceedings before the court, or appeal to the court which shall promptly decide whether the deprivation of liberty was lawful; that any violence against a person deprived of liberty and a person whose liberty is restricted is prohibited and punishable, and that such a person shall be treated humanely, respecting the dignity of his person (art. 5).<sup>79</sup>

107. The Criminal Procedure Code regulates the procedure and conditions for ordering detention (arts. 141–153).<sup>80</sup> Detention may be ordered only by the court, under the conditions specified in this Code and only if the detention is necessary in order to conduct a criminal procedure and the same purpose cannot be achieved by another measure; the duration of detention shall be kept as short as possible and it is the duty to act especially expeditiously if the defendant is in detention (art. 141).<sup>81</sup> Detention shall be ordered by a court decision (art. 143).<sup>82</sup>

108. Authorized officials of the police may deprive a person of liberty when a reason envisaged by article 142 of the Code<sup>83</sup> exists, and shall without delay bring such a person

<sup>79</sup> *Official Journal of the FRY*, Nos. 70/2001 and 68/2002, and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> Detention may be ordered against a person for whom there exists grounded suspicion that he has committed a criminal offence if:

- (1) He is in hiding or his identity cannot be established or if there exist other circumstances indicating a flight risk;
- (2) There are circumstances indicating that he will destroy, conceal, alter or falsify evidence or traces of a criminal offence or if particular circumstances indicate that he will obstruct the proceedings by exerting influence on witnesses, accomplices or concealers;
- (3) Particular circumstances indicate that in a short period of time he will repeat the criminal offence, or complete an attempted criminal offence, or commit a criminal offence he is threatening to commit;
- (4) In the capacity of defendant once duly summoned he is clearly avoiding appearing at the trial;
- (5) The criminal offence with which he is charged is punishable by a term of imprisonment of more than 10 years or a term of imprisonment of more than five years for a criminal offence with elements of violence, or if and if this is justifiable in view of particularly grave circumstances of the criminal

before the investigating judge (art. 227).<sup>84</sup> By exception, the police may keep a person deprived of liberty or a suspect in order to collect information or for questioning not longer than 48 hours from the moment he was deprived of liberty, or responded to a summons, in which case a decision on detention must be issued and delivered to the detainee immediately, and at latest within two hours, which shall be appealable but an appeal shall not stay execution of the decision. The appeal shall be immediately delivered to investigating judge who shall decide on it within the period of four hours from receiving the appeal. The police shall immediately inform investigating judge on the detention, and the investigating judge may request that the police bring the detainee immediately before him. A suspect must have a defence council as soon as the police issue a decision on detention (art. 229).<sup>85</sup>

109. A detainee may be visited by close relatives, and upon his request – by a physician and other persons. Visits to detainees shall be approved by investigating judge or a president of the court. Certain visits may be prohibited if it is likely that they could lead to an obstruction of investigation, and decisions to this effect shall be appealable (art. 150).<sup>86</sup>

110. The right of prisoners to visits and maintaining contacts with the outer world is regulated by the Law on the Enforcement of Criminal Sanctions. Every prisoner shall be entitled to receive visits of the spouse, children, adopted children, parents, adopted parents and other lineal relatives or lateral relatives to fourth degree of consanguinity, and by other person subject to approval by the prison governor (art. 78). A prisoner shall be entitled to be visited by his attorney or an authorized person representing him, or whom he called to give a power of attorney for representation (art. 79). Foreign prisoners shall be entitled to visits by a diplomatic or consular representative of their country (art. 80).

111. Independent mechanisms for the inspection of prisons and other detention facilities shall be international and domestic organizations for the protection of human rights, the Ombudsman, the national preventive mechanism formed on the basis of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>87</sup> and the Commission for the Control of the Enforcement of Criminal Sanctions of the National Assembly.

112. Additionally, the Law on the Enforcement of Criminal Sanctions prescribes that implementing of the measure of detention shall be supervised by the president of the district court on whose territory is the seat of the penal institution (art. 245). There is also internal supervision performed by an organizational unit of the Directorate for the Enforcement of Criminal Sanctions (arts. 270-275).

