SERBIA AND MONTENEGRO
COUNCIL OF MINISTERS

INITIAL REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS IN THE FEDERAL REPUBLIC OF YUGOSLAVIA FOR THE PERIOD 1992-2002

Belgrade, March 2003

Contents

INTRODUCTION

1. The Initial Report on the Implementation of the International Covenant on Civil and Political Rights for the reporting period 1990-2002 pertains to the Federal Republic of Yugoslavia which ceased to exist on 4 February 2003 when, on the basis of the Proceeding Points for the Restructuring of Relations between Serbia and Montenegro of 14 March 2002, the Federal Assembly adopted the Constitutional Charter of the State Union of Serbia and Montenegro. An integral part of the Constitutional Charter is the Charter of Human and Minority Rights and Civil Liberties, adopted on 28 February 2003.
2. Pursuant to the Charter, the name of the new State, i.e. the successor State of the Federal Republic of Yugoslavia, is Serbia and Montenegro and it is based on the equality of the two member States, the State of Serbia and the State of Montenegro (Articles 1 and 2). The territory of Serbia and Montenegro consists of the territories of the member States; the border of the State Union is inviolable, while the boundary between the member States is unchangeable, except by mutual consent (Article 5). The State of Serbia includes the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija which, under United Nations Security Council resolution 1244, is currently under the administration of the international community (The Decision on the Promulgation of the Constitutional Charter of the State Union of Serbia and Montenegro).
3. Serbia and Montenegro is a single subject of international law and the member States may become members of international global and regional organizations, the membership of which is not contingent on international personality (Article 14).
4. The organs of the new State are: the Parliament of Serbia and Montenegro (unicameral and consisting of 126 members, 91 from Serbia and 35 from Montenegro); the President of Serbia and Montenegro (elected for a term of office of four years); the Council of Ministers (Foreign Minister, Minister of Defence, Minister for International Economic Relations, Minister for Internal Economic Relations and the Minister for Human and Minority Rights); the Court of Serbia and Montenegro (rulings of the Court are binding and cannot be appealed against and the Court is authorized to invalidate laws, other regulations and enactments of the institutions of the State that are contrary to the Constitutional Charter and the laws of Serbia and Montenegro). Serbia and Montenegro has the Armed Forces which are under democratic and civilian control (Article 54).
5. Considering that the Initial Report on the Implementation of the International Covenant on Civil and Political Rights covers the reporting period 1992-2002 and contains information relevant to the Federal Republic of Yugoslavia, that name of the country has, by and large, been maintained to make the reading of the text easier.
6. Likewise, pursuant to the agreement of the competent organs of the member Republics (now member States) of Serbia and Montenegro, the Report consists of two parts. The first part pertains to the Federal Republic of Yugoslavia and the Republic of Serbia and the competent Federal organs (many of which ceased to exist upon the adoption of the Constitutional Charter) and the organs of the Republic of Serbia participated in its elaboration. Attached to the Report is the ”Consideration of the Criminal Legal System and the Situation of Human Rights in Kosovo and Metohija since the Arrival of the International Forces of the United Nations (1999-2002), prepared by the Coordinating Centre for Kosovo and Metohija in October 2002. The second part of the Report pertains exclusively to Montenegro and was made by the competent organs of Montenegro.

BACKGROUND INFORMATION

7. The former Federal Republic of Yugoslavia, and the present Serbia and Montenegro, is situated in South-East Europe and occupies the central part of the Balkan peninsula, covering an area of 102,173 square kilometres. From the point of view of geography, Serbia and Montenegro is a Balkan, Central European, Mediterranean and Danubian country. It borders on eight States: Hungary, Romania, Bulgaria, Macedonia, Albania, Italy, Bosnia and Herzegovina and Croatia.
8. Most of the countries of the region are passing through a period of post-conflict consolidation and profound and complex internal changes and are striving to define their own place as well as the place of the entire region, in the new international constellation. Although it appears at first sight that the re-alignment is dictated by military-political realities, behind it is primarily the firm determination of the leading political forces in the leading countries to develop the political and economic system that has existed in the countries of Western Europe already for decades and proved its efficiency and vitality compared with other historical social systems.
9. Some ten years ago, the Federal Republic of Yugoslavia was, according to most important parameters, closer to the Western European integration than any other country of Eastern Europe. Today, it is lagging behind primarily as a consequence of the policy conducted in the last decade of the twentieth century. Therefore, Serbia and Montenegro, is now faced with the task of making up for what has been lost and, at the same time, of transforming itself politically and economically as was done by the countries of Eastern Europe, now at the threshold of the European Union. Those countries did not face the consequences of State disintegration, conflicts and sanctions, including a large number of refugees, and other problems. Also, the situation inherited in all spheres of social life, particularly in the economy, proved to be more difficult and more complex than had been thought. The consequences of the political, economic, moral, and even general civilizational, deconstruction of society that occurred under the previous government have to be overcome.
10. The participation of the international community in, and its assistance to, the consolidation of the situation in the country and its coming out of isolation were very important. Serbia and Montenegro is determined to fulfil its international obligations, which holds particularly true for the Dayton Agreement to which a specific contribution is being made by accelerated development of relations with Bosnia and Herzegovina, and for overcoming the problem of Kosovo and Metohija. Although it is not satisfied with the position of the non-Albanian population in Kosovo and Metohija, Serbia and Montenegro is resolved to cooperate constructively with international representatives and address, together with them, the existing problems in accordance with UNSC resolution 1244.
11. Also, Serbia and Montenegro is ready to fully cooperate with the International Criminal Tribunal for the Former Yugoslavia. Very significant steps have been taken thus far: the Law on Cooperation with the Tribunal has been passed and the former President of the Federal Republic of Yugoslavia, Slobodan Milosevic, and a number of other indictees have been handed over.
12. In the circumstances, the priorities of the State Union of Serbia and Montenegro are:
    - rapprochement with the European Union, with the aim of becoming a member;
    - normalization and development of relations with neighbours, primarily with the former Yugoslav Republics, an issue of special importance for the citizens of the Federal Republic of Yugoslavia/ Serbia and Montenegro, and the refugees in particular, as well as the strengthening of regional cooperation;
    - balanced relations with great powers; and
    - respect for, and a consistent implementation of, assumed international obligations, particularly those under international human rights instruments.

Article 1

Right to self-determination

13. The Constitution of the Federal Republic of Yugoslavia contained no explicit provision on the right to self-determination. However, Article 48 guaranteed the persons belonging to national minorities the right to establish and foster unhindered relations with co-nationals within the Federal Republic of Yugoslavia and outside its border and to take part in international non-governmental organizations, but not to the detriment of the Federal Republic of Yugoslavia or its member republics.
14. The question of the right to self-determination is explicitly regulated in the Constitutional Charter of Serbia and Montenegro.
15. Unlike the Constitution of the Federal Republic of Yugoslavia, the Constitutional Charter of Serbia and Montenegro explicitly guarantees in its Article 60 the right to self-determination. Under the provisions of this Article, upon expiry of a three-year period, the member States have the right to initiate the procedure for a change of the State status, i.e. for withdrawal from the State Union. Such a decision is made after a referendum and a Law on Referendum is passed by a member State, taking into account internationally recognized democratic standards. Also, it is provided that, in case the State of Montenegro withdraws from the State Union, the international documents related to the Federal Republic of Yugoslavia, in particular UNSC resolution 1244, pertain and apply fully to the State of Serbia as its successor. The member State exercising the right of withdrawal does not inherit the right to international legal personality and all outstanding issues will be regulated separately between the successor State and the State that has become independent. In case both member States declare in a referendum that they are in favour of changing the State status, i.e. in favour of independence, all outstanding issues will be resolved in the succession procedure, as was the case with the former Socialist Federal Republic of Yugoslavia.
16. By United Nations Security Council resolution 1244 Kosovo and Metohija has been placed under the interim administration of the United Nations. Serbia and Montenegro has been a firm advocate of a consistent implementation of this resolution, however there is no progress in the field in the implementation of the key decisions nor the concept of criteria for its implementation.
17. The priority of Serbia and Montenegro are: security for all the residents of Kosovo and Metohija, respect for human and minority rights, return of refugees and IDPs, tracing of missing persons and decentralization. These should be the priorities of UNMIK since creation of conditions are thereby guaranteed for improvement of the situation in Kosovo and Metohija.
18. Serbia and Montenegro is ready for cooperation with UNMIK and dialogue with the provisional organs in Kosovo and Metohija. For that there is also an institutional framework – The High Working Group – which was established by the FRY/UNMIK Agreement of 2001. However, UNMIK puts on the agenda for negotiations only technical issues and brings decisions most often without consultations with the organs of Serbia and Montenegro or refuses to respect objections. The Albanian politicians from Kosovo and Metohija do not show readiness to commence dialogue, on the pretext that time for that has not arrived yet.
19. Serbia and Montenegro has important reserves vis-à-vis the transfer of authority from UNMIK to the provisional organs in Kosovo and Metohija until the end of 2003. The transfer cannot be a mechanical and automatic process. Besides, the institutions would have to achieve a much higher level of efficiency, transparency, representation and agreement in order to take over the competences of UNMIK.

Article 2

A) Human rights and equality of citizens

20. The Federal Republic of Yugoslavia/Serbia and Montenegro expressed its commitment to human rights by acceding, ratifying and signing a number of international human rights instruments, deposited with the Secretary-General of the United Nations.
21. On 12 March 2001, the Federal Republic of Yugoslavia made the Successor Statement with regard to various international human rights instruments, deposited with the Secretary-General of the United Nations, acceded to by the Socialist Federal Republic of Yugoslavia. It covers 10 so-called core conventions, out of 14 adopted within the United Nations.

22. Following the change of government in October 2000, the Federal Republic of Yugoslavia has actively participated in the international community and acceded to a number of international instruments in the field of the protection of human rights:

- Rome Statute of the International Criminal Court (June 2001);
- Optional Protocol to the International Covenant on Civil and Political Rights (June 2001);
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (June 2001);
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (July 2001);
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (July 2001); and
- Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (December 2002).

23. The Federal Republic of Yugoslavia also made the Successor Statement on the Geneva Conventions, withdrawing reservations on the Conventions made by the former Socialist Federal Republic of Yugoslavia.
24. Also, the Federal Republic of Yugoslavia/Serbia and Montenegro has been very active in promoting human rights within regional organizations.
25. Upon submission of the request for admission to the Council of Europe, the Federal Republic of Yugoslavia embarked upon the process of the harmonization of its domestic laws and legal system with European human rights standards.
26. Also, the Federal Republic of Yugoslavia acceded to the Framework Convention on the Protection of National Minorities and preparations are under way to ratify another 12 relevant Conventions.

- **Human rights guarantees in the Constitution of the Federal Republic of Yugoslavia/the Charter of Human and Minority Rights and Civil Liberties**

27. Serbia and Montenegro recognizes and guarantees the freedoms and rights of man and the citizen, recognized by international law. The provisions of the Charter of Human and Minority Rights and Civil Liberties treat this matter in a more concrete way than the above-mentioned Article 10 of the Constitution of the Federal Republic of Yugoslavia and provide for the obligation of everyone to respect the human and minority rights of others, as well as for direct enjoyment of these rights in accordance with the Constitutional Charter of the State Union of Serbia and Montenegro, and for their regulation, ensurance and protection by the Constitutions, laws and policies of the member States (Article 2). Also, the Charter guarantees human and minority rights, guaranteed by generally accepted rules of international law, as well as by international treaties in force in the State Union, which, as such, are exercised directly (Article 7).
28. The Constitution of the Federal Republic of Yugoslavia guaranteed equality to citizens irrespective of nationality, race, sex, language, faith, political or other beliefs, education, social origin, property or other personal status. Also, it provided for the equality of all citizens before the law and for the obligation and responsibility of each person to respect the rights and freedoms of others (Article 20). In the matter of prohibition of discrimination, the Charter is more comprehensive than the Constitution and, in addition to the said guarantees, it prohibits any direct or indirect discrimination on any grounds, including culture, language, age or physical disability. Also, the Charter provides for the introduction of special measures required for the realization of equality, necessary protection and progress of persons or groups of persons who are in an unequal position for the purpose of enabling them full enjoyment of human rights under equal conditions. However, these measures may be applied only until the objectives pursued have been achieved (Article 3).
29. Abuse of freedoms and rights of man and the citizen is unconstitutional and punishable in Serbia and Montenegro. The rights and freedoms, recognized and guaranteed by the Constitution of the Federal Republic of Yugoslavia, enjoyed the protection of the courts (Article 67). The Charter provides for the right of everyone to effective judicial protection if a guaranteed human or minority right is violated or denied, as well as for the right to have the consequences of such violation eliminated. Everyone claiming that his/her right has been violated or denied by an act or action of an institution of a member State or by an organization exercising public powers is entitled to file a complaint with the Court of Serbia and Montenegro (Article 9).

30. The Charter recognizes derogations from human and minority rights only to the extent necessary under given circumstances and following the proclamation of a state of war or a state of emergency, if the existence of the State Union or a member State is threatened. Nevertheless, no derogation is permitted under any circumstances from the following rights: human dignity and free development of individuals, the right to life, inviolability of physical and mental integrity, prohibition of slavery, servitude and forced labour, the right to liberty and security, the right to a fair trial, presumption of innocence, ban on retroactivity, punishment only according to law, *ne bis in idem,* the right to marriage, freedom of thought, conscience and religion, citizenship, prohibition of forced assimilation and prohibition of instigation to racial, national and religious hatred.

B) Rights of persons belonging to national minorities

31. The Constitution of the Federal Republic of Yugoslavia proceeded from the concept of civil democracy according to which the enjoyment of constitutional rights and freedoms was linked exclusively with the status of the citizen, i.e. was equal for all citizens irrespective of their nationality. In addition to the provisions on universal freedoms and rights of man and the citizen, the Constitution contained also nine provisions which related directly to persons belonging to national minorities and regulated the following rights and freedoms: equality on the basis of nationality; the right to preservation, development and expression of ethnic, cultural, linguistic and other characteristics; the right to the use of national symbols; right to the official use of language and script in parallel with the Serbian language, in areas inhabited by persons belonging to national minorities; freedom to express one's nationality, with guarantees that persons not wishing to express their nationality are not obliged to do so, as well as the freedom to express one's national culture; the right to use one's language and script and the right to an interpreter in proceedings before a court of law or a government authority or organization exercising public functions; right to education in one's mother tongue; the right to public information in one's mother tongue; the right to establish educational and cultural organizations or associations; the right to establish and maintain unhindered relations with co-nationals in the Federal Republic of Yugoslavia and outside its borders; the right to participate in the work of international non-governmental organizations, but not to the detriment of the Federal Republic of Yugoslavia or its member republics. The Constitution of the Federal Republic of Yugoslavia envisaged a special right for persons belonging to national minorities to maintain links and relations with their mother country (Article 48). As a special form of protection of persons belonging to national minorities, the Constitution prohibited incitement of national hatred or intolerance (Article 50).
32. By its very name, the Charter of Human and Minority Rights and Civil Liberties is indicative of the importance Serbia and Montenegro attaches to the protection of the rights of minorities. In addition to general guarantees of these rights as a form of human rights: the obligation to respect human and minority rights (Article 2); prohibition of discrimination (Article 3); prohibition of abrogation or limitation of human and minority rights provided for by the Charter (Article 4); limitation of, and derogation from, human and minority rights in exceptional cases (Articles 5 and 6); guarantee of human and minority rights guaranteed by international instruments (Article 7); prohibition of limitation of human and minority rights on the pretext that they are not guaranteed by the Charter (Article 8); judicial protection and elimination of consequences of human and minority rights violations (Article 9); and the interpretation of the provisions of the Charter of Human and Minority right (Article 10), the Charter contains also a separate Chapter (III) regulating the rights of persons belonging to national minorities.
33. Pursuant to the said provisions of the Charter, persons belonging to national minorities have individual and collective rights which are exercised individually or in community with others. Collective rights include participation of persons belonging to national minorities, directly or through elected representatives, in the process of decision-making concerning issues related to their culture, education, information and the use of their language and script. Also, for the purpose of exercising the right to self-government in the fields of culture, education, information and the official use of language and script, persons belonging to national minorities may elect national councils (Article 47).
34. Special rights of persons belonging to national minorities guaranteed in the Charter are: freedom of expression of national identity (Article 48); prohibition of discrimination in the general sense and equal legal protection (Article 49); prohibition of forced assimilation (Article 50); prohibition of instigation to racial, national, religious and other hatred and intolerance (Article 51); the identity right (Article 52); the right of association in educational and cultural organizations and associations financed on a voluntary basis (Article53); relations with co-nationals in other States (Article 54); improvement of living conditions as an obligation of the State to adopt measures to promote the full and effective

equality of persons belonging to national minorities (Article 55); promotion of the spirit of tolerance in the spheres of education, culture and information (Article 56); and the guarantee for acquired rights in the sense that the Charter revokes or changes no right of persons belonging to national minorities acquired under regulations applied before the Charter came into effect (Article 57).

35. The Federal Republic of Yugoslavia ratified the Council of Europe's Framework Convention for the Protection of National Minorities in 2001. The implementation of the Convention implies that the State must initiate adoption of appropriate laws and devise appropriate policies aimed at implementing the obligations it has assumed.
36. To that end:
    - the Law on the Protection of the Rights and Freedoms of National Minorities ("Official Gazette of the Federal Republic of Yugoslavia", No. 11/02) has been adopted. The Law defines national minority in the following manner: "…Each group of the citizens of the Federal Republic of Yugoslavia which by their numbers is sufficiently representative, even though it is a minority in the territory of the Federal Republic of Yugoslavia, belongs to a group of population which is in long-lasting and firm connection with the territory of the Federal Republic of Yugoslavia and possesses characteristics such as language, culture, national or ethnic belonging, origin or religion by which it differs itself from the majority of the population and whose members are characterized by concern to maintain together their national identity, including culture, tradition, language and religion" (Article 2). This definition of national minority has overcome the Constitution's terminological inconsistency since all groups of citizens who call themselves or are determined as peoples, national and ethnic communities, national and ethnic groups or nationalities are considered national minorities.
37. The Law conforms fully to the contents of the Framework Convention, but its implementation falls most often within the competence of the Republics (now member States). The accompanying normative solutions are in conformity with the Law, but reforms are needed that would promote the rights of national minorities in the fields of education, information, the official use of language and script and in cultural activities.
    - Activities related to the adoption of the European Charter on Regional and Minority Languages have been initiated and negotiations with representatives of the governments of Croatia, Hungary, Romania and Macedonia have started aimed at concluding agreements on the protection of national minorities;
    - Account has been taken of the need to ensure that Amendments to the Laws of the Republic of Serbia on Local Self-Government and Criminal Procedure respectively correspond with minority protection standards;
    - By the Omnibus Law, the Assembly of the Autonomous Province of Vojvodina has had part of the abrogated competences returned and powers related to the protection of the rights of national minorities delegated to it.
38. The Government of the Federal Republic of Yugoslavia submitted its first report on the implementation of the Framework Convention to the Advisory Committee at the end of 2002.

C) Measures adopted with the aim of ensuring enjoyment of the rights covered by the Covenant

39. The Law on the Amendments to the Criminal Law of the Republic of Serbia ("Official Journal of the Republic of Serbia", Nos. 10/2002 and 11/2002) of March 2002 is based on the provision of Article 72, paragraph 1, subparagraph 2 of the Constitution of the Republic of Serbia, according to which, the Republic of Serbia, *inter alia,* regulates and ensures the exercise and protection of freedoms and rights of man and the citizen.
40. The Amendments provide for harsher penalties for certain criminal offences since those provided for by the Criminal Law had generally no effect on prevention. They introduce new incriminations; abolish death penalty; de-criminalize certain offences; strengthen the protection of minors by providing harsher penalties for criminal offences committed against them; and increase nominal-term inflation-adjusted amounts for compensation provided for by penalties for criminal offences, the legal qualification of which contains property value.
41. The Amendments abolish death penalty for the criminal offences of homicide, serious cases of robbery and assault coupled with violence and replaced with the penalty of 40 years in prison. It has been abolished because the right to life is an inalienable right of man and it may not be denied by anyone,

not even by the State. Besides, imposition of death penalty precludes the possibility of redressing the injustice done by its pronouncement to an innocent person, while all the evidence available in the countries in which it is pronounced frequently shows that the number of criminal offences punishable by death penalty has not decreased. Finally, the Federal Criminal Law does not prescribe death penalty as a punishment for any criminal offence.

42. Tougher policy of punishment is reflected in the provision of separate minimum and separate maximum prison penalties for a number of criminal offences falling within the following groups: criminal offences against freedoms and rights of man and the citizen; against election rights and the freedom of expression; against the person and morals, against public health and the environment; and the abuse of official duty.
43. The Amendments provided for harsher penalties for the following criminal offences: abduction; interference with the inviolability of home; unlawful search; unauthorized wiretapping and sound recording; unlawful photographing; violation of the secrecy of correspondence and other mail; prevention of the printing and distribution of the printed matter and of radio and television broadcasting; prevention and disruption of public assembly; violation of the right to stand in an election; violation of the right to vote; violation of the right of choice at an election; abuse of the right to vote; violation of secret balloting; election fraud; destruction of election documents; rape; coercion to sexual intercourse or unnatural carnal knowledge; coercion to sexual intercourse or unnatural carnal knowledge of an infirm person; sexual intercourse or unnatural carnal knowledge of a person under 14 years of age; c0ercion to sexual intercourse or unnatural carnal knowledge through abuse of official position; unnatural carnal knowledge; quackery; and giving and taking of bribes.
44. New incriminations have been introduced, aimed at providing greater personal and property security of citizens, protecting the constitutional order and security of the Republic of Serbia and at contributing to the consolidation of the legal system and the lawful functioning of government agencies and public services.
45. The institution of the criminal offence of the "Violation of the Freedom of Movement and Residence" protects the constitutionally guaranteed freedom of movement and residence. The perpetrator who denies or limits the said freedom to a citizen of the Federal Republic of Yugoslavia will be fined or punished with up to one year in prison. If the perpetrator is a person acting in official capacity, he or she will be punished with six months to five years in prison. The new incrimination "Violence in the Family, Threat to the Physical or Mental Integrity of a Family Member by Use of Force or a Serious Threat" provides for the punishment of up to three years in prison, while the use of a weapon or a dangerous implement in the commission of the act is punishable with six months to five years in prison. Commission of grievous bodily harm and/or infliction of a lasting and serious damage on the health of a family member or a minor is punishable with two to ten years in prison, while an act resulting in the death of a person will be punished with at least ten years in prison.
46. Likewise, the new criminal offence "Failure to Take Measures to Prevent the Sexual Abuse of Persons Deprived of Liberty" incriminates the failure to take measures or actions that prevent or preclude the sexual abuse of persons deprived of liberty. A person committing the act in official capacity will be punished with six months to five years in prison.
47. A new group of criminal offences of corruption has been introduced and the majority of the criminal offences from this group are a special form of the abuse of official position to procure a gain. Because of frequency and a great social danger, these acts have been classified as a separate group.
48. The Amendments provide for a greater legal protection of minors by introducing harsher penalties for the criminal offence of abduction. The abduction of a minor is punishable with at least five years in prison.
49. With regard to the criminal offences of the violation of the election right, a more serious form of the criminal offence "Election Fraud" [1] has been introduced.