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offence; if he has been sentenced by a court of first instance to a term of imprisonment of five years or more, and if this is justifiable in view of particularly grave circumstances of the criminal offence;  
 (6) He has been sentenced by a court of first instance to a term of imprisonment of five years or more, if this is justifiable in view of particularly grave circumstances of the criminal offence.  
 In the case referred to in paragraph 1, item (1), of this article, detention ordered solely because the identity of the person cannot be established lasts only until that identity is established. In the case referred to in paragraph 1, item (2), of this article, detention will be revoked as soon as the evidence because of which detention was ordered is secured. Detention ordered based on paragraph 1, item (4), of this article may last until the publication of the judgement.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> *Official Journal of Serbia and Montenegro – International Treaties*, Nos. 16/2005 and 2/2006 and *Official Gazette of the RS – International Treaties*, No. 7/2011.

113. All decisions ordering or extending detention are appealable. Detentions are also ex officio re-examined every 30 days within the preliminary investigation, and every two months, after the indictment comes into force (arts. 143, 144, 146).

114. In 2006, the Ministry of the Interior of the Republic of Serbia adopted the Rule Book on Police Powers<sup>88</sup> which prescribes that police officers shall make an official record on the detention of a person which shall present: (a) personal data of the detained person; (b) time of the beginning and end of detention; (c) reasons for his bringing in and detention; (d) information provided to the detainee about the reasons for his bringing in and detention and advising him of his rights; (e) exercised rights by detainee and notifications to competent institutions (time, manner, name); (f) bringing of the detainee before the competent authority; (g) visible bodily injuries or other observable signs, because of which a detainee may need medical aid; (h) if the detainee was provided medical or first aid (who, when and why); (i) dangerous objects seized because of detainee's safety; (j) termination of detention. The official record shall be signed by the police officer who detained the person and the detained person (art. 30). Stated rules prescribe that the police officer who conducts detention shall be accountable for the safety of the detained person from the moment of his bringing into the detention to the moment of his release (art. 34).

115. Based on article 10, paragraph 2, of the Law on Police<sup>89</sup>, on 10 December 2012, the Minister of Interior issued Instructions on the Treatment of Brought In and Detained Persons, aimed at enhancing lawfulness of the treatment and exercise of the rights by brought in and detained persons. According to the Instructions, authorized persons of the Ministry of Interior are obliged to deliver to every detained person during detention a special form advising them of their rights, which they shall sign. The General Police Directorate shall undertake preventive measures in accordance with the stated Instructions.

116. The Directorate for the Enforcement of Criminal Sanctions shall maintain updated records on detained persons in accordance with article 17, paragraph 3, of the Convention.

### **Article 18 - Right to information about the person deprived of liberty**

117. The Criminal Procedure Code prescribes that police authorities, i.e. court, shall be obliged to immediately inform the family of the person deprived of liberty or other person with whom he lives in a domestic partnership or any other permanent community, about the deprivation of liberty, unless the person deprived of liberty explicitly objects to it; when a lawyer is deprived of liberty to immediately inform competent bar association, and if it is necessary to undertake measures for securing children and other family members that the person deprived of liberty is taking care of, to inform the authorized social services (art. 147).<sup>90</sup>

118. The information in terms of article 18 of the Convention shall be accessible to defence council and relatives of the convicted person. There are no restrictions on access to information, save in case of information on the state of health, since this matter is regulated by the Law on Health Care,<sup>91</sup> which envisages confidentiality of the information on the state of health of a citizen (art. 37). Accordingly, under the House Rules in penal

<sup>88</sup> *Official Gazette of the RS*, No. 54/2006.

<sup>89</sup> *Ibid.*, Nos. 101/2005, 63/2009 – amended by the decision of the Constitutional Court and 92/2011.

<sup>90</sup> *Official Journal of the FRY*, Nos. 70/2001 and 68/2002, and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010.

<sup>91</sup> *Official Gazette of the RS*, Nos. 107/2005, 72/2009, 88/2010, 99/2010 and 57/2011.

correctional facilities and district prisons<sup>92</sup> a convicted person shall be entitled to be informed about his state of health and the contents of his medical record, and a member of his family or another person designated by him may obtain information in accordance with the regulations on health care (art. 30). According to the Law on the Enforcement of Criminal Sanctions, in case of the death of a detained or convicted person, the police and investigating judge shall be immediately informed, and then his spouse, children and adopted children, and in their absence – his parents, adopted parents, brother, sister and distant relatives (arts. 125 and 247).

119. Stated information shall be accessible to every person with a legitimate interest, in accordance with the provisions of the Law on Free Access to Information of Public Importance,<sup>93</sup> which regulates the rights to access information of public importance held by public authority bodies, for the purpose of fulfilling and protecting the public interest to know and attain a free democratic order and an open society (art. 1).

### **Article 19 - Keeping and protection of personal information about enforcedly disappeared persons**

120. The Law on Health Care prescribes the arrangements which, inter alia, relate to handling data from the medical records including data on human substances based on which the identity of a relevant person can be established. Data from medical records fall into the category of personal data about the patient and constitute an official secret which must be kept by all medical personnel and medical associates, as well as other persons working in health institutions, private practice, or health insurance organization where the patient is insured, and to whom such data are accessible and needed in order to perform their statutory defined competences. As an official secret shall be regarded data about the human substances based on which the identity of the relevant person can be established. Competent persons may be released of the duty to keep the official secret based on a written or other clearly and unambiguously expressed consent of the patient or based on a court decision. Data from the patient's medical documentation or health records may be presented for examination, in the form of a record, or excerpt from medical documentation, only upon the request by judicial authorities, trust authorities, health insurance organization, authorities competent for statistics when so prescribed by law, other statutory authorized health institutions, as well as upon the request by other authorities and organizations when so prescribed by the law. Persons who without authorization or consent of the patient or a full-age member of patient's family dispose with the data from medical documentation and without authorization disclose such data in public, shall be liable for the disclosure of official secret in accordance with the law (art. 37).

121. National Criminal-Technical Centre (NCTC) within the Police Department of the General Police Directorate has not so far worked on any case with the use of medical or genetic data which are collected and/or transmitted within the framework of the search for a disappeared person.

122. The Republic of Serbia does not have a Law on DNA register which would consolidate all records on genetic origin or DNA. The Law is currently in preparatory drafting stage and is planned to consolidate the records and procedure for the identification of missing children in terms of article 25 of the Convention.

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<sup>92</sup> Ibid., Nos. 72/2010 and 6/2012.

<sup>93</sup> Ibid., Nos. 120/2004, 54/2007, 104/2009 and 36/2010.



123. The activities within the process of the collection, processing, use and storage of personal information, including medical and genetic data in the NCTC, are performed in accordance with the applicable Law on Police, and do not have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual. The access to such data is strictly prescribed, restricted, and accessible for subsequent control, and the data on made DNA profiles are stored on a special server in the Ministry of Interior.

## **Article 20 - Restriction of right to information about a person deprived of liberty**

124. The Law on Free Access to Information of Public Importance prescribes, inter alia, that everyone shall have the right to be informed whether a public authority holds specific information of public importance, i.e. whether it is otherwise accessible, and the right to access information of public importance by being allowed insight in a document containing information of public importance, the right to a copy of that document, and the right to receive a copy of the document upon request, by mail, fax, electronic mail, or in another way (art. 5). The rights referred to in this article may be exceptionally subjected to limitations prescribed by this Law if that is necessary in a democratic society in order to prevent a serious violation of an overriding interest based on the Constitution or law (art. 8, para. 1). No provision of this Law may be interpreted in a manner that could lead to the revocation of a right conferred by this Law or its limitation to a greater degree than the one prescribed in paragraph 1 of this article (art. 8, para. 2).

125. A public authority shall not allow the applicant to exercise the right to access information of public importance, if it would thereby: (a) expose to risk the life, health, safety or another vital interest of a person; (b) imperil, obstruct or impede the prevention or detection of a criminal offence, indictment for a criminal offence, pretrial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceedings, or unbiased treatment and a fair trial; (c) seriously imperil national defence, national and public safety, or international relations; (d) substantially undermine the Government's ability to manage the national economic processes or significantly impede the fulfilment of justified economic interests; or (e) make available information or a document qualified by regulations or an official document based on the law, to be kept as a State, official, business or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh access to information interest (art. 9).