D) <u>The question of citizenship</u>

50. The Constitution of the Federal Republic of Yugoslavia provided for the Yugoslav citizenship. The Yugoslav citizen was at the same time the citizen of a member republic – the Republic of Serbia or the Republic of Montenegro. All citizens of the Federal Republic of Yugoslavia were equal in rights and

[1] Table 1 –Criminal Offences against Freedoms and Rights of Man and the Citizen under the Criminal Law of the Republic of Serbia for the period 2000-2001

duties, i.e. the citizen of one member republic had the same rights and duties in the territory of the other member republic as the citizen of that member republic. The Yugoslav citizen could not be deprived of citizenship, expelled from the country or extradited to another State (Article 17, paragraph 3).

51. The Charter of Human and Minority Rights and Civil Liberties guarantees the right of citizenship. In accordance with the provisions of Article 35, a child born in the territory of Serbia and Montenegro has the right of citizenship if it has no other citizenship. Likewise, a citizen of the State Union of Serbia and Montenegro may not be deprived of his/her citizenship, expelled from the State Union of Serbia and Montenegro or turned over to an entity outside its territory, except in accordance with the international obligations of the State Union.
52. The conditions for the acquisition and termination of the citizenship of the Federal Republic of Yugoslavia are regulated by the Law on Yugoslav Citizenship ("Official Gazette of the Federal Republic of Yugoslavia", Nos. 33/96 and 9/2001), the Law on the Citizenship of the Socialist Republic of Serbia ("Official Journal of the Socialist Republic of Serbia", Nos. 45/79 and 13/83) and the Law on Montenegrin Citizenship ("Official Gazette of the Republic of Montenegro", No. 41/99).
53. According to the Law on Yugoslav Citizenship, the basic manner of acquiring Yugoslav citizenship is the acquisition of citizenship by origin (ius sanguinis). It appears also in combination with the system of the acquisition of Yugoslav citizenship by the birth in the territory of the Federal Republic of Yugoslavia (ius soli). Namely, a child acquires, at the moment of birth, the citizenship of its parents by the force of law regardless of the place of birth. Only if both parents are unknown or of unknown citizenship or without a citizenship, a child born or found in the territory of the Federal Republic of Yugoslavia acquires Yugoslav citizenship by the birth in the territory of the Federal Republic of Yugoslavia. The combination of the two systems makes it possible for each child whose one or both parents are Yugoslav citizens and/or a child born or found in the territory of the Federal Republic of Yugoslavia, whose both parents are unknown or of unknown citizenship or without a citizenship, to acquire Yugoslav citizenship. Yugoslav citizenship may also be acquired by admission (naturalization) and under international treaties.
54. The said Law stipulates that all citizens have equal rights to achieve the status of citizen without discrimination on any ground, such as sex, race, colour, language, religion, nationality or social status, property or any other status.
55. The provisions of the Law on Yugoslav Citizenship are aligned with the general standards of international law, primarily with the provisions of the European Nationality Convention, Convention of the Nationality of Married Woman and the Convention on the Legal Status of Stateless Persons.
56. Considering the situation in which the Federal Republic of Yugoslavia found itself upon secession of the republics of the former Socialist Federal Republic of Yugoslavia, i.e. the situation in which a large number of the citizens of the Federal Republic of Yugoslavia found themselves, the transitional provisions of this Law, by and large protective in nature with respect to the rights of a citizen of the Socialist Federal Republic of Yugoslavia who possessed the citizenship of another republic of the former Socialist Federal Republic of Yugoslavia or is a citizen of another State created in the territory of the Socialist Federal Republic of Yugoslavia, enabled integration in the legal system of the rule on succession of citizenship. Under the rule, every individual, on the day of the succession of States, has the citizenship of the predecessor State regardless of the manner of the acquisition of the citizenship, i.e. has the right of the citizenship of at least one of the States concerned by the succession. The difficult social and legal position of refugees has been ameliorated in this way, while the problems of their settlement, movement, family and property rights are solved in accordance with the principles of the Convention on the Status of Refugees of 1951 and the Protocol thereto of 1967.
57. The provisions of Article 47 of the Law on Yugoslav Citizenship made it possible for all citizens of the former Socialist Federal Republic of Yugoslavia who had had the citizenship of another republic of the former Socialist Federal Republic of Yugoslavia or another State created in the territory of the former Socialist Federal Republic of Yugoslavia to acquire Yugoslav citizenship if they had domicile in the territory of the Federal Republic of Yugoslavia on the date of the promulgation of the Constitution of the Federal Republic of Yugoslavia (27 April 1992). This right is also granted to the children of these persons born in the Federal Republic of Yugoslavia after the said date. Likewise, Yugoslav citizenship under this Article may also be acquired by a citizen of the former Socialist Federal Republic of Yugoslavia who accepted to serve as a professional commissioned or professional non-commissioned officer or a civilian employee in the Army of Yugoslavia and by members of his/her immediate family – the spouse and children. The Amendments to the Law have enabled continued possession of citizenship, both by the afore-mentioned categories of citizens and by the persons who, as refugees, expellees or displaced persons, stayed in the territory of the Federal Republic of Yugoslavia, as well as

by a person who fled abroad and who files an application to Yugoslav citizenship to a Federal organ in charge of internal affairs (Article 48). In the case of multiple citizenship, the Yugoslav citizen, when staying in the territory of the Federal Republic of Yugoslavia, is considered, under Article 4 of the Law on Yugoslav Citizenship, a Yugoslav citizen with all the rights and obligations he/she has as a citizen of the Federal Republic of Yugoslavia.

58. Since the beginning of the implementation of the Law, i.e. in the period from 1 January 1997 to 30 September 2002, 440 000 requests have been submitted for the acquisition of Yugoslav citizenship under Article 48 of the Law. In that period 542 987 persons have been admitted to Yugoslav citizenship (this concerns mainly the acquisition of citizenship by refugees), while 300 000 persons acquired citizenship through the inscription in the book of citizens. Since the amendments of the Law till the end of September 2002, 167 321 persons acquired dual citizenship.
59. According to the provisions of this Law, Yugoslav citizenship may be terminated through release, renunciation or under international treaties. In the case of the termination of Yugoslav citizenship through release, the organ conducting the procedure reserves the discretionary right to approve it.
60. A Yugoslav citizen will cease to have the citizenship of a member republic with the termination of Yugoslav citizenship, while a foreigner acquires the citizenship of a member republic through the acquisition of Yugoslav citizenship.
61. The Law does not provide for the institute of withdrawal of Yugoslav citizenship, but the institute of re -acquisition of Yugoslav citizenship, the so-called re-integration, has been broadened. Yugoslav citizenship may be re-acquired not only by a person whose Yugoslav citizenship was terminated at the request of parents, as prescribed by previous citizenship laws, but also by any person whose Yugoslav citizenship was terminated through release and who acquired foreign citizenship, provided he/she stays at least a year in the Federal Republic of Yugoslavia without interruption and meets the requirements under the Law.
62. Under the laws in force, Yugoslav citizenship is proved by an excerpt from the register of Yugoslav citizens, excerpt from the birth register and by a certificate of citizenship.
63. A decision on the acquisition and termination of Yugoslav citizenship cannot be appealed against in an administrative procedure, but protection of the right in a court procedure has been ensured by filing a complaint to the Federal Court which rules on the legality of final administrative acts.
64. Bearing in mind the afore-mentioned, it should be pointed out that the problem of the citizenship of citizens from the former Yugoslav republics has been overcome by the adoption of the new Law on Citizenship in 1997 since, until that time, applications for acquisition or termination of citizenship were acted upon exclusively under the Law on the Citizenship of the Socialist Republic of Serbia from 1976. The provisions of that Law regulated the question of the acquisition (by origin, by birth in the territory of Serbia, by admission of citizens of another republic to the citizenship of Serbia, by naturalization and under international treaties) and of the termination (by the acquisition of the citizenship of another republic, by release, by renunciation, by withdrawal and under international treaties) of the citizenship of the Socialist Republic of Serbia. Under that Law, the citizenship of the Socialist Federal Republic of Yugoslavia, i.e. of the Federal Republic of Yugoslavia, is acquired simultaneously with the acquisition of the citizenship of the Socialist Republic of Serbia (the Republic of Serbia).

E) Status of foreigners under the laws and the existing practice

65. Article 66 of the Constitution of the Federal Republic of Yugoslavia provided for the rights of foreign nationals in the Federal Republic of Yugoslavia which were concordant with the standards of international law and international treaties acceded to by the Federal Republic of Yugoslavia. Consequently, foreign nationals in the Federal Republic of Yugoslavia had the freedoms, rights and duties provided for by the Constitution, federal law and international treaties. A foreign national may be extradited to another State only in cases provided for by international treaties which are binding on the Federal Republic of Yugoslavia. A foreign national and a stateless person persecuted for advocacy of democratic views, freedom and the rights of the human person or the freedom of scientific or artistic creation or for participation in social and national liberation movements are guaranteed the right of asylum. Article 70 stipulated that a foreign national may acquire, on terms of reciprocity, the right to property and the right to engage in business in accordance with federal law. A foreign national and a stateless person may not acquire the right to own immovable property of cultural interest.
66. In its Article 37, regulating the freedom of movement in the State Union of Serbia and Montenegro, the Charter of Human and Minority Rights and Civil Liberties stipulates that the entry and stay of foreign nationals in the territory of the State Union will be regulated by law and that he/she may be

expelled only on the basis of a decision of the competent organ in a procedure prescribed by law. Nonetheless, the expelled person may not be sent to a place where he/she may face persecution on the grounds of race, religion, citizenship, belonging to a social group or political opinion or where human rights are seriously violated.

67. Any foreign national justifiably fearing persecution on the grounds of race, colour, sex, language, religion, nationality, belonging to a national group or political opinion has the right to asylum in the State Union. Likewise, any person resettled forcibly within Serbia and Montenegro has the right to effective protection and assistance in accordance with the law and the international obligations of the country (Article 38).
68. In its Article 50, the Constitution of the Republic of Serbia stipulates that a foreign national in the Republic of Serbia has the freedoms and rights specified by the Constitution and other rights and duties established by law.
69. In its Article 57, the Constitution of the Republic of Serbia stipulates that economic and other activities are conducted freely and under equal conditions in accordance with the Constitution and law. A foreign national is guaranteed the right to engage in economic and other activity and the rights deriving from investment and business activity under the conditions specified for domestic persons by law.
70. The provisions of Article 1 of the Law on the Movement and Stay of Foreigners ("Official Gazette of the Socialist Federal Republic of Yugoslavia", Nos. 56/80, 53/85, 30/89, 26/90 and 53/91 and the "Official Gazette of the Federal Republic of Yugoslavia", Nos. 24/94 and 28/96) stipulate that each person who is not a citizen of the Federal Republic of Yugoslavia is considered a foreign national. During their stay in the Federal Republic of Yugoslavia, foreign nationals may move about, stay, associate, use personal names, acquire, hold and carry arms under the conditions provided for by this Law.
71. The provisions of Article 4 of the Law stipulate that foreign nationals may be banned entry into the Federal Republic of Yugoslavia, restricted or banned movement in certain areas, cancelled stay or prohibited permanent settlement in certain places for reasons of protecting public order or protecting the country's defence interests or for reasons stemming from international relations.
72. Under Article 5 of the Law, foreign nationals may come and stay in the territory of the Federal Republic of Yugoslavia if they are in possession of a valid foreign travel document or a valid travel document for foreigners issued by the competent organ of the Federal Republic of Yugoslavia and if they have a Yugoslav visa affixed in the said documents.
73. Article 18, paragraph 2, of the Law on the Movement and Stay of Foreigners contains an exception provision by which the Federal Government may decide that nationals of foreign States which do not impose visa requirements on the citizens of the Federal Republic of Yugoslavia may come to, transit through and depart from the Federal Republic of Yugoslavia without a visa.
74. The Federal Republic of Yugoslavia concluded visa abolition agreements (all types of travel document, official and diplomatic passports or diplomatic passports alone) with a number of countries.
75. On the basis of Article 16 of the Law, the Federal Minister of the Interior brought in 2000 a unilateral decision (the validity of which was subsequently extended) to issue tourist passes and enable foreign nationals (from the European Union, highly developed countries and from the countries of Central Europe), coming to the Federal Republic of Yugoslavia on tourist visits, to enter the country without a visa. The tourist passes are issued at the border crossing and are valid for 30 days.

- **Foreigners sentenced in the Federal Republic of Yugoslavia**

76. Foreign nationals sentenced by domestic courts for breaking the law serve their sentences in the Penal-Correctional Institution at Sremska Mitrovica, while women foreign nationals serve in the Penal-Correctional Institution for women at Pozarevac. In the reporting period, 917 foreign nationals served prison sentences. The majority of them were from Romania (517) and in the greatest number of cases they had been sentenced for grand larceny, robbery and assault coupled with the use of force, but also for other offences. In addition, nationals of the following countries were serving prison terms in these institutions: Macedonia (68); Bulgaria (52); Turkey (28); Croatia (30); Ukraine (26); Bosnia and Herzegovina (18); Poland (7); Russia (12); Hungary (5); Albania (9), China (8); and the Republic of Srpska (53). Citizens of Italy (3); the Netherlands (6); Germany (3); Slovakia (3) Slovenia (4); Lithuania (9); Sweden (3); Iran (2); USA (3) and of other countries were also sentenced for the perpetration of various criminal offences (theft, grand larceny, robbery, assault coupled with the use of force, stealing of vehicles, illegal trafficking, fraud, murder, serious crimes against public traffic

safety, illegal production and trade in narcotic drugs, money forgery, terrorism, illegal border crossings and other criminal offences).

77. According to the data available for the period 2000-December 2002, foreign nationals were serving prison sentences for the following breaches of the law: 123 from Romania, mainly for the criminal offences of grand larceny and theft, robbery, murder, rape, coercion to sexual intercourse, grievous bodily harm; 28 from the Republic of Srpska, for the criminal offences of theft, grand larceny, assault coupled with the use of violence, fraud, serious crimes against public traffic safety, illegal possession of firearms, grievous bodily harm; 17 from Croatia, for criminal offences of murder, theft, assault coupled with the use of force, forgery of documents, criminal offences against public traffic safety, unnatural carnal knowledge; 13 from Macedonia, for the criminal offences of theft, grand larceny, assault coupled with the use of force, extortion, illegal production of, and trade in, narcotic drugs; 13 from Bulgaria, for the criminal offences of theft, assault coupled with the use of violence and robbery, drug trafficking, endangering traffic safety, giving of bribes; from Bosnia and Herzegovina, for the criminal offences of murder, grand larceny, serious cases of robbery and assault coupled with the use of force, illegal possession of weapons, rape and coercion to sexual intercourse; 8 from China, for the criminal offences of abduction and grand larceny; 2 from the Netherlands, for the criminal offences of illegal production of, and illicit trade in, narcotic drugs; 2 from France, for the criminal offences of the forgery of documents and drug trafficking; 1 from Poland, for the criminal offence against public traffic safety; 1 from Slovenia, for the criminal offence of murder; 1 from Sweden, for the criminal offence of murder; 1 from the Czech Republic, for the criminal offence of fraud; 1 from Italy, for the criminal offence of murder; and 1 from Turkey, for the criminal offence against public traffic safety.
78. The following number of foreign nationals from the following countries were serving prison sentences in the Penal-Correctional Institution at Sremska Mitrovica in December 2002: 38 from Romania; 15 from Croatia; 8 from the Republic of Srpska; 7 from Bosnia and Herzegovina; 5 from China; 5 from Bulgaria; 4 from Macedonia; 3 from Slovenia; 2 from Ukraine; 2 from the Netherlands; and 1 from Hungary, Lebanon, Federal Republic of Germany, Belgium, Italy, Sweden and Russia each, mainly for the criminal offences mentioned above. One Romanian woman was serving her sentence in the Penal-Correctional Institution for women at Pozarevac for illegal crossing of the State border, one Bulgarian woman for theft and one woman from Bosnia and Herzegovina for illegal possession of arms.
79. Foreign nationals serving their sentences in institutions in the Republic of Serbia have the same treatment as other sentenced persons. They share the same premises. Representatives of foreign Consulates and of the International Committee of the Red Cross are allowed regular visits and they check on the health conditions, work activities and the need for legal aid and material assistance of convicted foreign nationals. Consulates and Embassies of almost all countries show continuous interest in their citizens serving prison sentences. There are problems in communication, particularly with Romanian and Bulgarian nationals who are also the most numerous foreign nationals in penal-correctional institutions.

- **Foreign nationals who break the law in the Federal Republic of Yugoslavia**

80. Foreign nationals who break the law in the territory of the Federal Republic of Yugoslavia/Serbia and Montenegro come under two Articles of the Law on Minor Offences ("Official Journal of the Socialist Republic of Serbia", No. 44/89 and the "Official Journal of the Republic of Serbia", Nos. 21/90, 11/92, 20/93, 53/93,28/94, 36/98 and 44/98).
81. Article 16 stipulates that no legal proceedings for minor offences will be instituted, nor a penalty pronounced, against a person enjoying diplomatic immunity; under Article 49, a foreign national may be order to leave the territory of the Federal Republic of Yugoslavia if he/she commits a minor offence due to which his/her stay in the country is no longer desirable. The measure is pronounced for a period of six months to up to two years. The time for which it is pronounced begins to run on the date on which the decision concerning the offence has become effective. The time spent in serving the punishment, however, will not be included in the period of the duration of that measure.
82. According to the annual report, 1 382 protective measures of ordering foreign nationals to leave the territory of the Federal Republic of Yugoslavia were pronounced in 2001.

Statistical report on subjects of enforcement prior to taking legal effect under Article 305 of the Law on Minor Offences

Number of persons sentenced and the structure of sentences pronounced

Fine	10 351
Penalty of imprisonment (FRY)	563
Foreign nationals	1 293
Admonition	463
Protective measure	3 631
Reprimand	12 750

Structure of accused persons by State of origin

Federal Republic of Yugoslavia	3 103
Republic of Srpska	718
Federation of BH	308
Republic of Croatia	174
Hungary	76
Romania	3 610
Bulgaria	428
Macedonia	301
Albania	10
Other countries	2 893

Structure of offences

Traffic	4 835
Public peace and order	1 370
Movement of foreigners	4 620
Crossing of the State border	1 707

- **The right of foreigners to employment**

83. In accordance with Article 8 of the Law on the Basic Principles of Labour ("Official Gazette of the Federal Republic of Yugoslavia", No. 29/96) and the Law on the Conditions of Employment ("Official Gazette of the Socialist Federal Republic of Yugoslavia", Nos. 11/78 and 64/89 and the "Official Gazette of the Federal Republic of Yugoslavia" Nos. 42/92, 24/94 and 28/96), foreign nationals and stateless persons may take up employment if they fulfil the conditions laid down by the law, collective contract and the general act of the employer. The requirements which a foreign national or a stateless person must meet to take up a job are identical to those applying to the nationals of the Federal Republic of Yugoslavia. In addition, a foreign national or a stateless person must meet certain specific conditions which do not apply to Yugoslav nationals and which are set out in the Law on the Terms of Employment of Foreign Nationals:

    a) They must have a permanent residence or temporary stay permit; and
    b) They must have approval to take up employment with a particular employer. This requirement is waived if employment is taken up to carry out professional work under a contract on business/technical cooperation, long-term production cooperation, transfer of technology or foreign investment.

84. Approval to a foreign national to take up employment is granted by the competent republican and/or provincial agency. According to the data of the Belgrade Branch Office of the Market Institute of the Republic of Serbia, 1 216 work permits were issued to foreign nationals in the period from January 1999 to November 2002.
85. According to regulations on employment and the exercise of the rights of the unemployed, foreign nationals, after the registration with the Republican Labour Market Office, become equal with Yugoslav nationals, except that they cannot acquire the right to health insurance on the basis of unemployment.
86. The Law on Employment of the Republic of Serbia ("Official Gazette of the Republic of Serbia", Nos. 70/2001 and 73/2001), providing for the regulation of the rights and duties and the responsibilities stemming from employment by law and by a special law in accordance with confirmed International Conventions, regulates also the matter of the establishment of employment relation with a foreign national or a stateless person in the manner regulated also by the afore-mentioned Federal laws.

- **The right of foreign nationals to acquire property**

87. Chapter I of the Law on the Basic Principles of Property Legal Relations ("Official Gazette of the Socialist Federal Republic of Yugoslavia", Nos. 6/80, 36/90 and the "Official Gazette of the Federal Republic of Yugoslavia" No. 29/96) regulates the rights of foreign nationals. Article 82 (a) of the Law stipulates that foreign physical and legal persons may acquire movable property under the same conditions as Yugoslav nationals. Article 82 (a) stipulates that foreign physical and legal persons, carrying out an activity in the Federal Republic of Yugoslavia, may, on conditions of reciprocity, acquire immovable property that is indispensable for the performance of their activity. A foreign physical person who does not carry out an activity in the Federal Republic of Yugoslavia may, on conditions of reciprocity, acquire the right to own an apartment or a residential building under the same conditions as a Yugoslav national. As an exception to paragraphs 1 and 2 of Article 82, it is possible to provide by a Federal law that a foreign physical or legal person may not acquire immovable property in certain areas of the Federal Republic of Yugoslavia.
88. Article 85 (a) of the said Law stipulates that an enterprise engaged in tourist or catering activity may lease a tourist or other auxiliary facility on a long-term basis to a foreign physical or legal person under the terms and conditions set out in a written contract. A long-term lease may be concluded for not less than five and not more than 30 years. Upon the expiry of the contracted period, the lease may be extended. At the request of the lessee, the long-term lease will be entered into the public register or registered in another manner specified by law. A long-term lease of which an entry into the register has been made has legal force with respect to any owner who acquires the property at a later date.
89. Article 8 of the Enterprise Law ("Official Gazette of the Federal Republic of Yugoslavia", Nos. 29/96, 33/96, 29/97, 59/98, 74/99 and 36/2002) stipulates that foreign legal and physical persons may, on conditions of reciprocity, establish enterprises in accordance with that Law and with the Federal Law regulating foreign investment.
90. The Federal Law on Foreign Investment ("Official Gazette of the Federal Republic of Yugoslavia", No. 3/2002) stipulates that foreign nationals (a foreign legal person based abroad, a foreign physical person, as well as a Yugoslav national domiciled and/or residing abroad longer than a year) may, for the purpose of acquiring profit, invest in enterprises and in other businesses in the Federal Republic of Yugoslavia. In the sense of this Law, foreign investment is considered an investment in a Yugoslav enterprise by which a foreign investor acquires a stake in the equity or in the fixed assets of that enterprise and any other property right due to a foreign investor by way of which he/she realizes his/her business interests in the Federal Republic of Yugoslavia. A foreign investor may, alone or with another foreign or a Yugoslav investment partner, establish an enterprise or buy stocks and shares of an existing enterprise and may be granted, as a special form of foreign investment, a licence (concession) to exploit natural resources and goods in the public domain, an asset in public use for the purpose of carrying out an activity of general interest in accordance with the law, i.e. may be given approval to build up, use and transfer a certain facility, a plant or a unit, as well as infrastructure and communication facilities.
91. Yugoslav laws apply to foreign investment in the territory of the Federal Republic of Yugoslavia; however, if the provisions of an international or bilateral treaty, the contracting parties of which are the State of a foreign investor and the Federal Republic of Yugoslavia, are more favourable for the foreign investor or his/her investment, those provisions will apply (Article 13 of the afore-mentioned Law).
92. Article 5 of the Regulations on Foreign Trade Arbitration of the Yugoslav Chamber of Commerce and Industry ("Official Gazette of the Federal Republic of Yugoslavia", Nos. 52/97 and 64/2001) stipulates that foreign nationals may also be arbitrators.

- **Inheritance rights of foreign nationals in the Federal Republic of Yugoslavia**

93. Article 7 of the Law on Inheritance of the Republic of Serbia ("Official Journal of the Republic of Serbia", No. 46/ 95) stipulates that foreign nationals in the Republic of Serbia have, under conditions of reciprocity, the same status in terms of inheritance as Yugoslav nationals, unless stipulated otherwise by an international treaty.

- **The right of foreign nationals to public assembly in the Federal Republic of Yugoslavia**

94. Proceeding from the provisions of the Constitution of the Federal Republic of Yugoslavia, Article 40, paragraphs 1 and 2, and Article 77, paragraph 1, subparagraphs 5 and 6, on 24 April 2001, the Federal Constitutional Court took the Decision establishing that the provisions of Articles 8 and 13 and paragraph 1, subparagraph 3, of Article 15 of the Law on Public Assembly of Citizens ("Official

Journal of the Republic of Serbia", Nos. 51/92, 53/93, 67/93 and 48/94), regulating the status of foreign nationals in terms of their right to convene, hold and speak at a public gathering, their responsibility vis-a-vis the breach of law and the removal from the territory of the Federal Republic of Yugoslavia are not in accordance with the Constitution of the Federal Republic of Yugoslavia. The Decision made it possible for foreign nationals to exercise the right to public assembly under the same conditions as the nationals of the Federal Republic of Yugoslavia.

F) Legal remedies available to victims, whose rights and freedoms are recognized by the Covenant and their practical implementation

95. The protection of the basic rights of the citizen is based on the Constitution of the Federal Republic of Yugoslavia and/or by the Charter of Human and Minority Rights and Civil Liberties of the new State Union of Serbia and Montenegro. By its Article 26, the Constitution of the Federal Republic of Yugoslavia guaranteed everyone the right of appeal or recourse to other legal remedy against a decision concerning his/her legally founded right or interest. The same right is guaranteed by the Charter in its Article 18.
96. According to Article 22 of the Constitution of the Republic of Serbia, everyone is entitled to equal protection of his/her rights in the proceedings before a court of law, a government agency or any other agency or organization. Every individual is guaranteed the right of appeal or other legal remedy against a decision concerning his/her right or interest founded on law.
97. The Constitution of the Republic of Serbia sets the framework for the rule of law in terms of the protection of the citizen and legal persons:

" Citizens are equal in their rights and duties and have equal protection before government and other agencies, irrespective of race, sex, birth, language, nationality, religion, political or other belief, level of education, social origin, property status or any other personal attribute" (Article 13).

"Everyone is entitled to equal protection of his/her rights in the proceedings before a court of law, a government agency or any other agency or organization.

"Every individual is guaranteed the right to appeal or to apply other legal remedy against a decision concerning his/her right or interest founded on law" (Article 22).

"Every person is entitled to compensation of property and non-property damage inflicted on him/her through unlawful or irregular work of an official or a government agency or organization exercising public powers in conformity with the law" (Article 25).

98. By its Article 48, the Constitution of the Republic of Serbia provides for the right of the citizen to criticize the work of government and other agencies and organizations and to submit, petitions, proposals etc.
99. A judge cannot be transferred against his/her will.
100. In the protection of their constitutionally guaranteed rights and freedoms, the Constitution guarantees citizens and legal persons the right to initiate legal proceedings and, if they are not satisfied with a decision, the right to regular and special legal remedies. However, during the proceedings, pending their taking effect, i.e. enforceable, i.e. coercive enforcement or enforcement of a punishment in matters decided upon in a criminal procedure, they may have recourse to four procedures provided for by law if they are not satisfied with the treatment they or their legal problems are accorded before the court:

1. Recusation request (Articles 71-76 of the Law on Lawsuits, "Official Gazette of the Socialist Federal Republic of Yugoslavia", Nos. 4/77, 36/77, 36/80, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90 and 35/91 and the "Official Gazette of the Federal Republic of Yugoslavia", Nos. 27/92, 31/93, 24/94, 12/98, 15/98 and 3/2002, i.e. the Code on Criminal Procedure, "Official Gazette of the Federal Republic of Yugoslavia", No. 70/2001);
2. Right to file a complaint (Article 7 of the Law on the Regulation of Courts, "Official Journal of the Republic of Serbia", Nos. 63/2001 and 42/2002);
3. Right to a petition (The Law on the Procedure relating to Petitions and Proposals); and

4. Criminal offence of the violation of the right of recourse to legal remedy (Article 74 of the Criminal Law of the Republic of Serbia).

101. The institute of recusation (exclusion of a lay judge, an expert or a forensic expert and a recorder) is provided for both in the Law on Lawsuits and in the Code on Criminal Procedure. In addition to specifying the circumstances which exclude a judge from hearing a case by reason of family or other connections with the litigants or by reason of interest in the subject of litigation, the Law and the Code provide for the possibility of recusation also in the event of the existence of other circumstances that lead to suspicion with regard to the impartiality of a judge. This legal provision providing for the institute of recusation and the possibility of a litigant to petition the president of the court, putting in doubt the impartiality of a judge, corresponds in large measure with the content and reason of a possible complaint with respect to the work of a judge and the institute of "petition".
102. By its Article 1, the Law on the Regulation of Courts stipulates that the judicial power belongs to courts and that courts are independent organs of State power, protecting the rights and freedoms of the citizen and the rights and interests of legal persons spelled out by law and ensuring constitutionality and legality. Furthermore, by its Article 3, the Law stipulates that judicial power is independent from legislative and executive powers; that a court decision may be reviewed only by a competent court within the procedure provided by law; and that everyone, an agency of executive power in particular, must honour an enforceable court decision and obey it. Article 5 of the Law stipulates that a judge is determined to try a case regardless of who the litigants and the circumstances of the legal matter may be and that the court administration alone may assign cases according to the rules established in advance. Article 6 explicitly prohibits influencing courts by way of the "use of a public function, the media or any other public statement influencing the course and outcome of legal proceedings. Any other form of influence on the court is prohibited."
103. Article 7 of the afore-mentioned Law stipulates that a party or another participant in legal proceedings has the right of complaint if they consider that the proceedings are dragged out; that they are conducted inappropriately; or that pressure is being brought to bear on the course and outcome of the proceedings.
104. Action upon a complaint is provided for by Article 52 of the Law in the following way: "When a party or another participant in legal proceedings files a complaint, the President of the Court is duty-bound to consider it and advise the complainant of its merits and the measures that have been taken, within fifteen days from the receipt of the complaint.
105. If the complaint has been filed through the Ministry competent for administration of justice or a court of higher instance, the minister or the president of the court will be advised of the merits of the complaint and the measures that have been taken.
106. Accordingly, the key figure to act upon a complaint is the president of the court with which the complaint has been filed. In this context, Article 49 of the Law sets forth his/her rights and obligations in this way: "The president of the court represents the Court, directs the court administration and is responsible for a proper and timely functioning of the court […]; authorized to demand legality, order and punctuality in the court; eliminates improper practices and delay; sees to it that the independence of judges is maintained; and carries out other business provided for by law and the Court Rules of Procedure."
107. The president of the court may delegate certain tasks of court administration to other persons, but, pursuant to Article 50 of the Law, "he/she may not delegate […] the authority to decide on the annual schedule of case assignment and the departure from the schedule or the order of the taking-up of cases and on case re-assignment."
108. Pursuant to Article 66 of the Law, judicial administration includes, *inter alia,* supervision of actions taken in connection with a case within the period provided for by law and of actions taken in connection with complaints and petitions. The administration is carried out by the competent ministry for administration of justice. At the same time, pursuant to Article 67 of the Law, influencing the autonomy and independence of judges is prohibited, so that "any act of judicial administration infringing upon the autonomy and independence of the court and judges is null and void, while nullity is established by the Grand Personal Chamber at the proposal of the president of the competent court."
109. Finally, by its Article 70, the Law provides for the Court Rules of Procedure, brought by the competent minister for administration of justice in agreement with the President of the Supreme Court of Serbia. The application of the Court Rules of Procedure is monitored by the competent ministry for administration of justice. Upon completion of supervision, a record of proceedings is made and forwarded to the president of the court in which the supervision took place, the president of the next-in-line court of higher instance and to the President of the Supreme Court of Serbia (Articles 71 and

72). The Court Rules of Procedure prescribe internal regulation and work of a court and, among others, keeping the public informed of the work of a court […] and the treatment by the court personnel of parties and documents; actions taken in connection with complaints and petitions; and the keeping of statistical data records and the preparation of work reports.

110. The President of the Court acts upon a complaint only with regard to the respect of the Rules of Procedure. According to Article 55 of the Law, a judge may be dismissed if he/she performs his/her duties in an unconscientiously incompetent fashion and the relevant provision reads: "A judge performs his/her duty unconscientiously if he/she drags out a case, ignores prescribed deadlines in the conduct of proceedings and the drafting of decisions or acts contrary to the criteria determined by the Supreme Court of Serbia in another way. Unconscientious performance of duty is considered also the continuance by a judge in business and acts which are identical or similar to those found to be incompatible with his/her duties…"

111. This provision is essential because one of the most frequent reasons for filing complaints in the past has been political pressure exerted on judges in the conduct of proceedings.

112. In the procedure to dismiss an unconscientiously incompetent judge, the Grand Personal Chamber may pronounce vis-a-vis a judge a measure of warning or a measure of suspension from court lasting from one month to one year (Article 61). The measures are entered into his/her personal record of service and the judge has the status of a person suspended from court (in the event of a suspension measure) throughout the duration of the measure, while the measure of warning cannot be pronounced twice (Article 62).

113. By its Article 6, paragraph 5, the Court Rules of Procedure stipulate explicitly that the president of the court acts upon a complaint only with regard to the respect of the Rules. This Article stipulates in more precise terms the powers of the president of the court to organize, through directives and instructions which cannot be appealed against, and supervise independently, in his/her capacity as head of court administration and in the context of running the administration in accordance with the Rules of Procedure, the work of all services and departments of the court, including review of register and auxiliary books and calendars of hearings and other events, keeping track of protracted cases by receiving reports and in some other suitable way, including measures to eliminate delay and other deficiencies. The president of the court is duty-bound to check, personally or through a person he/she designates, each complaint against the work of the court or against individual judges and other employees regardless of whether it was received in writing or by word of mouth, on court premises or through other agencies. Before he/she replies to the complaint within the shortest time possible, the president will advise the person concerned, request a written or oral explanation, review the case and carry out all necessary actions to establish the merits of the complaint.

Breakdown of complaints in 2001 and 2002

The Court Supervision Section within the Ministry of Justice of the Republic of Serbia received about 5 200 complaints against the work of courts in the first eight months of 2002.

The magnitude of the increase is best illustrated by the fact that the number of complaints in previous years varied between 300 and 1500. Only 1614 complaints were received in 2000, while in 2001 the number soared to 6000.

The complaints were answered in writing and all other measures within the competence of the Section stemming from the application of the Court Rules of Procedure were taken. In 2002, the Supervision Section saw more than 8 000 complainants in connection with complaints they had filed against the work of courts.

114. The Law on Actions Taken upon Submission of Petitions and Proposals provides, in its Article 2, for the right to a petition according to which a petition implies "a request, a complaint, a proposal or other submission by way of which an agency is petitioned for the purpose of protecting and effectively realizing a social interest, one's rights, legal interests and obligations. In order to exercise the rights of man and the citizen, a petition may be submitted to bodies or organs of socio-political communities or to other organizations and communities performing functions of public interest and carry out public powers. Since this Law was passed in the political circumstances that were completely different from those prevailing today, it protects some of defunct institutions and extinct rights, which makes it inapplicable.

115. The provisions of the Criminal Law of the Federal Republic of Yugoslavia (Article 196 – The criminal offence of the abuse of official duty by an official person in federal bodies and organizations) and the Criminal Law of the Republic of Serbia (Article 74 – The criminal offence against the freedoms and rights of man) penalize violations of the right to have recourse to legal action. Likewise, the Code of Criminal Procedure ("Official Gazette of the Federal Republic of Yugoslavia", No. 70/2001) and other process laws, providing for legal or administrative proceedings for the protection of the rights of citizens, regulate in greater detail the right to a suit and other initial actions and the right to complaint and other regular and extraordinary legal remedies.

Article 3

A) Participation of women in the political life of the country

116. Men and women in the Federal Republic of Yugoslavia have equal political rights and freedoms. The right to vote is defined as a universal and equal right of all citizens of legal age. Consequently, women are granted the right to elect and be elected. Women are included in decision-making at all levels of government. They sit in the Federal and Republican Assemblies and occupy positions of executive power. The Law on Local Elections ("Official Journal of the Republic of Serbia", Nos. 33/2002, 37/2002 and 42/2002) introduced 30-per cent women election quotas, while the Council on Gender Equality within the Government of the Republic of Serbia was established in September 2002. The National Assembly of the Republic of Serbia initiated a procedure to establish a Parliamentary Committee on Gender Equality. The Ministry for Public Administration and Local Self-Government of the Republic of Serbia made the Recommendation to establish Committees on Gender Equality within municipal assemblies wherever possible.
117. The implementation of the pilot project "Introduction of Commissioners for the Participation of Women in Local Self-Government" is under way in 15 towns and cities of the Republic of Serbia. The Institute for Comparative Law prepared the Draft Law against Discrimination and the public debate of the Draft is under way. Family violence is penalized by the Criminal Law of the Republic of Serbia, passed in 2002.
118. The new Yugoslav Commission for Cooperation with UNICEF and for the Advancement of the Status of Women was established in January 2001 and the Working Group for Women, consisting of four women Commission members and seven women experts, was set up within the Commission.
119. The Commission organized the International Conference on Gender Equality in Belgrade in April 2002. 67 participants attended the Conference, including representatives of Hungary, Norway, Sweden, Slovenia and Bulgaria, as well as of OSCE, UNDP, UNICEF, National Democratic Institute and STAR.
120. The Working Group for Women of the Yugoslav Commission for Cooperation with UNICEF and for the Advancement of the Status of Women organized, in cooperation with OSCE, two round tables on gender equality. The publication "Standards and Mechanisms for Achieving Gender Equality in Democratic Countries" was published; the public presentation of the book was organized in Belgrade, as well as three panel discussions on the same topic in Belgrade, Nis and Novi Sad.
121. The representatives of the Commission took part in a number of international conferences discussing the advancement of the status of women (a round table on parliamentary reforms in Serbia in the organization of the OSCE in 2002, Regional Conference on Gender Mainstreaming in Ankara in 2001, Third World Congress of Women in Madrid in 2002 and the Fifth European Ministerial Conference on the Equality of Women and Men in Skopje, January 2003.
122. Members of the Working Group for Women take active part in ongoing projects realized within the Stability Pact for South-East Europe, ODIHR and UNDP. At UNDP's request, the Working Group for Women prepared a proposal for the introduction of gender equality in all spheres of social and political life in 2001.

B) Statistical data on gender ratios of the appointed public administration officials and the participation of women in courts and penalty enforcement institutions

123. No gender-sensitive statistics were kept in the FRY. However, according to the official data, women account for 52 per cent of the total population.

124. Women account for 5.62 per cent of Federal MPs, 10.8 per cent of MPs in the Assembly of the Republic of Serbia and 6.67 per cent of MPs in the Assembly of Vojvodina. In local assemblies in the Republic of Serbia 6.5 per cent of MPs are women.
125. Women account for 43 per cent of the total number of employed in the Republic of Serbia and for 58.7 of the total number of unemployed. They account for 11.9 per cent of holders of top leadership posts in the economy of Serbia.
126. As to the possession of property, 2.4 per cent of women own private companies, 3.4 per cent have savings, 16.16 per cent own apartments, 10.8 per cent own houses, while 9.3 per cent possess agricultural land.
127. Girls account for 50.7 per cent of all secondary school students in the Republic of Serbia and for 61.4 per cent of university students.
128. Out of the total number of 2 419 systemized judges' positions in the Republic of Serbia, 150 are vacant and women account for over 50 per cent of nominated judges. Out of 681 judges in agencies prosecuting minor offences, 487 are women and the warden in the Penal-Correctional Institution for Women at Pozarevac is a woman.

C) Women in police

129. In accordance with ILO Convention No. 111 on Discrimination in Employment, which Yugoslavia ratified, and the International Convention on the Elimination of All Forms of Racial Discrimination, the laws and administrative practice of the Federal Republic of Yugoslavia know of no difference, exception, exclusion or a better treatment on the basis of race, religion, national or other belonging, political conviction, sex, social origin, property status or on any other ground.
130. The provisions of the Convention on the Elimination of All Forms of Discrimination against Women have been incorporated in the country's legal system and practice, particularly from the aspect of the right to equal employment conditions.
131. Consequently, an ever greater number of women decides to seek employment in the organs of internal affairs notwithstanding the demands and specificity of the jobs and tasks. Thus, in the wake of the democratic changes, opening towards the world and the adoption of modern EU standards, women in increasing numbers have sought employment in, and been admitted to, the Ministry of the Interior of the Republic of Serbia. Currently, 6 775 women work in the Ministry, which accounts for 19.39 per cent of its total work force. 1 324 women were admitted to the Ministry during 2001 and 2002 alone. In point of fact, by far the greatest number of women, 1 109 of them, were admitted in the period between January and September 2002, which is five times more compared to the number of women admitted to the Ministry during the entire 2001 (215). Out of that number, 752 women were recruited for pure police assignments (general police assignments, traffic police, border police etc.). Also, 251 women or 3.7 per cent of the total number of women working in the Ministry occupy executive positions.
132. In addition to the women working in the Ministry of the Interior of the Republic of Serbia, a great number of them are employed in the educational institutions schooling future members of the Ministry. Out of the total number of 113 employees of the Higher School of Internal Affairs, 63 or 55.75 per cent are women, while out of 217 employees of the Secondary School of Internal Affairs, 94 or 43.32 per cent are women.
133. Likewise, in line with new trends and reform processes, an ever greater number of women enroll in institutions of higher education in which future police personnel are schooled and specialize.
134. The Police Academy is an institution of higher education, established in 1993 by the special Law on the Performance3 of Educational-Scientific Activity of Importance for Security and Police Affairs. The Police Academy trains and educates officers for top positions in police, charged with the task of protecting legality, the rights, freedoms and security of citizens, maintaining public peace and order and of fighting crime. Basic studies at the Academy last four school years and cadets are recruited through a public competition advertised by the Academy in accordance with the Law on the University and the Law on the Police Academy and the Statute of the Police Academy. Candidates must be Yugoslav citizens, must have completed a four-year secondary school and fulfil special conditions provided for by law for admission to the Ministry of the Interior. Also, they must fulfil special conditions regarding age, health and psycho-physical fitness for a police job, determined by the Minister of the Interior. In the period from 1993/94 to 2002/2003 school years 1 170 students have enrolled in the basic studies of the Police Academy. For the first time since its establishment, 34 girls enrolled in the basic studies in the 2002/2003 school year. In addition to the basic enrolment

conditions, they, too, had to fulfil special conditions for women candidates regarding psycho-physical fitness.

135. The Higher School of Internal Affairs was established by the Law on the Higher School of Internal Affairs in 1972 after it had been assessed that highly skilled police personnel can best be ensured through education in specialized schools. The studies at the School last two years and a half or 5 semesters. Enrolment conditions are prescribed by law. In addition to the general conditions (Yugoslav citizenship, completion of a four-year secondary school), special conditions have been prescribed relative to the affinities and psycho-physical and health fitness for education and work in organs of internal affairs. Since its establishment through the 2002/2003 school year, 12 215 students, 1 434 of them girls, have been enrolled in the School. The number of girls who enroll has markedly increased since the 1998/99 school year. Altogether 86 girls enrolled that year, while in the 2002/03 school year that number stood at 172. Out of the total number of women students, 619 have graduated in the reporting period.

136. Within the comprehensive reform of the Ministry of the Interior of the Republic of Serbia and proceeding from the permanent need to train personnel as a precondition to create a modern police force under European and world standards, the obligation to organize courses for police officers, including courses for women police officers, was established in 2002 on the basis of the Education and Training Plan and Programme for the employed in the Ministry. A total of 5 275 women applied for the course for women officers and 786 of them were selected following psycho-physical and health fitness tests.

137. A total of 406 women completed the four-month course for women officers in the Secondary School of Internal Affairs at Sremska Kamenica from 7 May to 23 August 2002 and 346 in the Education Centre at Kursumlijska Banja from 20 May to 20 September 2002. Upon completion of the course, 752 women officers were assigned to the following police departments in the following numbers: Belgrade (185), Kragujevac (45), Novi Sad (44), Nis (43), Sremska Mitrovica (34), Bor (28) etc. OSCE representatives attended the courses.