126. A public authority shall without delay and within 15 days from receipt of the request at the latest inform the applicant whether it holds the requested information, allow insight in the document containing the requested information i.e. issue or send out to the applicant a copy of the document. If the request regards information which is presumed to be of relevance to the protection of a person's life or freedom, i.e. to the protection of public health and the environment, the public authority must inform the applicant it holds such information, allow insight in the document containing the requested information, i.e. issue a copy of the document to the applicant within 48 hours upon receipt of the request. If a public authority does not respond to the request within the deadline, the applicant may lodge a complaint with the Commissioner. In the event a public authority refuses to inform the applicant, either entirely or partially, whether it holds the sought information, to allow the applicant insight in the document containing the requested information, to issue, i.e. send to the applicant a copy of the document, it shall be obliged to issue immediately, and not later than 15 days from the day of receiving the application, a decision on the rejection of the request and give a written explanation for such a decision, and to notify the applicant in the decision of the legal remedies at his/her disposal to appeal such a decision (art. 16).

127. An applicant may lodge a complaint to the Commissioner, who shall reach a decision promptly and within 30 days from the submission of the complaint at the latest. An administrative dispute complaint may be lodged against a Commissioner's conclusion and decision. An administrative dispute related to the exercise of the right to free access to information of public interest shall be deemed urgent (arts. 22, 24 and 27).

### **Article 21 - Guarantee for release of persons deprived of liberty**

128. The Law on Execution of Criminal Sanctions prescribes in detail release of persons from prison (arts. 167-174). On the occasion of release from the institution, convicted persons are issued a Release Certificate, which, inter alia, contains the date of the release and the date until which the person released is to report to the police (art. 169). Detained persons are released from the institution based on a ruling revoking detention and an order for release from detention issued by the court before which the proceedings are being conducted (art. 246). The Rule Book on Police Powers prescribes that an official note on detention of a person to be drawn up by a police officer must also contain data on cease of detention of a person (art. 30).

129. Supervision of release of persons deprived of liberty shall be conducted by the President of the High Court in whose territory the seat of the detention institution is located.<sup>94</sup>

### **Article 22 - Responsibility for failures of persons in charge of records on persons deprived of liberty as well as for providing information on persons deprived of liberty**

130. Disciplinary responsibility is prescribed for all violations of obligations and duties of the staff employed with the Administration for Execution of Criminal Sanctions (art. 266, para. 1, of the Law on Execution of Criminal Sanctions).

131. In case of a violation of provisions of the Convention, the officials of the Ministry of Interior shall also bear disciplinary responsibility for a grave violation of the official duty according to the Law on Police (art. 157).

### **Article 23 - Training of members of State authorities and personnel treating persons deprived of liberty and protection of persons refusing to execute orders approving or encouraging enforced disappearances**

132. The Training and Professional Training Centre of the Administration for Execution of Criminal Sanctions shall continually perform basic and specialized training in accordance with the curriculum. The basic training shall be regularly performed for trainees and members of all professions within the security service. Within the framework of the vocational training of the Centre in addition to the security service, it also includes representatives of other services within the Administration, according to concrete requirements of the institutions.

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<sup>94</sup> The Law on Execution of Criminal Sanctions, art. 245; the Criminal Procedure Code (*Official Journal of the FRY*, Nos. 70/2001 and 68/2002 and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010), art. 152, para. 1.

133. Up to now there has been no target education for medical personnel concerning the implementation of principles and provisions prescribed by the Convention. Related activities performed within the previous period in respect of education on medical personnel are training courses on the subject of trafficking in human beings.<sup>95</sup>

134. Authorized officials of the Military Security Agency (MSA) shall be obliged to act in accordance with the Constitution and law when exercising their powers and any possible abuse of prescribed powers shall be subject to sanctions. The Law on the Military Security Agency and the Military Intelligence Agency<sup>96</sup> prescribes the powers of authorized officials of the MSA in detecting, investigating and documenting criminal offences (art. 23). At the training and vocational training courses, members of the MSA study, inter alia, the regulatory framework of the operation of the MSA and international humanitarian law. Special attention is paid to the study of the freedoms and rights of persons and citizens guaranteed by the Constitution and the possibilities of violations of the rights concerned by the members of the MSA.