D) Incrimination of all forms of violence against women

138. The freedoms and rights of women are protected by the incrimination of all forms of violence against women. Although this is a problem affecting all societies, it is not particularly pronounced in the territory of the Republic of Serbia considering that criminal offences committed to the detriment of women account, on average, for 16.7 per cent of the overall number of criminal offences committed in the course of one year. A total of 184 494 criminal offences to the detriment of women were committed in the period 1994 through September 2002, on average 20 000 criminal offences per year. According to the available data, it transpires that the structure of general crime is not departed from in women's exposure to threats of various forms of crime, which means that women are threatened the most by the commission of criminal offences against property – about 70 per cent of the overall recorded criminal offences committed to the detriment of women. However, a number of criminal offences with elements of violence have been committed to the detriment of women, including criminal offences that are basically various forms of maltreatment of women. According to the structure of committed criminal offences, women are threatened the most by the commission of criminal offences of assault coupled with the use of force – 7 157, cases of rape or attempted rape – 2 162, light bodily harm – 2 114, grievous bodily harm – 1 927, indecent acts – 1 076, to be followed by the commission of the criminal offences of murder and attempted murder – 965, serious cases of robbery and assault coupled with the use of force – 553, use of dangerous implements in fights and altercations – 454, coercion to sexual intercourse or unnatural carnal knowledge of the person under 14 years of age – 395, unnatural carnal knowledge – 268 etc.

139. For the purpose of providing a comprehensive legal protection to women from all forms of violence in the family, the latest Amendments to the Criminal Law of the Republic of Serbia prescribe a new criminal offence in its Chapter 13 – "Criminal Offences against Marriage and Family" – Article 118 (a) - Violence in the Family. This criminal offence incriminates the use of force or serious threat against life and body, jeopardizing the physical or mental integrity of a member of the family. The provision of this criminal offence is aimed at protecting from violence in the family not only the woman, but also other members of the family, primarily children, also exposed to various forms of violence.

E) Laws and practices affecting enjoyment of the rights of women [2]

140. Special protection of women exists also in the minor-offence procedure. According to Article 36 of the Law on Minor-Offence Procedure a penalty of imprisonment cannot be pronounced against a pregnant woman three months after conception or against the mother of a child younger than one year or, if the child was stillborn or died after parturition, until after six months from the day of parturition.

F) Status of women in the field of labour legislation

141. Equality of men and women in the enjoyment of the rights provided for by the Covenant has been fully ensured in the field of employment. The ensurance represents a further concretization of the exercise of the right within the general right to equality of citizens in the acquisition and enjoyment of the right established by Article 20 of the Constitution of the Federal Republic of Yugoslavia which, *inter alia,* stipulates that citizens are equal regardless of sex. In the field of employment, this right may be viewed also in the context of compliance with the prohibition of discrimination. Like the constitutional provisions, the provisions of labour legislation are also aligned with United Nations and ILO instruments and the regulations of the European Union relative to the equality of men and women.

1. Men and women enjoy full equality with respect to the choice of profession. The concretization of the right through normative regulation and its practical implementation are not the matters dealt with by employment legislation; instead, they belong in education and kindred areas.

2.1 As for employment laws, men and women enjoy the same treatment with respect to employment. Proceeding from ILO Convention No. 111 on discrimination against employment and profession of 1958 (and its definition of the term discrimination) and Recommendation No. 111 relative to discrimination (employment and profession) of 1958, employment laws stipulate that jobs, i.e. the possibility of taking up employment, are accessible to each person fulfilling general employment conditions (15 years of age and general physical and mental fitness) and general conditions for work in specific places provided for by law, i.e. by the general act (the regulations) of the employer. In this way, discrimination against persons of different sex has been excluded also in the field of employment and the choice of profession. In practice, however, there are instances of much more frequent admissions of women, i.e. men, in regard to certain specific professions and jobs due to tradition or the nature of the job. In those instances, persons of opposite sex most often do not apply for such positions, even though there are no legal or other normative obstacles to their admission. Consequently, the affirmative action of sorts, "legislated" by nature, as it were, is not discrimination in the true meaning of the word.

2.2 Furthermore, there is no gender discrimination in the work place. Pursuant to ILO Convention No. 100 of 1951, equal pay of men and women for equal work is guaranteed in the Federal Republic of Yugoslavia/Serbia and Montenegro. Likewise, enjoyment of rights based on gender is not discriminated against, so that "maternity" leave may be taken by either parent. Other employment rights are enjoyed irrespective of the gender of the employee.

142. The afore-mentioned provisions do not exclude the separate protection of women under a large number of relevant international instruments. Women are protected from work in work places which would have a harmful effect on their health considering that some of their physical characteristics and capacities differ from those of men. Therefore, work places have been identified in which women cannot work or cannot work at night in the sense of Convention No. 45 on the employment of women in underground works in mines of all categories of 1935 and Convention No. 89 on the night work of women in industrial plants of 1948. In accordance with Convention No. 156 and the Recommendation on the employment of women with family obligations of 1981, the possibilities and treatment of persons, i.e. women with family obligations and the work of women at night have generally been provided for.

[2] Table 2 –Criminal Offences against Dignity, Personality and Morals under the Criminal Law of the Republic of Serbia for the period 2000-2001

G) Marriage and the citizenship of women and children

143. Prior to the adoption of the Law on the Amendments to the Law on Yugoslav citizenship ("Official Gazette of the Federal Republic of Yugoslavia", Nos. 33/96 and 9/2001) marriage did not affect directly the admission of foreigners to Yugoslav citizenship; this fact, however, influenced the approval of permanent residence of foreigners in Yugoslavia in accordance with the regulations of the movement and stay of foreigners, one of the legal requirements for the acquisition of citizenship by admission (Article 12).
144. The Amendments to the said Law, i.e. the provision of Article 12 (a), stipulates that a foreign national, who has been married to a Yugoslav national for at least three years and who has had permanent residence in the Federal Republic of Yugoslavia approved, may be admitted to Yugoslav citizenship if he/she has not been punished with imprisonment for a criminal offence which makes him/her unsuitable for admission to Yugoslav citizenship and if it can be concluded from his/her behaviour that he/she will respect the legal system of Yugoslavia. Likewise, and in accordance with Article 47 of the said Law, Yugoslav citizenship may also be acquired by a citizen of the Socialist Federal Republic of Yugoslavia who accepted to serve as a professional commissioned or professional non-commissioned officer or a civilian employee in the Army of Yugoslavia and by members of his/her immediate family (the spouse and children).
145. Consequently, the Amendments to the Law on Yugoslav citizenship make it possible for a foreigner, married to a Yugoslav citizen, to acquire Yugoslav citizenship. The inclusion of the provision in the Law enables a foreigner to acquire the right to dual citizenship. This amendment is in conformity with the Convention on the Citizenship of Married Woman which, like the European Convention on Nationality of 1997, establishes facilitated conditions for the acquisition of Yugoslav citizenship on the basis of marriage.
146. Likewise, marriage affects the citizenship of women and children in the case of acquisition of citizenship by Yugoslav emigrants since members of the families of Yugoslav emigrants may be admitted to Yugoslav citizenship under facilitated conditions (Article 13).
147. Pursuant to the provisions of the said Law, each child whose parent or both or both of them are Yugoslav citizens has the right to Yugoslav citizenship regardless of the place of birth, as well as a child born or found in the territory of the Federal Republic of Yugoslavia if both of its parents are unknown or of unknown citizenship or without citizenship. In providing for the acquisition of Yugoslav citizenship, the provisions do not differentiate between children born in and out of wedlock, while adopted children are enabled to acquire Yugoslav citizenship under facilitated conditions.
148. As to the effect of marriage on the termination of Yugoslav citizenship, the provision of Article 19, paragraph 1, subparagraph 4, of the said Law stipulates that a Yugoslav citizen will have Yugoslav citizenship terminated through release if he/she has regulated property obligations stemming from marriage to a person living in the Federal Republic of Yugoslavia.

Article 4

A) State of war, the state of imminent threat of war and the state of emergency

149. The legal system of the Federal Republic of Yugoslavia did not know the term "public emergency", mentioned in Article 4 of the Covenant. Instead, the Constitution of the Federal Republic of Yugoslavia and other Yugoslav laws in force use the terms "state of war", "state of imminent threat of war" and "state of emergency". According to Article 78, paragraph 3, of the Constitution of the Federal Republic of Yugoslavia, the Federal Assembly declares the state of war, the state of imminent threat of war and the state of emergency. During the state of war, state of imminent threat of war and the state of emergency, the organs of internal affairs act on the basis of powers given them under the rules and regulations adopted at that time and under general acts which remain in force also at that time. Proper use of extraordinary powers during that period is monitored through the same mechanisms that exist also in peacetime since neither the Constitution nor the laws regulate that question specifically.
150. Article 99, paragraph 10, of the Constitution of the Federal Republic of Yugoslavia stipulates that, when the Federal Assembly is not able to convene and subject to the opinion of the President of the Republic and presidents of the Federal Assembly chambers, the Federal Government proclaims the imminent threat of war, state of war or the state of emergency.

151. According to Article 99, paragraph 11, of the Constitution of the Federal Republic of Yugoslavia, enactments adopted during a state of war may throughout the duration of the state of war restrict various rights and freedoms of man and the citizen, except specific rights and freedoms guaranteed by the Constitution (equality of citizens; inviolability of physical and psychological integrity of the individual, his privacy and personal rights; respect for the human personality and dignity in criminal and all other proceedings; prohibition of the use of force against a suspect who has been detained; prohibition of torture, degrading treatment or extraction of confessions; right of appeal or recourse to other legal remedies; right to rehabilitation and compensation for damages; protection from punishment for an act which did not constitute a criminal offence under the law at the time of commission; protection from trial or punishment a second time for an offence for which the proceedings have been legally suspended or the charges rejected or for which the perpetrator has been acquitted by a court decision; freedom of belief, conscience, thought and public expression of opinion; and the freedom of religion, public or private profession of religion and performance of religious rites.
152. The Constitutional Charter of the State Union of Serbia and Montenegro sets out in Article 19 that the Parliament of Serbia and Montenegro declares and lifts a state of war with prior consent of the Assemblies of the member States.
153. Pursuant to the Charter of Human and Minority Rights and Civil Liberties, derogation from human and minority rights guaranteed by this Charter is allowed following the declaration of a state of war or a state of emergency, if the existence of the State Union or a member State is threatened, but only to the extent necessary under the given circumstances. Measures of derogation from human and minority rights cease to have effect following the end of the state of war or the state of emergency. No derogation is permitted even during the state of war or the state of emergency from the right to human dignity and free development of personality; right to life; right to the inviolability of physical and psychological integrity; prohibition of slavery, servitude and forced labour; right to personal liberty and security; right to a fair trial; presumption of innocence; ban on retroactivity; ne bis in idem; right to marriage; freedom of thought, conscience and religion; citizenship; prohibition of forced assimilation; and the prohibition of instigation to racial, national and religious hatred.
154. According to the provision of Article 83, paragraph 7, of the Constitution of the Republic of Serbia, it is possible to restrict some freedoms and rights of man and the citizen and alter the organization, composition and the powers of the Government and the Ministries, courts of law and public prosecutor's offices by enactments passed during the state of war. These enactments are passed by the President of the Republic, which conduces to the uniform regulation of the restriction of the basic rights and fundamental freedoms. The President is bound to submit the enactments to the National Assembly of the Republic of Serbia for approval as soon as it is in a position to convene.
155. The Law on National Defence ("Official Gazette of the FRY" No. 43/94, 28/96 and 4/99) [3] provides for the possibility of imposing a work obligation on citizens if the survival of the nation is threatened. According to Article 24 of the Law, a work obligation may exceptionally be imposed during the state of war, state of imminent threat of war or the state of emergency. The work obligation of the citizen consists of the execution of certain work and tasks throughout the duration of such a state. This obligation is imposed on all able-bodied citizens aged 15 or more and have not been assigned to serve in the Army of Yugoslavia. This work is not considered an employment. Article 24, paragraph 3, establishes categories of citizens who may not be imposed a work obligation. During the execution of the work obligation it is not allowed to strike. The Federal Government brings specific rules and regulations on the organization and execution of the work obligation. The prior condition for the imposition of such an obligation is the declaration by a decree of the Federal Government, published in the official journal, of the emergence of any of the reasons necessitating the imposition. Such work has not, as a consequence, any form of discrimination in the sense of Article 4, paragraph 1, of the Covenant, does not derogate from the obligations provided for by the Covenant nor is it in disagreement with other obligations stemming from international law.
156. All citizens between the age of 18 and 60 (men) and 55 (women) are obliged to participate in civil defence and protection.

B) The state of war in the Federal Republic of Yugoslavia, declared on 24 March 1999

[3] The Latest Amendments to the Law of 1999 amended Article 24 of the Law by way of addition of a new paragraph 3 which provides for exceptions, i.e. categories who cannot be assigned a work obligation (without their consent).

157. A state of war was declared in the Federal Republic of Yugoslavia on 24 March 1999. The acts (decrees) adopted by the Federal Government regulated, *inter alia*, the question of the implementation of the Law on Travel Documents of Yugoslav Citizens during a State of War and the Law on Transport of Hazardous Substances which are from the field of home affairs. Also, the Decree on the Implementation of the Law on Criminal Procedure which, in the pre-criminal procedure, is also applied by the organs of internal affairs. In accordance with the declaration of the state of war of 1999, the President of the Republic brought the following decrees within the competence of the organs of internal affairs: the Decree on Home Affairs during the State of War, Decree on the Assembly of Citizens during the State of War, Decree on Domicile and Residence of Citizens during the State of War and the Decree on the Personal Identity Card during the State of War. These Decrees restrict or regulate differently certain rights and freedoms: the freedom of movement and settlement; the right to privacy; and the freedom of public assembly.

158. After the bombing of the Penal-Correctional Institution in Istok, Kosovo and Metohija, in May 1999, when a number of sentenced persons and persons employed in the Institution lost their lives, 1955 sentenced persons were relocated to penal-correctional institutions in the territory of Serbia. Following their relocation, visits by international organizations to institutions in Serbia became more frequent. Upon completion of sentences, the sentenced persons were provided organized transport to Kosovo and Metohija. Only those sentenced to longer sentences remained in the institutions.

159. On the basis of the decision of the Federal Government No. 24-2/2002 to adopt the Agreement between the Federal Republic of Yugoslavia and the UNMIK on the Relocation of Sentenced Persons, taken at the 43rd meeting of the Federal Government on 21 March 2002, and the Conclusion of the Government of the Republic of Serbia No. 713-3610/2002 of 22 March 2002, the authorized representatives of the UNMIK took over the remaining 146 sentenced persons of Albanian nationality on 26 March 2002 who would continue to serve their sentences in the territory of Kosovo and Metohija. At their personal request, 5 sentenced persons of Albanian nationality chose to continue to serve the sentence in the territory of Serbia proper. In the meantime, one of them completed the sentence, two persons were handed over to the representatives of the UNMIK in December 2002 to be transferred to Kosovo and Metohija, while negotiations with respect to another convict are still going on.

160. The Decree on the Organization of the Execution of Work Obligation ("Official Gazette of the FRY" Nos. 36/98 and 20/99) relative to the work obligation of the citizens of the Federal Republic of Yugoslavia at the time of the declaration of the state of war, i.e. the emergence of an imminent threat of war in1999 was brought in pursuance of Article 24 of the Law on National Defence. The Decree established the categories of employed citizens who could not be imposed execution of work obligation without their consent and the exception from this limitation (when they could, even without their consent, be imposed a work obligation with the legal person by which they are employed if no other person could be recruited). The Decree on the Implementation of the Law on the Bases of Labour Relations during the State of War ("Official Gazette of the FRY" No. 20/99) was also in force. All those Decrees were revoked upon cessation of the state of war, i.e. the imminent threat of war.

161. No case of the adoption of a regulation on work obligation or the imposition thereof on account of the declaration of the state of emergency was registered in the Federal Republic of Yugoslavia, neither was it declared.

Article 5

Implementation of the provisions of the Covenant

162. The Federal Republic of Yugoslavia ratified the Covenant on Civil and Political Rights and, in accordance with Article 16 of the Constitution of the Federal Republic of Yugoslavia, was obliged to fulfil the obligations stemming from international treaties to which it is a party.

Article 6

A) Inviolability of life

163. Pursuant to Article 21, paragraph 1, of the Constitution of the Federal Republic of Yugoslavia, human life is inviolate. The same provision is contained in Article 11 of the Charter of Human and Minority Rights and Civil Liberties. However, the latter specifies that there is no death penalty in the State Union of Serbia and Montenegro and the cloning of human beings is prohibited.

B) Health protection

- **Health situation of the population in the Federal Republic of Yugoslavia**

164. The health protection of the population in the Republic of Serbia is ensured and regulated by the Constitution of the Republic of Serbia (Articles 30, 40 and 68), the Law on Health Protection and the Law on Health Insurance.
165. On the basis of the adopted division of the system of health protection of the European Economic Community, by the passage of separate Laws on Health Protection ("Official Journal of the Republic of Serbia" Nos. 17/92,26/92, 50/92, 52/93, 25/96 and 18/02) and the Law on Health Insurance ("Official Journal of the Republic of Serbia" No. 18/92, 26/93, 25/96, 46/98, 54/99, 29/01 and 18/02) the system of health protection in the Republic of Serbia since 1990 has formally belonged to the so-called Bismarck model of the system based on obligatory health insurance, but essentially it has failed to function according to the principles of modern health insurance. The Republican Health Protection Administration is primarily a State agency for revenue collection (contributions for health insurance) used to finance the health protection of the population by financing public health institutions.
166. At the beginning of the 1990s, a sequence of dramatic events took place in the Federal Republic of Yugoslavia which, by most indicators available to routine observation and analysis, led to the stagnation and/or deterioration of the health situation of the population. Life expectancy at birth, calculated from the existing age-specific mortality rates (abridged approximative mortality tables), shortened in the period 1989/ 90-1996/97 by more than two years for male infants in central Serbia, while it remained practically unchanged in Vojvodina. Over the same period, the value of that indicator for female infants was reduced by 1.13 years in Vojvodina, while it remained practically unchanged in central Serbia.
167. The analysis of the linear trend of life expectancy at birth for central Serbia in the 8-year period 1990-1997 points to two critical periods with the fall in the value of this indicator for male infants in 1992/ 93 and 1996/97, while a stagnation or a slight fall in the value is noticeable for female infants in the same period. The situation was similar in Vojvodina.
168. After a continued fall in the 1970s and 1980s, infant mortality, still a sensitive indicator in Yugoslav conditions of the health situation of children from birth to the completion of the first year of life, began to grow in 1992 and in 1993; the rate increased by two deaths per 1 000 live-born babies in central Serbia and Vojvodina. After a short fall, it rose again in 1996 in other territories as well.
169. The correlation between the infant death rate and socio-economic development is well illustrated by the negative correlation, in literature already widely known, both at international and national levels (11,12) between infant death rates and the social per capita product (or national income). The example of this vulnerable population category demonstrates that socio-economic factors are the most powerful determining features of the health situation. The negative correlation between the infant death rate and the national per capita income, calculated in absolute prices, can be illustrated also in the Republic of Serbia in the period 1990-1998.
170. The infant death rate is a complex measure of the risk of dying in the neonatal period (first 28 days of life), which declines with better access to neo-natal health protection, and the risk of dying in the post-neonatal period (from the 28th day to the first birthday), which declines with the better education of the mother, better hygiene and nutrition, a more comprehensive infant immunization coverage and a more effective treatment of respiratory diseases within this age group. The dying of infants in the Republic of Serbia increased in 1993, and then again in 1996 and 1997, through both of those risks.
171. Mortality of new born babies in the first week of life accounts for the greatest percentage of neonatal mortality, which is indicated also by the values of the perinatal death rate. In addition to being an

indicator of the effect of endogenous factors on the health of the foetus, this rate, i.e. the ratio of the sum total of stillborn babies and deaths in the first week of life per 1 000 child births, is, in the countries with organized perinatal health protection (health protection of pregnant women) in which practically all parturitions take place in medical institutions, as is the case with Yugoslavia, a good indicator of the quality of health services provided to mothers with children as it takes place in periods of intensive doctors' supervision of their health.

172. The high values of the perinatal death rate in central Serbia, practically at the same level throughout the reporting period except for the small rises in 1993 and 1996, are indicative of the deteriorating quality of health protection rendered to pregnant and parturient women and their newborn babies. In Vojvodina, the value of the rate began to grow again in 1996 after a fall in 1994.
173. The worrisome rise in post-neonatal mortality in central Serbia in 1995 and in Vojvodina in 1996 is indicative of the threatening effect of the exogenous factors on the health of infants.
174. Maternal mortality, reflecting all risks to the health of the mother during pregnancy, at parturition and in puerperium (the period of six weeks after parturition), is directly affected by socio-economic conditions, the health condition of the mother during pregnancy, complications during pregnancy and at parturition, as well as by access to, and the provision of, health services, particularly of prenatal and obstetrical health protection. Like the perinatal mortality rate, the rate or the ratio of maternal mortality, which is used more often, is a good indicator of the "outcome" of the work of a health service, i.e. the quality of medical services provided.
175. In the 8-year period, the ratio of maternal mortality (the number of women who die during pregnancy, at parturition and in puerperium per 100 000 live births) increased by 10. Vojvodina, too, registered a similar increase.
176. Although the increased dying of vulnerable categories of the population, such as children - particularly infants and mothers during pregnancy, at parturition and in puerperium - is partly accountable for the decrease in, and stagnation of, female life expectancy at birth, the rise in the mortality rate of the adult active population has affected the deterioration of the value of this indicator of the health situation the most.
177. In the period 1990-1997, the mortality rate of the adult population between 20 and 44 years of age rose by 14 deaths per 100 000 inhabitants of that age group in central Serbia and by 10.5 deaths in Vojvodina.
178. In the same period, the mortality rate of the adult population between 44 to 64 years of age in central Serbia rose somewhat more, by 20.4 deaths per 100 000 inhabitants of that age group and in Vojvodina even by 90.3 deaths per 100 000 inhabitants. Thus it can be concluded that, in the reporting period, the most vulnerable category of the adult population was the category of the adult population in the 44-64 age group in the entire territory of the Republic of Serbia, especially in the territory of Vojvodina.
179. The analysis of specific mortality rates by age groups shows that the increase of mortality rates in the 20-44 age group and, in particular, in the 44-64 age group has accounted for the fall in life expectancy at birth in central Serbia and Vojvodina in the period 1990-1997 the most, which is concordant with the results of the analysis of the health situation in the countries of Central and Eastern Europe.
180. In analyzing the causes of the dying of the population of the Republic of Serbia, one should point out that the structure of death causes in the 8-year period remained practically unchanged. In 1997, more than one half of deaths (56.4 per cent in central Serbia, 60.2 per cent in Vojvodina) was caused by cardiovascular diseases in which the percentage of these deaths increased by 1 per cent both in central Serbia and in Vojvodina compared to 1990. Deaths from malignant diseases rank second (17 per cent in central Serbia, 18.2 in Vojvodina), with a slight increase in central Serbia and a practically unchanged percentage in Vojvodina compared to 1990. Ranking third are insufficiently defined diseases and conditions (symptoms, signs, pathological, clinical and laboratory findings) and fourth are wounds, traumas and the consequences of the effects of external factors. The percentage of insufficiently defined diseases and conditions increased in central Serbia and Vojvodina. The percentage of external causes of deaths in the structure of dying has been reduced in central Serbia and Vojvodina compared to 1999.