135. A member of the MSA shall be obliged to execute orders of the director of the MSA or direct superior, and inform him about their work and be personally responsible for unlawful actions. Should a member of the MSA find the order of the director of the MSA or by the superior unlawful, they shall be obliged to warn him about this in writing. Should the superior go on insisting on its execution, they shall be obliged to request a confirmation of the order concerned in writing. If the order is confirmed, they shall be obliged to inform the senior superior and the internal control of the MSA. Should a member of the MSA have some knowledge of unlawful actions within the Agency, they shall be obliged to report on this to the director and the internal control, without any detrimental effects on their status. If the director of the MSA or the internal control does not act according to the report, the member of the MSA may refer to the supervisory and control bodies, without detrimental effects on their status (art. 42). Should a member of the MSA learn that there has been a violation of the constitutionality and legality, human rights and freedoms, professionalism, proportionality in exercise of powers and political and ideological neutrality in the activities of the MSA, they may directly refer to the general inspector, the Minister of Defence, the Government and the competent board of the National Assembly, without any detrimental effects on their status. A member of the MSA may also refer to the general inspector and the competent board of the National Assembly if they find that there has been danger for

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<sup>95</sup> The first training course for doctors on the subject of trafficking in human beings was held on 26 and 27 May 2004. The attendees of the seminar were doctors from the border regions in Serbia, as follows: Vršac, Šid, Senta, Veliko Gradište, Ljubovija, Vlasotince, Babušnica, Novi Pazar, Vranje and Zaječar. This training was held in cooperation with the Institute of Forensic Medicine of the Faculty of Medicine in Belgrade. The training showed that doctors came in contact with victims of the trafficking in human beings at their work but that they were not trained to recognize them as well as that they had never reported such cases because they did not know anything about the activities in the field of combat against trafficking in human beings. This was the first ever held training course on the subject of trafficking in human beings which was ever organized for the target group of doctors and medical personnel.

After the first training course for doctors held in May 2004, the civil society organization "Astra", in cooperation with the Institute of Forensic Medicine of the Faculty of Medicine in Belgrade and under the support of OSCE (OSCE Mission to Serbia), held another two-day seminar in Belgrade on 23 and 24 March 2007 under the title "Information on trafficking in human beings issues and basic forensic medical principles of documenting bodily injuries with (potential) victims of trafficking in human beings". The seminar was attended by 32 doctors from 15 health centres (or medical centres) from the territory of the City of Belgrade.

<sup>96</sup> *Official Gazette of the RS*, Nos. 88/2009, 55/2012 – amended by the decision of the Constitutional Court and 17/2013.

their rights in the performance of jobs and assignments within the competence of the MSA due to the violation concerned (art. 51).

136. The Law on the Serbian Army prescribes, inter alia, that a military official shall be obliged to execute the orders by the superiors concerning the service, except in cases in which the execution of orders would represent a criminal offence. A member of the Army of Serbia shall be obliged to refuse to execute a repeated order, mainly an order by the superior or by a senior officer the execution of which would mean committing of a criminal offence, as well as to inform immediately the person superior to the person who had issued an unlawful order or other competent body in case an unlawful order is issued again (art. 13, para. 1, points 4, 6, 7).

137. The issue of execution of orders by the members of the Army of Serbia is described in detail in the provisions of the Rules of the Army of Serbia.

## **Article 24 - Definition and rights of victims of enforced disappearance**

138. According to the Criminal Procedure Code, a damaged party shall be a person whose personal or property rights have been violated or impaired by a criminal offence (art. 2, para. 1, point 11).<sup>97</sup> The notion of a damaged party most frequently coincides with the notion of a victim in criminal substantive law, except in cases of criminal offences with mortal outcome, when next of kin of deceased persons also have the status of a damaged party or in cases of severe disability of some person (art. 201, para. 3, of the Law on Contracts and Torts). It seems that the notion of a damaged party according to the Criminal Procedure Code and the Law on Contracts and Torts is narrower than the notion of a victim within the meaning of article 24 of the Convention, for which reason the existing legal framework<sup>98</sup> may leave certain persons<sup>99</sup> without protection.

139. The basic provisions concerning the exercise of the right of a damaged party concern their right to participate effectively and protect their interests in criminal proceedings, to engage a proxy from among lawyers for this purpose, and to take over criminal prosecution from the public prosecutor (art. 50 of the Criminal Procedure Code).<sup>100</sup> A damaged party has the right to compensation of pecuniary and non-pecuniary damage, to request the return of belongings or quashing of a legal affair (art. 252 of the Criminal Procedure Code).<sup>101</sup> The public prosecutor and the court shall take care of protection of the damaged party from defamation, threat and other attacks and may also request the police to undertake special protection measures for the damaged party. The right to a fair trial guaranteed by the Constitution of the Republic of Serbia shall also be enjoyed by a damaged party, which is expressed as the right that their rights are publicly examined by an independent and impartial court within reasonable time (the right of a perpetrator of a criminal offence to be declared guilty and convicted in accordance with the law and the right to damage compensation). A damaged party may exercise the right to damage compensation in criminal and civil proceedings.<sup>102</sup>

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<sup>97</sup> Ibid., Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013.

<sup>98</sup> Arts. 50–67 of the Criminal Procedure Code (*Official Gazette of the RS*, Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013).

<sup>99</sup> The right of the victim to know the truth regarding the circumstances of enforced disappearance, the fate of the missing person, as well as adequate reparation for the damage suffered due to deprivation of the right concerned.

<sup>100</sup> *Official Gazette of the RS*, Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013.

<sup>101</sup> Ibid.

<sup>102</sup> See section 2 of the Law on Contracts and Torts.

140. The procedure for damage compensation, rehabilitation and exercise of other rights of persons convicted groundlessly and deprived of liberty groundlessly is prescribed in the Criminal Procedure Code (arts. 556–564).<sup>103</sup> The right to damage compensation belongs, inter alia, to a person groundlessly deprived of liberty due to an error or unlawful activity of the body (art. 560).<sup>104</sup> The successors may accomplish the right to property damage compensation in accordance with the rules on damage compensation prescribed by the Law on Contracts and Torts (arts. 154–209). The Commission for Damage Compensation to persons groundlessly deprived of liberty has been formed pursuant to the decision of the Minister of Justice and Public Administration.

141. The Family Law<sup>105</sup> prescribes that the custody body shall be obliged to appoint a temporary custodian for the persons having unknown residence, provided such persons have no legal representative or proxy, to protect temporarily personality, rights or interests of such persons (art. 132, para. 2).

142. In the Republic of Serbia there are several associations of families of persons missing in the armed conflicts in the territory of the former Yugoslavia and in the conflict in the territory of the Autonomous Province of Kosovo and Metohija, which represent the families of missing persons, file their claims to the national authorities and other parties in the process, organize round tables, meetings, workshops on all significant topics and issues related to families of missing persons, from those concerning the search process, exhumation and identification, to legal and statutory issues. The associations also hold memorials and mark other important dates, such as the International Day of the Victims of Enforced Disappearances and Human Rights Day.

143. Within the meaning of article 24 of the Convention, there are no special procedures established for damage compensation and redress to the victims. Civil suits for damage compensation conducted according to the rules on general civil procedure are the only systemized and formal procedures, in which a victim is in the position of a plaintiff fully bearing the burden of evidence. According to the recent amendments to the Law on Civil Procedure,<sup>106</sup> compulsory mediation was introduced into those proceedings, each time the State or some of its bodies is the respondent party. Before the initiation of the proceedings by an action, victims or members of their families shall be obliged to refer to the Public Attorney's Office of the Republic of Serbia (the Attorney's Office) with a request for the resolution of the dispute, while the Attorney's Office shall be granted the period of 60 days to respond to this request. The lack of response by the Office shall be considered a negative response (art. 193).

144. In respect of damage compensation to victims, it may only be treated in the context of court proceedings for compensation of non-pecuniary and/or pecuniary damages. In this respect, restoration is possible damage compensation in case of pecuniary damage or financial compensation for non-pecuniary damage. The Republic of Serbia has not adopted any special rehabilitation programme for the families of victims of enforced disappearance and there are no indications of any planned steps in this sense. According to the Law on the Rights of Civilian Disabled Veterans,<sup>107</sup> a family member of the person who had been

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<sup>103</sup> *Official Journal of the FRY*, Nos. 70/2001 and 68/2002 and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010.