- **Activities in the field of health protection**

181. During 2001 through 23 November 2002, the following activities were organized and carried out within the Ministry of Health, independently or in cooperation with the Government of the Republic of Serbia, the Republican Health Insurance Administration and expert teams and relevant health institutions:

a) The Law on Health Insurance was amended to align it with "financial Laws";
b) The Law on Medical Supplies and the Law on Medical Associations were completed, while the alignment of the Law on Health Protection and Health Insurance and the Law on the Establishment of Certain Competences of the Autonomous Province is planned;
c) The Health Policy Paper of the Republic of Serbia was prepared, and adopted by the Government of the Republic of Serbia, February 2002, on the basis of which work has been intensified on the reform of the system and the elaboration of new regulations in the field of health and health insurance;
d) Draft Laws on health protection, health insurance and doctors', i.e. pharmacists' commissions have been prepared and sent to health institutions, the Republican Health Insurance Administration and its branch offices and other interested subjects and structures of society for consultation. Delays in the finalization of the texts of the said Draft Laws have been necessitated by their connection with the elaboration and passage of other Laws, in particular the Law on Local Self-Government and the Law on the Establishment of Certain Competences of the Autonomous Province;
e) Parallel to the elaboration of the said Draft Laws, the following enactments to be adopted or agreed to by the Government of the Republic of Serbia are in preparation or have already been prepared: Decree on the Plan of Health Institutions Network (concept of the Law completed); Decision on Personal Participation of the Insured in Health Protection Expenses (adopted); Decision on Prescription Drug Coverage (sent to the Government of the Republic of Serbia for agreement); and the Decision on the Scope and Content of Health Protection Rights (in preparation);
f) Independently and in cooperation (The Ministry of Health of the Republic of Serbia and the Republican Health Insurance Administration) the following have been adopted: Rules of Joint Medical Procurement in Public Health Institutions; Decision Determining Compulsory Medical Insurance Bases and Pay Deduction Percentages; Rules on Amending the Rules on Evidence Enclosed to Sanitary Licence Requests; Rules on Expenses and the Manner of Establishing the Expenses Incurred in the Process of Carrying Out Inspections at Customer's Request; Rules on the Acquisition of Basic Knowledge on Food and Personal Cleanliness; Amendment to the Separate Collective Health Agreement (enabling a 20-per cent pay increase); and the Decision on Criteria for Health Protection Contracting in 2001 between the Republican Health Insurance Administration, health institutions and other providers of medical services (preparation of the Decision for 2001 is under way). The paper entitled "The Vision of the Development of the System of Health Protection" was prepared (August 2002), while a Strategy for the Reform of the Health Protection System and a Plan of Action for its Implementation are also being prepared;
g) Five national expert groups have been established on dentistry, public health, mental health, tuberculosis and the elaboration of a National Health Account of the Republic of Serbia;
h) Terms of Reference for technical assistance have been worked out for the World Bank: reform of health insurance and health protection financing; development of a health information system; public health; and the development of human resources in the health protection system;
i) Medical service analysis has been prepared. Scheduled to be completed by January 2003, the analysis is to provide relevant reform proposals;
j) A study of patients' satisfaction with the level of medical services provided was done in five Belgrade hospitals;
k) The Ministry of Health of the Republic of Serbia worked out a Plan of Action for an anti-smoking campaign;
l) A Proposal to change the Decision on Personal Participation of the Insured in Health Protection Costs;

m) The Conference on the Reform of Mental Health in the Republic of Serbia was organized in cooperation with the World Health Organization and Caritas Italy and Caritas Yugoslavia;
n) A seminar on the introduction of the National Health Account in the Republic of Serbia was organized in cooperation with DFID;
o) All activities for software licensing in the Ministry of Health of the Republic of Serbia have been completed in accordance with the planning, licensing and use of Microsoft software. A procedure has also been initiated for software licensing in health institutions of the Republic of Serbia; and
p) Preparation of a proposal for WEB presentation of the Ministry of Health of the Republic of Serbia is underway.

C) Protection of the environment

182. The system of legal norms in the field of the protection and promotion of the environment in the Federal Republic of Yugoslavia, established on the constitutional basis, consists of over 150 Laws and over 100 other rules and regulations on all levels. The Federal Republic of Yugoslavia ratified 52 international treaties on the protection of the environment, committing itself to fulfil the obligations under those treaties.
183. The Resolution on the Policy of the Protection of the Environment in the Federal Republic of Yugoslavia and the Resolution on the Policy of the Preservation of Bio-diversity in the Federal Republic of Yugoslavia have been adopted at the federal level. Separate laws regulate certain areas of the environment, such as the water regime of the country and the regime of international waters; hydro -meteorological activities of interest for the entire country; transport of hazardous substances; trade in explosive and toxic substances; protection from ionizing radiation; production of narcotic drugs; protection of animals from communicable diseases; and protection of plants from disease and vermin. The Law on the Bases of Environmental Protection ("Official Gazette of the Federal Republic of Yugoslavia No. 24/98) lays down for the first time uniform principles, criteria and measures for the protection of the environment, financing, monitoring of the situation of the environment, responsibility for the pollution of the environment and administrative surveillance, aimed at ensuring a healthy environment in the Federal Republic of Yugoslavia.
184. The Law on the Protection of the Environment of the Republic of Serbia ("Official Journal of the Republic of Serbia" Nos. 66/91, 83/92 and 53/95) regulated, *inter alia*, protection from industrial accidents. Trade in toxic substances is regulated by the federal Law on the Production and Trade in Toxic Substances and a series of by-laws. The Law stipulates certain areas of environmental protection from toxins, categorization of toxins, conditions for their sale and use, ban on trade and use of toxins, removal of toxic waste and packaging, competences regarding the implementation of regulations on trade in toxins, surveillance and penalties.

D) Use of firearms

- **Use of firearms by an authorized official person in the discharge of official duty**

185. Article 23 of the Law on Internal Affairs (Official Journal of the Republic of Serbia" Nos. 44/91, 79/91, 54/96, 25/2000 and 8/2001) determines conditions for the use of firearms. An authorized official person may use firearms in the discharge of official duties only if, by using other means of coercion or in some other way, he/she cannot
    1) protect human lives;
    2) prevent the flight of a person caught in the commission of the criminal offence of an attack on the constitutional order, endangering of territorial integrity, undermining of the military and defence capacity, violence against a representative of the highest State authority, armed rebellion, terrorism, sabotage, violation of territorial sovereignty, hijacking, jeopardizing the safety of the flight of an aircraft, murder, rape, grand larceny, burglary, robbery, banditry and serious cases of robbery and assault with the use of violence;

3) prevent the flight of a person caught in the commission of a criminal offence prosecuted ex officio, if there are reasonable grounds to believe that he/she possesses a firearm and intends to use it;
4) prevent the flight of a person deprived of liberty or a person wanted for any of the above-mentioned criminal offences;
5) prevent a life-threatening attack on himself/herself and
6) prevent an attack on a facility or a person guarding it.

186. When using firearms, an authorized official must not endanger the lives of other people. This is stipulated also by the provisions of the Rules on the Conditions and Methods of the Use of Means of Coercion ("Official Journal of the Republic of Serbia" Nos. 40/95, 48/95, 1/97), as well as by the duty of an authorized official to preserve human life and respect dignity when using means of coercion.
187. An authorized official must submit a written report about each use of means of coercion to his immediate superior not later than 24 hours after the use of those means. The justifiability and adequacy of the use of the means of coercion, including firearms, are assessed by the senior official in the Ministry of the Interior duly authorized by the Minister of the Interior. The authorized senior official may propose to the Minister of the Interior to take measures provided by law in the case of unjustifiable or inadequate use of the means of coercion (Article 31 of the Rules). Disciplinary and other measures, including the termination of employment and bringing in of criminal charges, are taken against all authorized officials who have used the means of coercion unjustifiably or inadequately. Accordingly, each case of the use of the means of coercion is investigated in detail and, in all cases in which it has been assessed that the use of the means has been unjustifiable or inadequate, legal proceedings are instituted against the official, which also constitutes the taking of additional measures and actions to establish all relevant circumstances of a concrete case needed for an efficient conduct of the proceedings.
188. Also, meetings of the commanding officers are held in all organizational units of the Ministry of Internal Affairs of the Republic of Serbia on a regular basis at which the legality of the work and intervention of the members of the Ministry, as well as the cases of unjustifiable and inadequate use of the means of coercion, are analyzed and all members of the Ministry are advised of the measures that have been taken to suppress such occurrences.
189. In the period 1 from January 1992 through 30 September 2002, members of the Ministry of the Interior of the Republic of Serbia overstepped legal powers using firearms in the discharge of official duties in 10 instances (2 in 1992, 1 in 1993, 1 in 1994, 2 in 1997, 2 in 1998, 1 in 1999, 1 in 2000, 0 in 2001 and 0 in 2002) in which 6 persons lost their lives (Krusevac, Urosevac, Kosovska Mitrovica, Gnjilane, Bor and Belgrade), 4 persons sustained grievous bodily harm (3 in Belgrade and 1 in Urosevac), while 1 person sustained light bodily harm (Subotica). In the same period 8 police officers were charged with the commission of the criminal offences of murder (6) and grievous bodily harm (3). The proceedings in six cases are under way (Krusevac, Kosovska Mitrovica, Belgrade 3 and Bor), while in two cases police officers were sentenced to prison terms of 4 years and 6 months (Urosevac) and 3 years (Gnjilane).

- **Use of firearms in penitentiary institutions**

190. The Rules on the Manner of the Execution of Security Service and the Rules on the Manner and Conditions of the Use of Means of Coercion in Penitentiaries ("Official Journal of the Republic of Serbia" No. 30/78) regulate the manner of the use of firearms, and security staff, when using firearms, are obliged not to endanger the lives of the convicts and other persons and to preserve human life and human dignity.
191. The Republic Law on the Enforcement of Penal Sanctions stipulates that authorized officials in penitentiary institutions may use firearms only if they cannot repel in some other way an immediate attack which constitutes a threat to their own lives or the life of some other persons or an attack on a facility they guard, prevent a flight of a convicted person from a security prison, a specially secured cell block or a high security prison, prevent a flight of a person under escort detained for a criminal offence punishable by 15 or more years in prison or prevent a flight of a sentenced person under escort who has been sentenced to 10 or more years in prison.
192. The warden is duty-bound to advise immediately the head of the administration of the use of the means of coercion against a convicted person who informs the Minister of Justice of the Republic of Serbia of

the use of firearms. The organs of internal affairs are advised of each case of the use of firearms and will come to the scene and carry out an inquiry.

193. In the reporting period, there were no cases of the abuse of firearms in penitentiary institutions by security guards in the line of duty. Firearms were used 5 times during 2002, which is the annual average, 4 times with warning shots being fired to prevent flights of convicted or detained persons without harmful consequences, and once, during an escort of a sentenced person from the District Court in Novi Sad to hospital, when an attempt by other persons to snatch the person under escort, with harmful and death consequences. In all instances the firearms were used according to rules.

194. Other means of coercion (physical force, rubber truncheon, separation et al.) are used against convicted or detained persons in cases of passive or active resistance during execution of a lawful order by an official, a physical attack on another person, self-infliction of wounds or an attempt to cause material damage if necessary to prevent these from happening. The truncheon is used in 50 to 70 instances per year, 2 to 3 times unjustifiably. Lately, especially in the last two years, the number of instances of the use of means of coercion against convicted persons decreased, and there are cases in which these means were not used notwithstanding the existence of conditions and grounds for their use.

E) Disappearance of persons

195. To prevent a forcible disappearance of a person, the Criminal Law of the Republic of Serbia penalizes by its Articles 63, 64 and 116 unlawful deprivation of liberty, kidnapping and abduction of a minor. Besides, in its Article 189, the Criminal Law of the Federal Republic of Yugoslavia also penalizes unlawful deprivation of liberty committed by an official in the discharge of duty.

196. It transpires from the afore-mentioned provisions of the Criminal Laws of the Republic of Serbia and the Republic of Yugoslavia that unlawful deprivation of liberty committed by an official either in the discharge of duty or by the abuse of duty or power is specially penalized.

197. In investigating criminal offences resulting in disappearance of persons, the organs of internal affairs are given all powers provided for by the Code of Criminal Procedure available for any other criminal offence prosecuted ex officio. Likewise, in accordance with these powers, the organs of internal affairs search ex officio for all disappeared persons, of or under age, the disappearance of whom has been reported by relatives or for whom there is reasonable doubt that they are the victims of a criminal offence, traffic or another accident, natural disaster, etc. The organs of internal affairs search, on the basis of laws and by-laws regulating police conduct during a search for a disappeared person, also for a person for whom it is not known at the time of disappearance whether he/she is a victim of a criminal offence.

198. To search for a disappeared person and establish the identity of the body of an unknown person, as well as to assess and follow events related to disappeared persons more effectively, the Ministry of the Interior of the Republic of Serbia compiles, keeps, records, processes and uses the data on these events by way of, among others, computer data processing regulated by by-laws. Records of disappeared persons in the Republic of Serbia are filed on the basis of reports of disappearances, submitted by the reporter on a standardized questionnaire and forwarded to the nearest organizational unit of the Ministry of the Interior. The work on clarifying the circumstances of a disappearance, tracing a disappeared person or identifying the body of an unknown person is organized and carried out by members of the specialized crime unit, who take all necessary measures within their competence on which, in accordance with the Code of Criminal Procedure, they submit a report to the competent public prosecutor, i.e. the court. These operations are monitored on a daily basis through the Daily Bulletin of Searches for Disappeared Persons in accordance with Article 567 of the Code of Criminal Procedure.

199. Also, in accordance with the powers provided for by the Law on the Organization and Competence of State Agencies in the Suppression of Organized Crime ("Official Journal of the Republic of Serbia" No. 42/2002), the organs of internal affairs are responsible for clarifying criminal offences which result in the disappearance of persons in the circumstances in which participation of organized crime is suspected. This is the case of the criminal offence of abduction penalized by Article 64 of the Criminal Law of the Republic of Serbia, but only when elements of organized crime are present – criminal association (Article 227 of the Criminal Law of the Republic of Serbia).

200. Serbia and Montenegro attaches exceptional importance to the solution of the question of missing persons in the territory of the former Yugoslavia, including the disappearances and abductions in the territory of Kosovo and Metohija. Inter-State Agreements have been signed and agreements reached

with the Republic of Croatia and both Entities in Bosnia and Herzegovina on solving the questions of missing persons.

201. Altogether 520 persons are on the list of missing persons that Serbia and Montenegro) submitted to the Republic of Croatia. The list includes the pilots of the former JNA and the persons for whom the Federal Republic of Yugoslavia had and presented evidence to the Croatian side that they had been alive in its jails and in its power. Likewise, search is on for 2700 persons of Serbian nationality, citizens of the Republic of Croatia, who went missing in the operations of the Croatian military and police "Lightning" and "Storm", considering that the greatest number of their families have resided in the Federal Republic of Yugoslavia/Serbia and Montenegro as refugees and that the track-down request has been submitted through the Tracing Service of the Yugoslav Red Cross.
202. The Commission for Humanitarian Questions and Missing Persons is in possession of the data from 1300 registered gravesites in a considerable number of mass graves in the Republic of Croatia, in which persons of Serbian nationality have been buried. Their exhumations began in Knin only in 2001 and, out of 300 exhumed bodies, 112 persons have been identified so far. On the basis of the agreement between the Republic of Croatia and the Federal Republic of Yugoslavia, mutual monitoring is ensured of exhumations in the Republic of Croatia and the Federal Republic of Yugoslavia/Serbia and Montenegro).
203. In 2002, the Commission for Humanitarian Questions and Missing Persons compiled relevant documentation on the basis of which protocols were prepared with all necessary elements for identification, and carried out exhumation of unknown persons buried at cemeteries in Novi Sad, Sremska Mitrovica, Sabac and Loznica. Overall, 223 bodies have been exhumed and samples have been taken from all for DNA analysis in accordance with the agreement reached between the the two Commissions on the basis of the Agreement on Cooperation with the International Commission for Missing Persons, signed by the Federal Government and the Government of the Republic of Serbia in April 2002. The Monitoring was unilaterally made available also to the Commission for Tracing the Missing Persons of the Federation of Bosnia and Herzegovina on locations in which it displayed interest.
204. As to Bosnia and Herzegovina, the list of missing persons contains 125 missing persons, most of them officers and soldiers of the former JNA from Sarajevo and Tuzla.
205. Serbia and Montenegro is particularly interested in solving the question of missing and abducted persons from Kosovo and Metohija in view of the responsibility of the United Nations, i.e. UNMIK under UNSC resolution 1244. Clarifying the fate of all missing persons from Kosovo and Metohija is an important step towards establishment of lasting peace and reconciliation.
206. Since the arrival of KFOR and UNMIK on 10 June 1999, 1300 non-Albanians have disappeared or been abducted. Within the same period, 50 children have disappeared or been killed, which represents the most flagrant form of violation of the provisions of the Convention on the Rights of the Child, especially the right to life, carefree childhood and normal development of children in peace.

F) Death Penalty: Abolishment of death penalty in national legislation

207. Death penalty has been abolished in the national legal system by the amendments to the Criminal Law of the Republic of Serbia of 1 March 2002. The provisions of Articles 3, 44, 53, 54 and 55 of the Law on the Amendments to the Criminal Law of the Republic of Serbia ("Official Journal of the Republic of Serbia" No. 11/2002) stipulate that in Articles 47, 169, 202, 203 and 204 the word "death penalty" be replaced by words "40 years in prison", while Article 38 of the Criminal Law of the Federal Republic of Yugoslavia stipulates that "a prison penalty may not be shorter than 30 days or longer than 15 years, while a penalty of 40 years in prison may be prescribed for the most serious criminal offences or the most serious forms of serious criminal offences." This penalty may not be pronounced against a person who, at the time of the commission of the criminal offence, was not 21 years of age. [4]
208. In accordance with the above-mentioned Amendments to the Criminal Law of the Republic of Serbia, by the Decision of 2 August 2002, the President of the Republic of Serbia commuted by pardon 12 legally valid, pronounced and enforceable, death sentences to penalties of 40 years in prison. [5]

G) Cooperation with the International Criminal Tribunal for the Former Yugoslavia

[4] Table 3 - Enforceable Death Sentences in the period 1992-2001.
[5] Table 4 – Criminal Offences against Life and Body in the period 2000-2001.

209. So far 15 indicted persons who stayed in the territory of the State have been transferred to the International Criminal Tribunal for the Former Yugoslavia within the cooperation of the Federal Republic of Yugoslavia/Serbia and Montenegro with the Tribunal. The Federal Republic of Yugoslavia apprehended and turned over 6 indicted persons, including Slobodan Milosevic, former President of the Federal Republic of Yugoslavia and the Republic of Serbia. Also, Milomir Staic, former Head of the Crisis Committee of the Municipality of Prijedor, Republic of Srpska, and four members of the Army of the Republic of Srpska Drazen Erdemovic, Predrag Banovic, Nenad Banovic and Ranko Cesic have also been turned over.

210. At the same time 10 indicted persons have been encouraged to turn themselves in to the Tribunal voluntarily, which they did:

1. Dragoljub Ojdanic, General of the Army, former Head of the General Staff of the Army of Yugoslavia and former Federal Defence Minister;
2. Nikola Sainovic, former Deputy Prime Minister of the Federal Republic of Yugoslavia;
3. Mile Mrksic, Major-General of the Army of Yugoslavia;
4. Pavle Strugar, Vice Admiral of the Army of Yugoslavia;
5. Miodrag Jokic, Vice Admiral of the Army of Yugoslavia;
6. Milan Martic, former Serbian leader in Croatia;
7. Blagoje Simic, Head of the Crisis Committee of the Municipality of Bosanski Samac, Republic of Srpska;
8. Momcilo Gruban, Deputy Commandant of the Omarska Camp, Republic of Srpska;
9. Milan Milutinovic, former President of the Republic of Serbia;
10. Vojislav Seselj, Leader of the Serbian Radical Party

211. National courts have issued wanted circulars for another 17 indicted persons, whose arrest was requested by the Tribunal. Vlajko Stojiljkovic, former Minister of the Interior of the Republic of Serbia, one of the indictees, committed suicide.

212. Serbia and Montenegro provided active cooperation with the Prosecutor of the Tribunal in connection with the tracking-down and interviewing of, and the taking of statements from, suspects and witnesses. To that end, the State has so far replied to 76 various requests and provided information about almost 150 suspects and witnesses. Out of 126 witnesses for whom release from the obligation to keep a State secret has been requested, the Federal Republic of Yugoslavia/Serbia and Montenegro has granted approval for 108 (86 per cent) witnesses, while other cases are in the process of approval.