<sup>104</sup> *Ibid.*

<sup>105</sup> *Official Gazette of the RS*, Nos. 18/2005 and 72/2011 – amended by other law.

<sup>106</sup> *Ibid.*, No. 72/2011.

<sup>107</sup> *Ibid.*, No. 52/96.

killed or died<sup>108</sup> shall be considered a family member of the civilian war victim, meaning that the only option available to the families of missing persons shall be to declare the missing person dead, as governed by the Law on Non-Contentious Proceedings (arts. 56–71).<sup>109</sup>

145. In the Republic of Serbia the families of missing persons have been facing the problem of the provision of the Law on the Rights of Civilian War Victims, prescribing that a civilian disabled veteran shall be a person having bodily injury of at least 50 per cent due to wound, injury or lesion leaving visible traces, received by ill-treatment or deprivation of liberty by an enemy during the war, by performance of military operations, by war material lagged behind or by hostile diversions or terroristic operations, thus additionally disabling the families of victims of war crimes in Sjeverin to accomplish their rights as the families of missing persons.<sup>110</sup> Also, the lack of the Law on Missing Persons is another problem faced by the families of missing persons, which should govern the special status of such persons and define the rights and benefits of the families of missing persons, in accordance with severity and length of the crime of enforced disappearance.

### **Article 25 - Unlawful removal of children who are subjected to enforced disappearance**

146. Within the system of social and family legal protection and application of all forms of family legal protection of children without parental custody, especially in case of adoption, the rights of the child established by the Convention on the Rights of the Child<sup>111</sup> are complied with as well as all the rights of the child established by the national legal regulations and by the Family Law<sup>112</sup> in particular.

147. The provision of article 107 of the Family Law prescribes that any adoption shall be null and void if all the conditions of its validity had not been fulfilled on the occasion of its establishment. Any adoption based on force or delusion shall be voidable (art. 108). Every adopted child has the right to review independently the documents on their adoption and the registry of births after the age of 15, under previous preparation: psychological consultation and support (art. 59).

148. Also, in compliance with international conventions, in particular with the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention), although the Republic of Serbia is

<sup>108</sup> The Law on the Rights of Civilian Disabled Veterans (*Official Gazette of the RS*, Nos. 85/2005, 88/2005 – corrigendum, 107/2005 – corrigendum, 72/2009, 111/2009 and 121/2012).

<sup>109</sup> *Official Journal of the SRS*, Nos. 25/82 and 48/88 and *Official Gazette of the RS*, Nos. 46/95 – amended by other law, 18/2005 – amended by other law and 85/2012.

<sup>110</sup> For abduction and murder of 16 Bosniaks, the citizens of the Republic of Serbia from the Sjeverin Municipality, who were abducted in October 1992 from a bus in the place of Mioče (Bosnia and Herzegovina) and then taken to Višegrad, where they were tortured and killed at the bank of the Drina River, four members of the unit “Osvetnici”, which was active within the Višegrad Brigade of the Army of the Republic of Srpska were convicted. Until 2013, out of 16 victims, the body of only one victim – Medredin Hodžić was found in May 2010 on the occasion of exhumation of the Perućac dried accumulation pond.

<sup>111</sup> *Official Journal of the SFRY – International Treaties*, No. 15/90 and *Official Journal of the FRY – International Treaties*, Nos. 4/96 and 2/97.

<sup>112</sup> We herein primarily point out to strict compliance with the rights of the child: the right to recognition of origin (art. 59), the right to living with parents (art. 60, para. 1, of the Family Law) and the right of the child to identity (art. 59, para. 3, of the Family Law).

not an official signatory to it,<sup>113</sup> the bodies of Republic of Serbia do not carry out adoption procedures and adoption procedures for children from foreign countries, which would be implemented during immediate war danger or declaration of the state-of-war.