- In the Milosevic case, the State of the Federal Republic of Yugoslavia and the Government of Serbia have decided to grant approval to more than 87 former and present State officials and employees to testify in connection with the indictment relating to Kosovo and Metohija, even in matters that constitute military State secrets;
- Zoran Lilic, former President of the Federal Republic of Yugoslavia, was granted approval to testify in the Milosevic case in matters determined after consultations between the Prosecutor and the Federal Republic of Yugoslavia that concern the events covering the indictments for Croatia, Bosnia and Herzegovina and Kosovo and Metohija;
- Dobrica Cosic, former President of the Federal Republic of Yugoslavia, and Nebojsa Pavkovic, former Chief of the General Staff of the Army of Yugoslavia, were granted approval to testify in the Milosevic case in matters that concern the events covering the indictments for Croatia, Bosnia and Herzegovina and Kosovo and Metohija;
- Serbia and Montenegro has so far replied to 65 out of 127 requests of the Office of the Prosecutor of the Hague Tribunal for documents. The documents turned over to the Tribunal contain:

  a) Confidential military documents of the Supreme Defence Council, which is the Commander-in-Chief of the Army of Yugoslavia;
  b) Some confidential regulations of the Army of Yugoslavia;
  c) All available official data related to the massacre at Racak in connection with the indictment of Slobodan Milosevic relative to Kosovo and Metohija;
  d) All available personal data on Ratko Mladic, former Commander of the Army of the Republic of Srpska;

e) Information about investigations and court actions against members of the Ministry of the Interior of the Republic of Serbia for crimes committed in Kosovo and Metohija;
f) Offical data of the National Bank of Yugoslavia in connection with companies charged with involvement in illegal arms trade during the conflict in Bosnia and Herzegovina;
g) The authorities of the Federal Republic of Yugoslavia/Serbia and Montenegro have continued to search the mass grave near Batajnica. This was done in the presence of an investigator of the Tribunal and the gathered evidence was forwarded to the Prosecutor;
h) Investigations and processes have been conducted before the courts of the Federal Republic of Yugoslavia/Serbia and Montenegro in 30 cases related to violations of international humanitarian law in the territory of the former Yugoslavia and in Kosovo and Metohija (Novi Sad, Prokuplje, Vranje, Valjevo, Smederevo, Bijelo Polje, Pec and Prizren). So far, the processes of two cases (Prokuplje and Bijelo Polje) have been completed; and
i) A number of investigative actions is being conducted before military courts against persons indicted for crimes committed in Kosovo and Metohija in 1999.

Article 7

A) Prohibition of torture, i.e. degrading punishment and treatment and the procedure in the case of abuse or overstapping of powers by police officers [6]

213. The provisions of Article 25 of the Constitution of the FRY provided for the guarantee of respect for the human personality and dignity in criminal and all other proceedings in the event of detention or restriction of freedom, as well as during the serving of a prison sentence. The use of force against a suspect who has been detained or whose freedom has been restricted is prohibited and punishable. No one may be subjected to torture or to degrading treatment or punishment. Medical and other scientific experimentation may not be carried out on an individual without his consent.
214. The provision of the Constitution of the Federal Republic of Yugoslavia reading: "No one may be subjected to torture or to degrading treatment or punishment" has been taken over from Article 7 of the International Covenant on Civil and Political Rights. An identical formulation is contained also in Article 26, paragraph 2, of the Constitution of the Republic of Serbia.
215. In its Article 12, the Charter of Human and Minority Rights and Civil Liberties stipulates that everyone has the right to inviolability of physical and mental integrity and that no one may be subjected to torture, inhuman or degrading treatment or punishment. It also sets forth that no one may be subjected to medical or scientific experiment without his/her consent. Article 13 prohibits slavery, servitude and forced labour. This Article provides that sexual or economic exploitation of persons in a disadvantageous position is also considered forced labour, work or service; however, the work or service imposed on persons effectively convicted, persons in military service or in case of emergency situations threatening the life of the community are not considered forced labour. Likewise, the provisions of this Article prohibit any form of human trafficking. It is pointed out that, under the Charter, no derogation measures are applicable in any case to the right to inviolability of physical and mental integrity and to the prohibition of slavery, servitude and forced labour.
216. The prohibition of torture and degrading punishment and treatment is regulated primarily by criminal legislation of the Federal Republic of Yugoslavia, both material and process. Although the term "torture" does not appear either in the text of the Constitution or the text of criminal laws of the Federal Republic of Yugoslavia, the prohibition of torture and degrading punishment and treatment is regulated by a number of legal provisions which describe and penalize actions covered by this term in Article 7 of the Covenant, i.e. by the provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that the Federal Republic of Yugoslavia ratified in 1991.
217. The Criminal Law of the Federal Republic of Yugoslavia provides for penalties for a number of criminal offences containing torture and degrading punishment and treatment (Articles 174-199 of the Law) and, in particular, unlawful deprivation of liberty (Article 189), extraction of statement (Article 190), maltreatment in the performance of duty (Article 191). In addition to these, the following criminal offences are penalized, too: abuse of official position (Article 174), negligence in the

[6] Table 5 – Criminal Offences under the Criminal Law of the Republic of Serbia related to Torture in the period 2000-2001.

performance of duty (Article 182), violation of the inviolability of home (Article 192) and unlawful search (Article 193).

218. In its Chapter 8 entitled "Criminal Offences against the Freedoms and Rights of Man and the Citizen", the Criminal Law of the Republic of Serbia contains 18 criminal offences (Articles 60-76), the wording of which is similar to that of the afore-mentioned Articles of the Criminal Law of the Federal Republic of Yugoslavia. Among them are: unlawful deprivation of liberty (Article 63), extraction of statement (Article 65) and maltreatment in the performance of duty (66). Besides, the Criminal Law of the Republic of Serbia also penalizes the criminal act of coercion to sexual intercourse or unnatural carnal knowledge through abuse of official position (Article 107).

219. Although the afore-mentioned criminal offences are formulated in the same or similar way in both Criminal Laws, it is pointed out that the provisions of the Criminal Law of the Federal Republic of Yugoslavia concern the official persons in federal organs and organizations, while the provisions of the Criminal Law of the Republic of Serbia concern all other official persons.

220. Likewise, the Code on Criminal Procedure contains a general provision, prohibiting and punishing any violence against a person deprived of liberty and a person whose liberty is restricted, as well as any extraction of confession or any other statement from an accused or any other person, which is in conformity with international instruments regulating the protection of human rights (Article 12). This solution was contained also in Article 10 of the previous Law on Criminal Procedure.

221. The Code of Criminal Procedure stipulates that no force, threat, deception, false promise, extortion, exhaustion and/or medical intervention, the means that would affect the consciousness and will in making a statement or other similar means, may be used against an accused person in order to obtain his/her statement or concession or make him/her perform an action that could be used as evidence against him (Article 131, paragraph 4).

222. The Directorate for Enforcement of Penitentiary Penalties is an administrative organ within the Ministry of Justice of the Republic of Serbia responsible for the enforcement of penitentiary penalties. In the performance of its duties, the Directorate is guided by the provisions of the Law on the Enforcement of Criminal Penalties ("Official Journal of the Republic of Serbia" No. 16/97) which contains numerous provisions on the right to human treatment during the serving of prison sentences. By-laws, rules and regulations, decrees and instructions applied by penitentiary institutions regulate the treatment of convicted persons, the way of life and work of the convicted persons in the institutions and, by extension, the respect for their rights (right to human treatment which provides for the obligation of everyone to respect the dignity of the convicted person and not to threaten his/her physical and mental health and the right to accommodation in accordance with modern sanitary conditions, as well as other rights).

B) Treatment of convicted persons and measures taken to train organs of public order

223. The treatment of convicted persons in the Republic of Serbia is regulated by the provisions of the Law on the Enforcement of Penalties ("Official Journal of the Republic of Serbia" No. 16/97), taken over from the United Nations rules and regulations on the treatment of convicted persons and from European prison rules. The practice of treatment of convicted persons is in conformity with, and follows, the concept of re-education. In addition to the Law on the Enforcement of Penalties, the way of life and work of convicted persons in penitentiary institutions is regulated more specifically by the act on the house rules brought by the Minister of Justice.

224. Upon admission to a penitentiary institution to serve a sentence, a sentenced person is informed in writing of his/her rights and obligations during the service of sentence and the text of the Law and the act on the house rules of the institution are available to him/her throughout the service of sentence. An illiterate sentenced person will have the documents read. Following admission, a sentenced person is sent first to the Psychiatric Ward, where he/she undergoes criminological, medical, sociological and other tests in order to classify him/her and have his/her re-education programme determined.

225. During the service of sentence, a convicted person is treated in the way which ensures respect for his/her personality and dignity and for the preservation of his/her physical and mental health. These are ensured by enabling the convicted person to enjoy the right to accommodation in accordance with modern sanitary conditions and the local climate; right to nutrition fit to maintain his/her health and strength; right to free underwear, clothing and footwear befitting the local climate; right to petition competent authorities; unlimited right to correspondence; right to legal assistance in connection with the service of sentence; right to visits of the spouse, children, adopted children, parents, adoptive parents and other relatives; right to stay in a separate room with the spouse, and children; right to

receive parcels; right to receive money remittances; right to work and the rights stemming from work; right to free medical protection; right of a convicted woman who has a child to keep the child until it reaches one year of age; right to information – use of daily and periodical press and other media; right to elementary and secondary education, organized, in accordance with general regulations, in penitentiary institutions; right to religious culture; right to petition the warden because of the violation of his/her rights or because of some other irregularities and the director of the Directorate if he/she receives no answer or no satisfactory answer.

226. The security service is responsible for the security of convicted persons, adult and juvenile, the employees and property of the institution, including living quarters and work sites of the convicted persons, and for the peace and order in the institution. The security personnel wear uniforms and carry arms. The work and organization of the security service, its equipment, arms, powers and uniforms and the manner of their use are regulated by the provisions of relevant laws and regulations. In addition to the general conditions provided for by the Law on Employment in Government Organs, the service employment criteria specify that employment applicants be younger people, psychologically and physically fit for the job and have at least secondary education. The personnel are provided permanent education/training and their professional knowledge and physical fitness are tested on a regular basis before a multi-disciplinary commission designated by the Minister of Justice of the Republic of Serbia
227. In that context, penitentiary institutions, in cooperation with UNICEF, organized personnel training in 2002 when international instructors held training courses for prison security guards.
228. In addition to the security service, responsible for the security of the convicted persons, the re-education service is also very important. It is tasked with re-educating and re-socializing convicted juvenile delinquents through application of modern re-education measures and methods of work.
229. In addition to continually making the personnel aware of the constitutional and legal provisions regarding the prohibition of any form of maltreatment or torture, degrading treatment and punishment, the conduct of the police is constantly reviewed and analyzed. Members of the Ministry of the Interior are familiarized with the prohibition of torture, i.e. treatment with elements of torture, through permanent professional education and training and everyday practical work. Internal Affairs Secondary and Higher Schools students and Police Academy cadets attend seminars and courses at which special attention is accorded to professional training in lawful and correct conduct, especially in the application of means of coercion and other powers. Besides, within compulsory professional training, new employees of the Ministry of the Interior are provided additional training in lawful conduct every year and the use of powers. Upon completion of a disciplinary action or criminal proceedings, employees of the Ministry are advised of the violations, the purpose of which is to further prevention and suppression. Also, crews dispatched to assignments are issued instructions by commanding officers every day.
230. New curricula have been devised for police courses, which include the study of foreign languages and United Nations resolutions and Conventions relative to the freedoms, rights and duties of man and the citizen. The new Plan and Programme of Professional Education and Training of Members of the Ministry of the Interior of the Republic of Serbia include, among others, military and humanitarian laws, police code of conduct, etc.

- **Time limits that prison authorities must comply with when passing special security measure of solitary confinement**

231. In addition to enjoying the afore-mentioned rights, a convicted person is obliged to honour rules of behaviour provided for by law and by the house rules of the institution. For the violation of the rules of behaviour, a convicted person may be disciplined in a disciplinary action in which he/she is provided an opportunity to defend himself/herself and to have his/her statement checked. The violation may be punished by reprimand, withdrawal of privileges and solitary confinement. Disciplinary measures are pronounced by the warden. Doctors' opinion is needed before the most severe punishment of solitary confinement may be pronounced to make sure that the disciplined person is capable of enduring cell confinement.
232. The disciplinary punishment of solitary confinement consists of uninterrupted stay of a disciplined person in a cell, with daily walk in an open space of at least one hour; none of the rights enjoyed by convicted persons are withdrawn. While in solitary confinement, a disciplined person receives doctors' visits every day. The enforcement of the disciplinary punishment of solitary confinement is stayed upon a doctor's written statement to the effect that continued confinement threatens the health of the disciplined person.

233. The disciplinary punishment of solitary confinement is pronounced for a period no longer than 15 days, and a period no longer than 30 days in case of breach of discipline. The aggregate time that a convicted person may spend in the cell for solitary confinement may not last longer than six months during one calendar year. A convicted person may file a complaint against the disciplinary punishment.
234. The enforcement of disciplinary punishments of the withdrawal of privileges and solitary confinement may be conditionally postponed by six months if it is established that the purpose of punishment may be achieved even without its enforcement. Disciplinary proceedings and the proceedings conducted to compensate for the damage that the convicted person caused to the institution deliberately or by negligence are two-instance. Complaints filed by a convicted person against first-instance decisions of the warden are reviewed by the director of the Directorate for Enforcement of Penitentiary Penalties. After it is established that the purpose of disciplinary punishment has been achieved, the warden may stay further enforcement of disciplinary punishment before the expiry of the period of time to which it has been pronounced.

- **The right of a convicted person to have visits and maintain contacts**

235. Communication among convicted persons is not limited, the number of visits provided for by law may not be reduced and the right to unlimited correspondence and other rights provided by law may not be curbed. A convicted person has the right to private conversation, without the presence of a guard, with an authorized official of the Ministry of Justice of the Republic of Serbia to present his/her problems. This institute is used fairly frequently, as well as the right to petition competent authorities. All petitions are considered and acted upon.
236. In addition to the rights provided by law, a well-behaved and hard-working convicted person may be accorded the following privileges by the warden: expanded right to receive parcels; expanded right to receive visits; visits without supervision in visitation rooms; visits in separate rooms without the presence of other convicted persons; visits outside the institution; better accommodation; one-day furloughs; visits to family and relatives on weekends and holidays; seven-day reward and special furloughs in the course of a year; and the right to spend the yearly vacation outside the institution.

C) Control mechanisms to prevent acts of torture

237. To ensure protection of convicted or detained persons from torture and other forms of maltreatment, these persons have the right to petitions and complaints if any of their rights provided by law have been violated or if they have been hurt in any other way. All complaints filed to the warden or the supervision service are considered expeditiously and their merits are established. This is particularly true of the last two years (since 2000), just as it is insisted that any instance of the use of means of coercion be recorded and assessed as to whether it is justified. The records and assessments are submitted to the Ministry of Justice of the Republic of Serbia in the form of a report.
238. It has been noticed that convicted persons, especially those serving long sentences, are loath to report maltreatment and torture and request instead to be transferred to another institution. Most frequent complaints concern alleged refusal of medical attention as many convicted persons, while serving the sentence, go for a medical examination and try to obtain treatment which they could not afford before coming to the institution.
239. The Directorate for Enforcement of Penalties carries out supervision of the work of the institution through its organizational unit of the Supervision Section. The Director of the Directorate and the Minister oversee the work of the Supervision Section.
240. The Supervision Section controls implementation of regulations and professional work in the enforcement of penitentiary penalties; overviews implementation of rights, provision of health protection to convicted persons, adult and juvenile, and the application of means of coercion and disciplinary punishments and measures; monitors re-education of convicted persons; participates in the programming and planning of education measures; follows the work of the re-education service; supervises the security service; controls work of institution services; and carries out re-education, training and familiarization of convicted persons. Supervision is periodic and takes place without the presence of penitentiary employees during the conversation with convicted and detained persons.
241. Supervision is very important as it assesses both individual and collective work in a penitentiary institution, while shortcomings, omissions and irregularities are highlighted and measures are taken to rectify them. Regular supervision is carried out once a year in every institution.

242. Supervision may also be unscheduled and take place whenever an unforeseen event occurs: a breach of house rules, a fight, a riot, self-infliction of wounds, a murder, a mutiny or other irregular activities. Organized large-scale mutinies occurred at the end of 2000 (in the interregnum after the fall of the Milosevic regime) in the penal-correctional institutions in Nis, Sremska Mitrovica and Zabela (Pozarevac), when considerable material damage was caused. Persons convicted for most serious criminal offences serve sentences in these institutions and the reason for the mutinies were the conditions in the institutions and the severity of the sentences these persons had been passed. To calm the situation, in addition to the agreements with convicted persons, measures were taken to re-position them within the same institution or transfer them to another institution and to establish responsibility, if any, of the employees. Wardens in almost every penitentiary institution were replaced. In addition to measures that are being taken to improve conditions in the institutions, complaints of convicted persons are considered expeditiously and acted upon on the merits.
243. In addition to internal supervision of the work of institutions for penalty enforcement by the Supervision Section of the Directorate for Enforcement of Penalties, the International Committee of the Red Cross carried out inspections and made 215 visits from 1999 through December 2002. Its visits were the most numerous. Visits to institutions or individual convicted persons were made also by representatives of the Helsinki Human Rights Committee, UNHCR, OSCE, Fund for Humanitarian Law, United Nations Committee against Torture, United Nations, Ministry for Social Affairs of the Republic of Serbia, Higher School for Internal Affairs and many journalists and television crews to whom the prison doors were opened. Also, representatives of foreign Embassies were enabled to contact their co-nationals serving sentences in penitentiary institutions in the Republic of Serbia, either as detained or convicted persons. The number and diversity of the visitors evince the transparency of the work of the institutions.
244. The Directorate for Enforcement of Penalties may allow individual or group visits to institutions and convicted persons, while the approval of the court is needed to conduct an interview with a convicted person. The Minister of Justice of the Republic of Serbia and his associates toured institutions for enforcement of penalties to acquaint himself with the method of work and the problems the institutions have.
245. Years-long economic problems of the Federal Republic of Yugoslavia, exacerbated by United Nations sanctions and the consequences of the 1999 bombing, have had a drastic effect also on the work of the institutions for enforcement of penalties and, by extension, on the behaviour of the institutions' employees and inmates. Significant efforts have been invested in the last two years to improve the material status and motivation of the employees, which is reflected on the treatment of convicted persons. Also, enormous efforts have been made and vast material resources have been invested in improving the conditions under which the convicted persons serve their terms.
246. Supervision of the work of penitentiary institutions is carried out regularly also by courts during visits of detained persons.

D) Criminal charges and trials of reported torture and maltreatment during the reporting period

247. In the period from 1 January 1992 through September 2002, the Ministry of the Interior of the Republic of Serbia brought 32 criminal charges against 43 authorized official persons because of a reasonable doubt that they had committed 21 criminal offences of maltreatment in the line of duty, 6 criminal charges for the criminal offence of unlawful deprivation of liberty, 3 criminal charges for the criminal offence of coercion to sexual intercourse and unnatural carnal knowledge each through the abuse of official position and the extraction of statement and 1 criminal charge for the criminal offence of indecent act in connection with the criminal offence of coercion to sexual intercourse or unnatural carnal knowledge through the abuse of official position. Out of that number, 3 criminal charges were brought against 5 officers in 1992, 3 criminal charges against 4 officers in 1993, 4 criminal charges against the same number of officers in 1994, 1 criminal charge against 1 person in 1995, 2 criminal charges against 2 persons in 1996, 3 criminal charges each against 8 authorized official persons of this Ministry in 1997 and 1998, 1 criminal charge against 2 persons in 1999, 1 criminal charge against 2 persons in 2000, 5 criminal charges against 6 persons in 2001 and 6 criminal charges against 10 persons from January to September 2002. The criminal charges were brought against 36 uniformed officers and 7 authorized official persons working in crime investigation departments.
248. It transpires from the above breakdown that most criminal charges were brought in 2001 and 2002, i.e. after the establishment of the new democratic government in the Republic of Serbia when,

immediately upon assumption of office, the new Minister and his team embarked upon the process of the de-politicization and de-criminalization, i.e. the sifting of the Ministry's own ranks, especially the commanding officers, and the de-mystification of the work of the police. At the same time, the Ministry of the Interior of the Republic of Serbia devoted special attention to the implementation of the principle of transparency as a method of work control *sui generis*. Opening the door of the Ministry of the Interior to the public is aimed at increasing the security culture of the citizens and at regaining their trust in the police. That that trust is rising is demonstrated also by fact that the number of citizens' requests asking the Ministry for help or the number of their submissions complaining about the work of the members of the Ministry without fear of negative consequences, either by electronic mail or directly, are on the rise as well. Police chiefs in all organizational units of the Ministry are under the instructions of the Minister of the Interior to check each submission (written or oral, signed or anonymous), so as to establish the facts and to prepare a reply to the citizens. From 1 January 2000 to 31 October 2002, 4 625 complaints and other submissions were filed to the organizational units of the Ministry of the Interior of the Republic of Serbia, 523 or 11.3 per cent of them grounded, on account of which disciplinary proceedings were instituted against 158 persons for a serious abuse of duty and against 111 persons for a minor abuse of duty. Suspension decisions for 32 employees were brought pending completion of the disciplinary proceedings. 10 criminal charges and 14 charges for minor offences were brought, and 4 employees had their employment ended by agreement. It was established that 2 929 or 63.3 per cent of complaints were unfounded, while 1 173 or 25.36 per cent are being investigated.

249. What was involved in the vast majority of afore-mentioned, processed cases (32 criminal charges against 43 employees) was improper use or overstepping of power relating to the use of the means of coercion – physical force or truncheon. In 15 cases, the means of coercion were used on the official premises during interrogations concerning the circumstances of the commission of a criminal offence. In these instances three persons were killed, while five persons sustained grievous bodily harm. Out of the total number of charged persons, 12 were tried and sentenced. All those official persons of the Ministry of the Interior, who had been found guilty, were pronounced sentences of between 80 days to 6 years in prison that went into effect.

250. In addition to criminal charges, disciplinary proceedings have been conducted against 32 employees reported to have committed criminal offences. In 4 cases the employees involved were dismissed, 10 employees were fined, 5 employees were assigned to other jobs, proceedings were discontinued against 2 employees, 5 employees were acquitted, while proceedings against 6 are still underway. Pending the completion of disciplinary proceedings, all employees against whom the proceedings were conducted were removed from the Ministry. 4 of them had their employment ended by agreement.

251. In addition to legal measures taken *ex officio* by the Ministry of the Interior, action has been also taken upon complaints submitted by wronged parties to Public Prosecutor's Offices. On the basis of Public Prosecutors' requests to the Ministry to provide data, citizens submitted 1 076 complaints against 1 578 authorized official persons of the Ministry directly to Public Prosecutors, most often for the criminal offence of maltreatment in the line of duty (930), followed by the extraction of statement (124) and unlawful deprivation of liberty (53). In the largest number of cases, the complaints were unfounded and submitted by the citizens who had been prosecuted. Upon completion of proceedings, the Public Prosecutors were advised in due course of the result and rejected most of the complaints as unfounded.

252. Considering the size and scope of activities carried out by authorized official persons of the Ministry of the Interior, the number of cases of overstepping and abuse of powers in the line of duty is negligible. During 2001, the members of the Ministry intervened in over 3 131 000 cases and applied legal powers which they exceeded only in 144 cases and acted in an unlawful and improper way. It accounts for 0.004 per cent of overall interventions, i.e. 1 case of overstepping or abuse of legal powers by authorized official persons per 21 740 interventions.

E) Conditions and procedures for ensuring medical and psychiatric care and measures taken

253. The health protection of convicted and detained persons is organized according to the general health rules and regulations. The health protection service provides health prevention and treatment of convicted and detained persons and monitors the hygiene and quality of food and water. Penitentiary institutions have their own health services and dispensaries, while district prisons use local medical institutions whose doctors see patients from the institutions twice a week or as necessary. Upon

admission to a penitentiary institution, all detained persons are examined and have medical records card opened. Likewise, medical examinations of detained persons are compulsory prior to discharge from prison as well.

254. A convicted person taken ill while serving his/her prison term is treated in penitentiary health institutions, such as the Prison Hospital in Belgrade. This is a specialized institution within the Directorate for Enforcement of Penalties in which the security measures of compulsory psychiatric treatment in a closed institution and of compulsory treatment of alcoholics and drug addicts, as well as other measures of the health protection of convicted persons, are applied.

255. According to the Law on Enforcement of Penalties, a convicted person has free health protection. A convicted person who cannot be provided appropriate health protection in a penitentiary is sent to the Prison Hospital, a psychiatric institution or some other health institution, and the time spent in hospital is included in his/her term. Likewise, at the request of a convicted person, the warden may approve a specialist examination if it has not been approved by the doctor.

256. Works were completed in the reporting period on the adaptation and renovation of penitentiary institutions mainly in Kosovo and Metohija, specifically in prisons in Prizren, Pec, Pristina, Kosovska Mitrovica and Istok. About 10 million dinars have been invested in the renovation of the last one, which was subsequently destroyed in the bombing of 1999. The works were financed from the budget of the Republic of Serbia, as well as by the funds provided by the institutions themselves. The prisons in Kosovo and Metohija are no longer in commission as they are now under the administration of UNMIK.

257. Substantial work has been done in the last two years to renovate penitentiary institutions and improve conditions in them. With the available resources not much more could have been done, the more so as renovation efforts were focused on the penal-correctional institutions in Sremska Mitrovica, Nis and Zabela (Pozarevac) where many facilities had been burned in the prison riots of 2000. Thus, the Seventh Pavilion was renovated in the penal-correctional institution at Zabela (Pozarevac); the second pavilion was renovated in the penal-correctional institution Nis II, while works are underway on the renovation of the kitchen, bakery and the laundry room. The building of the House of Culture is scheduled for renovation, too, as its library was demolished in the riots; works are underway on the renovation of the steward's office, while the building housing the detention ward has been redone partially; the renovation of the women's ward in the penitentiary hospital in Belgrade was carried out according to European standards; en external wall was built in the penitentiary institution in Valjevo and the buildings damaged in the flood of 2001 were renovated; and the district prison of Leskovac was renovated and adapted. The works in the afore-mentioned institutions were financed from the budget of the Republic of Serbia.

258. Renovations are needed in almost all penitentiary institutions in order to humanize conditions of serving prison terms and improve security factors. As it happens now, in some institutions up to 80 convicts are accommodated in one room, which creates enormous problems in terms of establishing and maintaining order and discipline, and of protecting physical and moral integrity of convicted persons. Small living units would ensure better control and improve conditions of serving prison terms. The presence of a large number of convicted persons in one place is a risk and creates a potential for demonstration of their negative, hostile and destructive behaviour.

F) Visit by a delegation of the United Nations Committee against Torture

259. Serbia and Montenegro has been cooperating with the United Nations Committee against Torture under Articles 20 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment. In that context, the competence of the Committee has been accepted to consider three individual submissions, while the process of the consideration of the conclusions and recommendations of the Committee related to some individual cases dating back to 1995 is underway.

260. A delegation of the Committee visited the Federal Republic of Yugoslavia from 8 to 19 July 2002. On the basis of the interest displayed before arrival, the representatives of the Committee met with the representatives of a number of relevant Federal and Republican agencies. After the talks and visits, the delegation of the Committee noted in a preliminary statement that torture had been systematically applied in the Federal Republic of Yugoslavia before October 2000; after that time, however, rather than systematic torture, there have been only isolated cases of torture that are common in every democratic country in the world. Yet, the number of cases is still higher than usual. It was concluded that there was no torture in prisons. Likewise, it was noted that investigation of torture is not always impartial and that police officers often protect each other.

261. The representatives of the Committee assessed that there had emerged a positive reform trend in all social structures in the country after the political, structural and personal changes in the wake of October 2000 and that positive reforms were in evidence in the police. It was also noted that the cooperation of the Federal Republic of Yugoslavia with the Committee was in the ascendant.

Article 8

A) Illegal crossings of the border of the Federal Republic of Yugoslavia

262. The geographic position of the country and a liberal visa regime in relation to some countries have accounted for the use of the territory of the Federal Republic of Yugoslavia as a way station by the citizens of the so-called Afro-Asian complex and of Eastern Europe for illegal transit to the countries of Western Europe.
263. In the first nine months of 2002, 657 foreign nationals were caught while attempting to cross the State border illegally, the greatest number of them the citizens of Turkey (187), Afghanistan (99), Romania (87) and Iraq (55). Typically, most of the illegal crossing attempts were committed by persons (citizens of Romania, Moldova and China) who had entered the Federal Republic of Yugoslavia legally and were caught trying to exit the country illegally in order to go to the countries of Western Europe.
264. The Ministry of the Interior of the Republic of Serbia has taken intensive measures and activities to trace and prevent illegal migrations, including the economic migrations of the citizens of Romania and Moldova, as well as the transit of a large number of citizens of Afro-Asian countries to the countries of Western Europe and Greece.
265. In the first nine months of 2002, a number of groups of foreign nationals were discovered entering and trying to exit the territory of the Federal Republic of Yugoslavia in an organized, but illegal way and a number of channels for illegal transfer of people were cut:

- Channel for the transfer, primarily of the citizens of Afghanistan and Iraq to the West via Bulgaria, the territory of the Federal Republic of Yugoslavia and the Yugoslav-Hungarian border;
- Channel for the transfer of Turkish nationals, predominantly the Kurds, through Pristina "Slatina" Airport, Montenegro and Belgrade, where they were taken over by persons involved in illegal transfer and ferried to a destination near the Yugoslav-Croatian border. The Turkish nationals most often came as tourists to Kosovo and Metohija;
- After the cutting of the channel for the transfer of Turkish nationals through Pristina “Slatina” Airport, Montenegro and Belgrade, a new channel was opened via Bulgaria and Romania through which the Turkish nationals were illegally transferred to the Federal Republic of Yugoslavia and taken over by Yugoslav nationals and ferried on illegally; and
- 4 channels for organized illegal transfer of foreign nationals from the direction of Romania, Bulgaria, Ukraine and Moldova.

A particularly illustrative example of illegal transfer of foreign nationals was the discovery of 43 persons (21 from Afghanistan, 19 from Tunisia and 3 from Iran) in 2 trailers hauling timber at Ljubicevo near Pozarevac.

266. In the first nine months of 2002, the members of the Ministry of the Interior of the Republic of Serbia brought 26 criminal charges against persons involved in the organization of illegal transfer of people (20 charges under Article 249 of the Criminal Code of the Federal Republic of Yugoslavia and 6 charges under Article 155 of the Criminal Code of the Federal Republic of Yugoslavia). It is estimated that the cutting of these channels accounted for the prevention of the entry of over 1 000 potential illegal migrants whose destination were the countries of Western Europe.
267. The introduction of tougher visa requirements for Chinese nationals and the cessation of Yugoslav Airlines direct flights to Beijing, the number of Chinese nationals' arrivals through Belgrade Airport was considerably reduced (from 10 377 in 2000 to 2 209 in 2001 and 412 in the first nine months of 2002). In the first nine months of 2002, 38 Chinese nationals were not allowed to enter the country through the border crossing at the Belgrade Airport because they had not fulfilled general and specific conditions for the entry in the Federal Republic of Yugoslavia (most often possession of insufficient funds, suspect validity of visas etc.).
268. The problem of illegal migration is also pronounced in the case of Iraqi nationals, primarily for economic reasons, but also because of the fact that the Federal Republic of Yugoslavia was the only

European country for which they do not need a visa. Precisely for these reasons the citizens of Iraq were requested to show, prior to entering the country, that, in addition to general (a valid passport) and specific (possession of sufficient funds, return air-tickets with a fixed date of return, hotel vouchers, etc.), they also have a valid reason to travel to the Federal Republic of Yugoslavia. In the first nine months of 2002, 157 citizens of Iraq entered the Federal Republic of Yugoslavia through Belgrade Airport, while 47 were refused entry because they did not fulfil general and specific conditions required to enter the country.

B) Trade in "white slaves"

269. The territory of Serbia and Montenegro has been used as a way station for the transit of women from Eastern Europe to Bosnia and Herzegovina and Kosovo and Metohija and farther on to Greece and Italy via Macedonia and Albania, where they either stay permanently or go to Western Europe.
270. A number of women from Eastern European countries, such as Romania, Moldova, Ukraine and Russia, work in bars and restaurants as waitresses, strippers or escorts. However, after the introduction of strict measures against persons who take part in the recruitment and sale of these women and strict measures of the control of the State border, as well as after the change of treatment of foreign nationals who are being treated more and more as victims of an organized chain of trade in women and of prostitution and less and less as perpetrators of offences under the Law on the Movement and Stay of Foreigners, the number of women from Eastern European countries in the country has decreased significantly.
271. In the first nine months of 2002, 452 women from Eastern Europe, of whom 273 from Romania, 98 from Moldova, 65 from Ukraine, 11 from Bulgaria, 3 from Russia and 1 from Belarus and Macedonia each, were found in bars and restaurants that hire women to work as waitresses, strippers or escorts during inspections of these establishments. Measures of withdrawal of stay and other legal measures were taken against persons found in breach of law. Out of the total number of women foreign nationals, 48 were found to have been victims of illicit trade in human beings, i.e. of sexual exploitation (27 from Romania, 11 from Moldova, 9 from Ukraine and 1 from Bulgaria). 23 criminal charges were brought against 35 persons (bar and restaurant owners and other persons) because of the commission of 48 criminal offences in connection with illicit trade in women, out of which

- 21 for the criminal offence of mediation in the practicing of prostitution;
- 4 for the criminal offence of abduction;
- 8 for the criminal offence of unlawful deprivation of liberty;
- 3 for the criminal offence under Article 33 of the Law on Weapons and Ammunition;
- 3 for the criminal offence of assisting the perpetrator after the commission of a criminal offence;
- 3 for the criminal offence of forging documents;
- 2 for the criminal offence of illegal border crossing;
- 1 for the criminal offence of establishing servitude and transport of persons in servitude;
- 1 for the criminal offence of murder;
- 1 for the criminal offence under Article 23 of the Law on Public Peace and Order; and
- 1 for the criminal offence under Article 23 of the Law on Public Peace and Order.

272. In March 2002, a shelter for women, the victims of illicit trade in women, was opened in cooperation with the Yugoslav non-governmental organization “Shelter for Women and Children, the Victims of Violence in the Family” and the International Organization for Migration in which 40 women from foreign countries were given shelter. In April 2002, the National Coordinator for the Struggle against Trade in Human Beings was nominated in the Republic of Serbia, who held his first meeting on 30 May 2002 with representatives of the Federal Ministries of the Interior and Foreign Affairs, Public Prosecutors Office of the Republic of Serbia, Ministries of Social Welfare, Health and the Environment of the Republic of Serbia, OSCE and IOM, as well as with the representatives of non-governmental organizations ASTRA, Victimological Society of Serbia and the Consulting Office against Violence in the Family.
273. In July 2002, actions were taken to establish special police squads for the struggle against illicit trade in human beings, attached to the Ministry of the Interior of the Republic of Serbia and local police departments throughout the Republic of Serbia.
274. Within regional police cooperation, the Ministry of the Interior of the Republic of Serbia carried out an action named “Mirage” from 7 to 16 September 2002, aimed at preventing trade in narcotic drugs and

human beings, particularly in women and children, and their coercion to engage in prostitution and other illicit activities. Likewise, at an inter-departmental meeting in the Federal Ministry of Foreign Affairs, representatives of the Ministry of the Interior of the Republic of Serbia supported the initiative to introduce visas to the citizens of Moldova and proposed that visa checks be carried out by the Ministry of the Interior of the Republic of Serbia. This measure is aimed at reducing considerably the number of entries of the citizens of Moldova, potential victims of organized chains of illicit trade in women in the Balkans, into the territory of the Federal Republic of Yugoslavia/Serbia and Montenegro.

275. In order to suppress illegal migration and trade in human beings, the Ministry of the Interior of the Republic of Serbia established successful cooperation with Yugoslav non-governmental organizations and INTERPOL. Thus, three two-day seminars entitled "Training of Police Officers in Charge of the Suppression of Illicit Trade in Human Beings" were held in 2002, organized by the Incest Trauma Centre from Belgrade and the Ministry of the Interior of the Republic of Serbia, in which 60 police officers took part.

276. On 26 and 27 November 2002 a meeting took place in the Ministry of the Interior of the Republic of Serbia with representatives of OSCE and UNICEF on the subject of trade in human beings. The participants in the meeting assessed as positive the organization and functioning of the Anti-Human Trade Squad of the Republic of Serbia, establishment and role of the Mobile Squad and the structure and method of the functioning of special police squads of the Ministry of the Interior of the Republic of Serbia. Likewise, it was pointed out that OSCE was going to recommend this comprehensive method of the organization and functioning of the Ministry of the Interior of the Republic of Serbia as a role model for all countries of South-East Europe.

277. On 27 November 2002, a meeting was held with representatives of UNICEF for the purpose of exchanging information and collecting data for the UNICEF annual report on trade in human beings, particularly in children, in South-East Europe. It was concluded that the most frequent victims of the trade were young women aged 18 to 26, but that, in a small number of cases, older female minors aged 16 to 18 were also the victims of the trade. The meeting assessed as positive the results achieved in the Federal Republic of Yugoslavia in this field and pointed out that the working body for the questions of the status of women of the United Nations in New York praised the Yugoslav model of the struggle against trade in human beings which should be recommended as a role model to other countries of South-East Europe. Mr. Kofi Annan, United Nations Secretary-General, was advised of the model as well.

A) Prohibition of forced labour

278. The freedom to work is one of the constitutionally guaranteed rights and is regulated within the standards governing the right to work. Article 54 of the Constitution of the Federal Republic of Yugoslavia guaranteed freedom of choice of occupation and employment. According to the relevant constitutional provisions employment may be terminated against the will of the employee only under the conditions and in the manner stipulated by the law and the collective contract. Paragraph 3 of this Article explicitly prohibited forced labour.

279. Article 40 of the Charter of Human Rights and Minority Rights and Civil Liberties guarantees the right to work. As the right to work is stipulated by the law and conferred on under the Charter of Human Rights and Minority Rights and Civil Liberties, the member States of the State Union are required to create conditions in which everyone may earn his/her own living. Furthermore, it is stipulated that everyone shall be entitled to choose freely his/her own living and to fair and adequate working conditions, and particularly to be fairly remunerated for his/her work.

280. The Constitution of the Republic of Serbia contains the right to work provisions similar to those of the Constitution of the Federal Republic of Yugoslavia.

281. The provisions banning forced labour, i.e. on freedom to work, emanate from the obligations of the country not only under UN international instruments but also under the International Labour Organisation Convention No. 29 of 1930 concerning Forced or Compulsory Labour that was ratified by the country (Serbia and Montenegro has not yet ratified the Convention No. 105 of 1957 concerning Abolition of Forced Labour), as well as from Recommendation No. 35 indirectly forcing to labour and Recommendation No. 36 of 1930 regulating forced or compulsory labour). Certain obligations result from Recommendation No. 46 of 1936 concerning gradual abolition of recruitment.

1.1 A set of standards envisaged in the Law on the Bases of Labour Relations that defines the manner of employment, the term "labour relations", cases where an employee may be taken

over by another employer, annual paid leave, leave of absence of employees, working hours, cases where workers may be asked to work longer hours, and change of pattern of the working hours.

1.2 The definition of labour relationship itself does not make explicit references to the voluntary nature of that relationship. However, it is clear from the relevant constitutional provisions or the contractual nature of employment as established under the above-mentioned Law.

1.3 Article 20, paragraph 1 of the Law on the Bases of Labour Relations provides for a possibility to work longer than regular working hours (extra hours) under conditions stipulated by the law or collective contract. It fixes the maximum of extra hours per week (up to 10 extra hours a week). Except as stipulated in paragraph 2 of the same Article, the employee may be required to work longer than the maximum extra hours (in case of natural disaster and in other cases stipulated by the Republic law). The cited Law specifies precisely the period in which forced labour is required and the exact number of working hours to be put in. In each particular case the employer (manager) is obligated to bring a written decision to introduce overtime work (Article 20, paragraph 3). Disregard for the legal norm regarding work longer than regular hours is an offence (punishable by a fine imposed on the employer or the official authorized by him). For any extra hours put, the employee is entitled to an increased pay, as set out in the Republic law, collective or employment contract.

1.4 In some sectors, because of their specific nature (for example, construction, farming, catering) - which is not strictly specified by law but conditions are defined when they are regarded as such - it is possible to change working hour patterns to allow work for longer than regular hours for a part of the year and shorter than regular hours for the remainder of the year. Total working hours of an employee on average should not exceed his regular hours during the year in question. These matters have been regulated by Article 23 of the Law and by the relevant provisions of the labour legislation of the Republics.

1.5 The provisions of criminal legislation also safeguard against forced labour. A group of criminal offences against employment is governed by the criminal codes of the constituent Republics. Thus, for instance, Article 86 of the Criminal Code of the Republic of Serbia contains a criminal offence of violation of the rights stemming from employment, albeit as a blanket stipulation. The same Article stipulates that whoever knowingly does not abide by laws, other regulations, collective contracts and other general enactments related to employment shall be fined or imprisoned for up to one year.

B) Type of work that may be forced on detained or sentenced persons

282. Forced labour does not exist as a penal sanction in Serbia and Montenegro. While serving their prison terms, convicted persons are assigned, within the bounds of possibilities of penitentiaries, jobs that correspond to their physical and intellectual capabilities, skills and expressed wishes. The purpose of it is for sentenced persons to acquire, maintain and improve work capacities and habits and professional skills. Under the general laws in force, both the time spent on the same job during the prison term and the time spent on the job itself are recognized as a qualification for the job. The sentenced person is entitled to a remuneration for his work and benefits from industrial safety arrangements available under general regulations.

283. Sentenced persons are trained and work in penitentiaries or outside these institutions. The services in charge of training and employment that exist within penitentiaries train convicts in certain skills, organize their work activities and perform other duties as stipulated by the law. There exist business units in some penitentiaries. Article 15, paragraph 3 of the Law on the enforcement of penal sanctions provides for the Government of the Republic of Serbia to take a decision to establish an enterprise to train and employ convicted juvenile persons. However, such a decision has not been made yet. Consequently, the provisions of a separate law, namely the Law on the organization and management of economic units of institutions enforcing penal sanctions, still apply to the Training and Employment Services and their activities, provided that these provisions are not contrary to other regulations in force.

284. The penitentiaries for the enforcement of penal sanctions incorporate the following economic units: "Dubrava" and "Prolece" economic units in the Sremska Mitrovica penitentiary; "Novi putevi" in the District Court prison in Novi Sad; "Nadel" in the District Court Prison in Pancevo; "Preporod" in the Penal-Correctional Institution Zabela in Pozarevac; "Deligrad" in the Penal-Correctional Institution in Nis; "Mladost" in the reformatory in Krusevac; "Elan" in the Penal-Correctional Institution in Sombor; "Buducnost" in the Penal-Correctional facility for juvenile offenders in Valjevo. Besides

these economic units, the majority of penitentiaries have cultivable land used for farming. The main purpose and plan behind the production in penitentiaries is to ensure self-funding. However, due to insufficient inflow of funds for investment this goal has not yet been reached.

285. Inmates are allowed to attend general education classes or vocational training courses. For technical improvements and innovations they have made while serving their sentences, they enjoy entitlements under general regulations. Art works and other products of their creativeness that they make on their own leisure time and by using their own means constitute their own intellectual property.

C) Conscientious objection

286. Specifically, Article 137 of the Constitution of the Federal Republic of Yugoslavia stipulates that a citizen who, for religious or other reasons of conscientious objection, refuses to do his military service under arms shall be allowed to serve without weapons or in civilian service, in accordance with the federal law. In this regard, of relevance are also provisions of Article 35 of the Constitution guaranteeing freedom of belief, conscience, thought and public expression of opinion.
287. The Charter of Human and Minority Rights and Civil Liberties sets out that the State Union of Serbia and Montenegro recognizes conscientious objection. No one is obliged to do his military service or any other obligation which includes the use of weapons, against his creed or belief. Such a person may, therefore, be asked to do a corresponding civilian service in accordance with the law (Article 28).
288. Articles 296-300 of the Law on the Yugoslav Army regulate the procedure for the exercise of the right to conscientious objection before the relevant authorities.
289. Regarding the enjoyment of this right, the information available to the Sector for the replenishment, conscription and system-related matters of the General Staff of the Yugoslav Army indicates that 76 recruits availed themselves of this right in the 1994-2002 period. Twenty recruits are currently serving their military service doing civilian service.
290. Article 24, paragraph 3 of the Draft Law on Freedom of Religion provides for that freedom to manifest religion or belief relieves no one of his civilian or professional duties. The only exception to this legal provision is the so-called conscientious objection that may be invoked by some religionists in accordance with a special regulation allowing an alternative way of doing military service without arms.