149. In other cases of reports on disappearances of children, the police officers of the Ministry of Interior act with utmost urgency in accordance with the provisions on the Law on Police (art. 72), the Criminal Procedure Code (art. 225, para. 2, and art. 566),<sup>114</sup> the Rule Book on Police Powers (arts. 61–63), in compliance with both national and international norms and standards in respect of compliance with the rights of the child.

150. “Astra”, an anti-trafficking action, is a civil society organization that has successfully been holding an SOS telephone line (011/785-0000) for the victims of trafficking in human beings as a part of the support and aid programme to the victims in the process of recovery and reintegration. An important segment of SOS telephone line operation is the search for missing persons for whom there are indications of disappearance in the chain of trafficking in human beings, which is implemented in cooperation with the organizations and institutions dealing with this issue. Thanks to the cooperation with the widespread network of organizations of civil society all over the world, in which communications are not burdened with formal requirements and bureaucracy characteristic for the State services, “Astra” has often been in the position to find the persons disappeared in the chain of trafficking in human beings very quickly and accommodate them in a safe place.

151. In 11 years of operation of Astra SOS telephone line (March 2002–March 2013), 18,056 calls in total were received from 3,139 male and female clients. Out of this number of calls, 3,204 calls were not directly related to trafficking in human beings only and 13 per cent of them were related to reports on disappearances of persons of age in peacetime. Their families were explicitly instructed to refer to the police and possible support by the civil society organizations abroad. In cases not related to trafficking in human beings, “Astra” intervened by providing contacts and logistic support.

152. In 2012 “Astra” initiated the introduction of number 116000 as a uniform European telephone number for missing children in the Republic of Serbia with the aim to render comprehensive assistance to parents/custodians of missing children and to the very children identified as missing.

153. On 17 May 2012, the Republic Agency for Electronic Communications (RATEL) granted<sup>115</sup> to “Astra” the use of the uniform European telephone number 116000 for missing children, thus making the services of this number also available in the Republic of Serbia. In this way Serbia became the first country in South-East Europe outside the European Union in which the 116000 service became operating. In this way our country joined the group of 22 European countries in which this form of assistance to parents/custodians and missing children has already been available. The basic activity of the European number for missing children is to receive reports on missing children and forward them to the police, to support parents/custodians of missing children, as well as to render support in investigations. Number 116000 has today been operated by different civil society organizations in 16 European countries cooperating between each other, with the

<sup>113</sup> The process of ratification of the Hague Adoption Convention has been in progress. The bill of the Law on Ratification of the Convention was submitted to the National Assembly of the Republic of Serbia in February 2013.

<sup>114</sup> *Official Journal of the FRY*, Nos. 70/2001 and 68/2002 and *Official Gazette of the RS*, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – amended by other law, 49/2007, 20/2009 – amended by other law, 72/2009 and 76/2010.

<sup>115</sup> The decision No. 1-01-345-20/12-1.

police and other organizations dealing with the issue of missing children. This form of international cooperation is of special benefit, since the lack of former forms of border crossing control between the countries of the European Union facilitates the transport of missing underage persons from the territory of one Member State to another, thus also making their detection less probable. Also, it is easier to establish cooperation between the civil sectors at the international level because civil society organizations are not obliged to comply with strict bureaucratic protocols so that they may respond faster than the State institutions in some cases.

154. The role of a civil society organization is also reflected in rendering emotional support, psychological and legal aid, instructing the competent institutions and, if necessary, rendering assistance in communications with the competent agencies. In case a missing child is located in the territory of a foreign country, this form of assistance is of particular importance because of linguistic barriers and impossibility of parents to directly communicate with the police of the country in which their child is potentially located.

155. For the time being, the operation of number 116000 has been solely financed by foreign donors. Unfortunately, the Republic of Serbia still has no funds allocated in its budget to cover the costs of this service. Telecom/MTS, Telenor and VIP operators have supported the operation of number 116000 and made technical adjustments within the shortest possible period.

156. "Astra" has initiated signing of the Memorandum of Cooperation with the Ministry of Interior as the last step to establish number 116000. Under the present circumstances, the lack of formal procedures considerably decreases efficiency of searches and prevents coordinated cooperation in the cases of missing children as well as duly and good quality support to their families and the very children during recovery.

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