Article 9

A) Deprivation of liberty and detention

291. Under Article 23 of the Constitution of the Federal Republic of Yugoslavia everyone has the right to liberty. No one may be deprived of liberty except in cases and according to the procedure defined by federal law. Furthermore, an arrested person must be promptly informed in his own language or in the language that he understands, of the reasons for his arrest and has the right to request the authorities to inform his next of kin of his arrest. The arrested person must also be cautioned that he is not obliged to say anything and that he is entitled to appoint a counsel of his own choosing. Unlawful arrest is punishable by law.
292. Under Article 24 of the Constitution, any person reasonably suspected of having committed a criminal offence may be detained and held in custody by the order of the competent court, only if this is necessary for the conduct of criminal proceedings. A proper order explaining the reasons of detention must be served on the detained person at the time of detention or at least within the next 24 hours. The detainee may appeal against this order and the court is obliged to decide on the appeal within 48 hours. The length of detention or custody must be of the shortest possible duration. Detention ordered by a first-instance court may not last longer than three months from the date of arrest. This period of detention may be extended for another three months. If upon the expiry of these periods, the detainee has not been indicted, he shall be released.
293. Under Article 29, paragraph 1 of the Constitution everyone has the right to engage a counsel to defend him before a court of law or any other authority conducting the proceedings against him.
294. Article 14 of the Charter of Human and Minority Rights and Civil Liberties provides for the right to liberty and security of the person. The Charter further provides for additional guarantees in case of

arrest for a criminal offence or a minor offence as well as special guarantees (Articles 15-16). Article 17 regulates the right to a fair trial and defines that everyone shall have the right to appeal or to any other legal remedy against a decision concerning his right, obligation or an interest based upon law (Article 18). The Charter contains provisions on the presumption of innocence until proven guilty (Article 19) and on the prohibition of retroactivity (Article 20). Pursuant to its Article 21 no one may be tried or punished twice for the same offence. Besides, a person wrongfully convicted of a punishable offence is entitled to rehabilitation and compensation by the State (Article 22).

295. According to the applicable laws and regulations in force an unlawful arrest constitutes a punishable offence. The Criminal Code of the Republic of Serbia (Article 63) provides that a person who has unlawfully arrested, detained or in any other way deprived another of his liberty shall be punished with imprisonment of up to one year.
296. If the arbitrary arrest is made through abuse of official position or powers, the perpetrator shall be punished with imprisonment ranging from three months to five years. The same Article provides for two separate incriminations. Namely, if the arbitrary arrest has lasted for more than thirty days or included the use of brutal means or if the arbitrarily arrested person has suffered serious impairment of his health or any other serious consequences, the perpetrator shall be punished by one to eight years in prison. However, if the arbitrarily arrested person died as a consequence, the perpetrator shall be punished by at least three years' imprisonment.
297. Between 1992 and September 2002, charges were brought against law enforcement officials in six cases of unlawful arrest in the Republic of Serbia.

- **Code of Criminal Procedure**

298. The Code of Criminal Procedure went into effect on 28 March 2002 ("Official Gazette of the Federal Republic of Yugoslavia", No. 70/01).
299. The amendments to the Law on Criminal Procedure were initially motivated by bringing the provisions of this Law in conformity with the Constitution of the Federal Republic of Yugoslavia of 27 April 1992. Later on, the legislator chose to adopt a new Code of Criminal Procedure which was harmonized both with the Constitution and with the legal process standards required under the international instruments that the Federal Republic of Yugoslavia has already ratified or intends to ratify in the future.
300. Major changes have been made with regard to the powers and action of law enforcement officials with a view to making a clear distinction between judicial and executive (police) authority, consistent with the constitutional principles relative to the division of power.
301. One of the more important novelties concerns the pre-arraignment procedure, i.e. the stage of investigating criminal offences, where the powers of police were very extensive in previous laws, because from now on this procedure will be directed by the Public or State Prosecutor.
302. The solutions contained in the Code considerably improve and protect the position and the rights of the suspect interrogated by police.
303. A noteworthy novelty in this respect is without doubt the abolition of the so-called police custody or detention that a person may be remanded in for no more than three days before the investigation is started against him. The conditions of this detention were also laid down in the previous Law on Criminal Procedure. Considering, however, that this legal provision was not in accordance with the Constitution of the Federal Republic of Yugoslavia that includes only the basic solutions concerning deprivation of liberty, detention and the right to a counsel, it has been removed from the new Code. Abolition of so-called police detention has helped eliminate the most frequently cited complaint about police methods, namely, the use of the means of coercion against detainees to extract self-incriminating statements from them or confessions of guilt to the criminal offences they are charged with.
304. In addition, the right to a legal counsel has been regulated in a new, more favourable manner for the suspect whenever he is called in for questioning by police. This matter is regulated in conformity with the relevant provisions of the Code regarding obligatory and optional defence. It is essential, however, that the suspect is allowed or must have a lawyer from the start; that he is interrogated according to the provisions applicable to the interrogation of the accused; that a statement taken from him in that way will be treated as evidence in the criminal proceedings, etc. Legal aid to the poor is also provided, i.e. the police are obliged to assign a counsel to the suspect in all cases when the defence is obligatory and the suspect has no means to pay for it. Novelties were also introduced in the provisions on the detaining of people, entry into and search of premises, home and persons, because all of these

measures have the effect of limitation of freedom of movement and interfere with the right of the privacy of the person.

305. The Code of Criminal Procedure incorporates provisions on arrest and remand in custody. A general provision of the Code stipulates that the arrested person must be promptly informed in his own language or in a language that he understands of the reasons for the arrest. At the same time, he must be cautioned that he is not obliged to say anything, that he is entitled to choose his own lawyer and to ask that his next of kin be informed about the arrest (Article 5). Furthermore, the same Article provides that the person arrested without a judicial decision must be brought before an investigating judge without delay.
306. The provisions of Articles 141 and 142 of the Code of Criminal Procedure establish basic prerequisites and conditions for remand in custody (a person may be remanded in custody only under the conditions strictly prescribed in the Code and only if the same purpose may not be achieved by any other measure). No one may be arbitrarily arrested or detained. Only a person who has been remanded in custody by a court order may be held in detention. Detainees are held in all district court prisons and the detention units of all penal-correctional institutions in the Republic of Serbia.
307. Articles 143-146 determine the authorities for bringing decisions on remand. (A competent court sends a person into custody by a decision that is served on him at the time he is deprived of his liberty, but in any case not later than 24 hours following the deprivation of liberty or bringing the person concerned before an investigative judge. The detained person may appeal against the decision to the panel of judges within 24 hours from the receipt of the decision. The appeal is submitted to the judges along with the detention decision and other papers. If the investigative judge is not agreeable to the State Prosecutor's proposal for remand in custody, he/she will ask a panel of judges to decide. The detained person may appeal against the decision of the panel of judges but it will not delay its enforcement. The panel of judges is bound to decide on the appeal within 48 hours).
308. Article 144 defines the length of detention. (Under a decision of the investigating judge the accused person may be detained in custody for no more than one month from the date of arrest. Following the expiry of this period that person may be held in custody only upon a decision extending the detention. The panel of judges may prolong detention for no more than two months. The decision of the judges may be appealed but the appeal will not delay the enforcement of the decision. In the case of prosecution of a criminal offence punishable by imprisonment of more than five years or a severer penalty the panel of judges of the Supreme Court may, for reasons deemed important by them, extend detention for a maximum period of three months. In which case the investigating judge or the State Prosecutor should present a well-documented explanation. The detainee is released as a result of a decision to reverse the detention decision and of the release order issued by the court hearing the case, as well as because the remand period has expired in the meantime.
309. The accused person who has been detained in custody must have a counsel from the first hearing. Therefore, compared to the previous legal solutions, the new Code has broadened the rights to assign an official counsel to the accused. The Bar Association is included by submitting an updated roster of lawyers to the presidents of law courts every six months so that they may assign official counsels from among them by order of their names appearing on the roster. The Code permits the arrested person to have conversations with his counsel in confidence by only being subject to visual and not sound monitoring by the officer in charge of monitoring (Article 75). Interference with the correspondence between the accused and his counsel is allowed only if there is reasonable suspicion that escape is being planned and that there is conspiracy to pervert the course of investigation. Such interference is restricted only to this stage of the proceedings. The counsel has the right to read the criminal charges against his client or the request to conduct an investigation before the first interrogation of the suspect (Article 74).
310. The counsel assigned to a criminal case must be an attorney at law; exceptionally he may be replaced by a trainee attorney at law (in cases involving a criminal offence for which the law prescribes imprisonment of up to five years). The number of counsels that may take part in a criminal case is limited to five. That does not prevent, however, a larger number of counsels from being hired outside the formal proceedings.
311. Article 145 provisions stipulate the terms of reversal of the detention decision. (Both the investigating judge and the prosecutor concerned need to agree; if not, the investigating judge will request a panel of judges to decide the matter within 48 hours; if the detention is reversed on account of its expiry, the decision is made by the investigating judge.) Article 146 specifies that detention may also be reversed or decision on remand brought pending the completion of the main hearing, once the indictment is returned to the court.

312. The passing of the Code of Criminal Procedure has meant that significant changes have been made regarding the powers and the treatment of arrested persons by law enforcement officials. Unlike the previous Law (allowing detention by police), the provisions of Article 227 of the Code specify that the authorized law enforcement official may arrest a person on any of the grounds for remand in custody as envisaged in Article 142 of the Code. However, they are obliged to bring the arrested person before the investigating judge concerned not later than 8 hours of the arrest. If, due to some irremovable obstacles, the arresting officer is not able to bring the arrested persons before the investigating judge, he or she should explain the delay to the investigating judge.
313. The purpose of deprivation of liberty under Article 227 of the Code of Criminal Procedure is to ensure that a suspect is brought before the investigating judge assigned to his/her case. Which means that deprivation of liberty is not resorted to to take some other action against the suspect. There is an explicit obligation of the law enforcement official to bring the arrested person before the competent investigating judge without delay.
314. Article 229 of the Code stipulates that a person arrested under its Article 227, paragraph 1 (if in hiding or if his/her identity cannot be established with certainty or if there exist other circumstances indicating his/her intention to flee; if there exist circumstances indicating that he/she intends to destroy, conceal, alter or produce false evidence or leads of the criminal offence committed or to carry out the attempted or threatened offence) as well as the suspected person under Article 226, paragraphs 7 and 8 thereof (summoning as suspect for the purpose of gathering evidence a person reasonably believed to have committed a criminal offence or a person proceeded against in pre-trial procedure under the Code, cautioning him/her of his/her right to have a legal counsel present; upon determination that such an individual may be regarded as a suspect, he/she shall be promptly informed of the offence he/she is charged with or of the grounds of the charges as well as of his/her right to name a lawyer who shall be present during his/her further interrogations; that he/she has the right not to give answers to the investigators; that he/she is entitled to the rights under Article 5 of the Code in case of holding in detention) may only be exceptionally held for gathering evidence or questioning no more than 48 hours of the arrest being made or the summons to appear as a suspect.
315. The duration of such detention may not exceed 48 hours from the time of the arrest or summoning of the person to appear as suspect. The detention decision needs to be taken immediately or within two hours. The detention decision may be appealed against. The appeal lodged by the suspect and his/her counsel must be filed to the investigating judge as soon as possible. The investigating judge should decide on the appeal within four hours of the receipt of the appeal. Once filed, the appeal does not delay the enforcement of the detention decision.
316. Holding in detention is immediately brought to the attention of the investigating judge of the competent court, who may order the held person to be detained forthwith (Article 229, paragraph 4 thereof). "Forthwith" implies the moment the detention decision is taken. This practically means that the detention decision and the letter informing the investigating judge of the holding in detention are drawn up simultaneously.
317. Pursuant to the detention provisions based on Article 12 of the Law on Internal Affairs, the detention decision is taken without delay. The person held in detention may appeal to the Minister of the Interior within 12 hours of receipt of the decision. The Minister should decide on the appeal not later than within the next 24 hours. Lodging the appeal does not mean delay of the enforcement.
318. Elimination of the so-called police detention has removed the most frequently cited objections to police procedures, i.e. coercion used against detained persons to extract self-incriminating statements or confession to the offences they are charged with.
319. In point of fact, the provisions of the International Covenant on Civil and Political Rights have been contained and consistently implemented in the aforementioned provisions of the Code of Criminal Procedure concerning the powers of law enforcement officials. Furthermore, relevant laws and enactments detail the exercise of internal affairs, the conditions and use of law enforcement powers and sanctions for nay measures, actions and procedures inconsistent with the provisions of ICCPR. In case of abuse or exceeding of powers penal, minor offence or disciplinary action is taken against the law enforcement officials concerned, including their dismissal and termination of contract with the police force.
320. In the period from 1992 through September 2002 members of MUP of the Republic of Serbia imposed the measure of deprivation of liberty in 27,244 reported cases and the measure of detention in 35,450 cases. On average, the deprivation of liberty was imposed on 2,476 persons and the detention measure on 3,938 persons annually. Account should be taken, however, of the fact that the detention measure was not imposed during the course of 2001 and 2002, for reasons stated above

- **Law on minor offences**

321. The Minor Offences Law also provides for a measure of deprivation of liberty imposed by law enforcement officials.
322. Under Article 184 thereof police and other officials authorized to bring in people may take in a person caught in the act without a specific order of the magistrate, if his/her identity cannot be established or if he/she has no domicile or habitual residence of if he/she intends to flee abroad (and stay there for a longer period) to avoid being held responsible for the offence, or if he/she should be prevented from continuing to commit the offence. In all such cases the offenders must be brought in without delay. If the offender under paragraph 1 of the Article above is caught in the act and cannot be brought before the magistrate and if there is reasonable suspicion that he/she might flee or if there is danger that he/she might continue to commit the offence right away, the law enforcement official may hold the offender for 24 hours at the most.
323. Under Article 188 of the Minor Offences Law, the authorized law enforcement official may order that a person caught in the commission of a minor offence under the influence of alcohol be held in detention until he/she is sober, but no more than 12 hours.

B) Compensation mechanisms for victims of unlawful arrest or detention - compensation for arbitrary conviction

324. Compensation for the damage suffered as a result of an arbitrary conviction is dealt with in Articles 556-564 of the Code. Article 556 details the cases when compensation for damage is available to arbitrarily convicted persons: if an effective penal sanction has been imposed on them or if they have been found guilty but not subject to serve a sentence, if the case has been dropped as an exceptional legal remedy, if they have been acquitted or the case has been thrown out of court. The right to compensation also covers cases where: a person has been detained without criminal proceedings being instituted against him, or there has been discontinuance upon an effective decision, or he has been acquitted of all charges against him by an effective judgment or the indictment has not been returned. In addition, compensation may be claimed by a person serving his deprivation of liberty sentence at the time of retrial upon an application to protect the legality or to review the legality of an enforceable judgment, if pronounced a lighter sentence of deprivation of liberty than already served, or if a criminal sanction not implying deprivation of liberty is imposed or if found guilty but spared the enforcement of a sentence. A person who has been wrongly and unlawfully subject to arbitrary arrest by the authorities, or who has been detained in custody or in an institution for enforcement of penalties or measures for a longer period, or who has been detained longer than required by the sentence received, is also entitled to compensation.
325. All the persons referred to above have the right to compensation for both tangible and non-tangible damage, namely for:

Material loss, real loss and loss of income

- compensation for non-exercise of the rights related to employment (allowance for living away from family, annual leave, holiday entitlement, pension and disability insurance entitlements);
- compensation for impaired or deteriorated health due to imprisonment or detention or for loss of health care;
- compensation for costs incurred as a result of sending food parcels and other necessities to the convicted person and compensation for the travel expenses involved in visits to him/her;
- compensation for costs of legal proceedings, refund of the fine paid under a previous adjudication, compensation for fulfilment of the legal property claim related to the unjustified conviction;
- financial loss of rent if the injured party, because of full or partial ability to work, has lost income or if his needs have been permanently increased or if his further development opportunities have been ruined or diminished.

Non-material loss

This type of loss includes the physical pain, psychological trauma or mental pain suffered because of a decreased capacity to earn a living due to inflicted bodily harm or impaired health as well as other non-material loss.

The compensation procedure is set in motion by submitting the claim to the Ministry of Justice of the Republic of Serbia under Article 557 of the Code of Criminal Procedure. This Article requires that a citizen, before taking legal action for compensation of loss, is obliged to inform the Justice Ministry, or the Federal Ministry of Defence if a decision of the Military Court is involved, in writing of its intention to seek compensation. Notification of either Ministry, as appropriate, is necessary in order to reach agreement on the existence of a loss and on the type and amount of compensation.

326. Number of compensation claims laid in the Republic of Serbia

1992 100 claims of which 9 settlements have been reached with parties;
1993 78 claims including 4 settlements with the parties;
1994 88 claims of which number 17 settlements have been reached with the parties;
1995 119 claims including 17 settlements with the parties;
1996 114 claims inclusive of 5 settlements with the wronged parties;
1997 115 claims of which 13 settlements have been reached with the parties;
1998 189 claims inclusive of 31 settlements with the parties;
1999 113 claims inclusive of 12 settlements with the parties;
2000 214 claims of which 38 settlements have been reached with the parties;
2001 361 claims including 51 settlements reached with the parties;
2002 371 claims (until 1 November) including 76 settlements with the parties.

327. The right of compensation resulting from unjustified punishment is also provided for under the Law on Minor Offences (Article 299). This right is available to anyone on whom a penalty or protective measure has been imposed by an effective decision but, following an exceptional legal remedy, the proceedings for minor offences have been dropped.
328. Also, the right of compensation (under Article 300) may be exercised by: a person on whom penalty is imposed before the decision on the minor offence becomes effective, if the appeal results in the proceedings being abandoned; a person detained while the proceedings for the minor offence are going on but which have eventually been dropped; a person who has completed his prison sentence and who, upon an exceptional legal remedy or appeal against the decision by which enforcement was ordered before the decision goes into effect, is pronounced a prison sentence that is shorter than the sentence he has already served; and by a person who has been detained without grounds longer than permitted by the law as a result of error and unlawful work by the case judge.
329. The right to a refund of money - reimbursement of the fine paid; restitution of benefits from property; restitution of an item or an equivalent value of the confiscated item is exercised by a person who has been fined unfairly or on whom a measure of protection of withdrawing property benefits from him or a measure of confiscation of an item has been imposed in a case involving a minor offence (Article 301).

Article 10

A) Segregation of accused from convicted persons in detention

330. The treatment of detainees strictly observes the provisions of the Code of Criminal Procedure and the Law on the enforcement of penal sanctions and must respect the person and the inherent dignity of the accused person as a human being. In penitentiary institutions accused persons are always segregated from convicted persons. A detainee is held a special block of the penitentiary to prevent communication with his co-defendants in a criminal case. Which is why they are segregated. They are not allowed either to communicate with detainees in other sections of the facility.
331. The detained persons are provided the same conditions as the convicted persons in a penitentiary. Their treatment only differs in that the detainee is entitled to more visits than the convicted person; he is allowed to have his own food, clothes, shoes, bed sheets. They are not obliged to work unless they

wish so. On the other hand, work of convicted persons is organized for a specific purpose by a special service charged with organizing labour of convicted persons.

332. Detained persons share group rooms, save in cases when the investigating judge has asked in writing for separation for a strictly defined period. Detained persons are grouped according to their personal characteristics.

333. Detainees are segregated according to their sex in specially assigned rooms within the institution and there is no way that they can mix. The Minister of Justice of the Republic of Serbia is responsible to make the rules to be applied in the penal-correctional institutions.

B) Penitentiaries

334. Under the Law on the enforcement of penal sanctions convicted women are invariably assigned to a penal-correctional institution for women, an institution that is physically completely separated and organized to meet the needs of women serving their sentence there. All guards, medical and other personnel that are in contact with female inmates are women.

C) Treatment of juvenile persons

335. The treatment accorded to juvenile persons who have committed a criminal offence is defined by the provisions of the Code of Criminal Procedure and the Law on the enforcement of penal sanctions and is distinct from the treatment of adults.

336. A professional team of a reformatory is entrusted with devising a treatment programme for juveniles. Juvenile offenders are divided into reform groups appropriate to their age, mental faculties, other personal traits and the programme of treatment adopted. Detained juvenile persons are separated from adults.

337. The type of work to be done in penal-correctional institutions is chosen according to the abilities of juvenile persons and their penchant for a certain type of work, depending on the possibilities existing in these institutions. The hours of work for convicted juvenile persons are fixed in such a way as to allow their education and specialized training, leaving them enough time for physical training and recreation. The Law on the enforcement of penal sanctions (Articles 286-288) incorporates rules for assistance once the educative measure of incarceration and the juvenile prison sentence have been served.

338. The practice of courts within the jurisdiction of the District Court of Belgrade includes two annual visits to juveniles in correctional institutions. Such visits include judges, the Public Prosecutor, experts from the Centre for Social Services and police. Educative measures are additionally reviewed at hearings. Parents are interviewed either at the institution or in the place of residence of the juvenile. The aim is to prepare from the beginning of the term of sentence or educative measure for reintegration under the supervision and conceptual direction of a consultant psychologist of the District Court and the First Municipal Court of Belgrade.

339. Juvenile offenders serve their prison terms at a penal-correctional institution for juvenile persons: male juveniles are assigned to the juvenile penal-correctional institution while female juvenile persons are detained in a separate block of the penal-correctional institution for women prisoners. Convicted male juveniles serve their sentences in the Penal-Correction Institution for Juvenile Offenders in Valjevo in the Republic of Serbia. On the other hand, convicted female juveniles are placed in a separate block of the Penal-Correctional Institution in Pozarevac.

340. The Law on the Enforcement of Penal Sanctions contains provisions relating to transfer; reception; postponement and interruption of prison sentence serving; segregation into reform groups; meals; visits; physical education; job assignments and training; possibilities for regular school attendance; disciplining juveniles in the reformatory and termination of the juvenile prison term.

341. Juvenile prison sentences are pronounced only exceptionally and account for 2 per cent of all penal sanctions imposed on juvenile persons every year. While the juvenile person is serving a prison term, the correctional institution where he/she is placed keeps in touch with his/her guardian or family to ensure success of his/her reformation and social rehabilitation.

342. In the reporting period, the convicted juvenile persons served their prison sentences as follows: 25 in 1992; 29 in 1993; 25 in 1994; 56 in 1995; 52 in 1996; 54 in 1997; 48 in 1998; 48 in 1999; 48 in 2000; 46 in 2001, and 38 in 2002.

343. In the year 2000, there were four juvenile persons serving a sentence of one to two years in prison; three served 2 to 3 years in prison; seven 3 to 5 years in jail; 34 a sentence of five to ten years' imprisonment, mostly for criminal offences against life and body and against property.
344. In 2001 the pattern was 5, 2, 4 and 29 juveniles, respectively, mostly for the criminal offences referred to in the preceding paragraph.
345. In contrast, the pattern for 2002 was apportioned as follows: 7, 3, 4 and 24 juveniles convicted mostly of criminal offences involving property and safety of public traffic.

Article 11

Fulfilment of a contractual obligation

346. The criminal legislation of Serbia and Montenegro does not provide for imprisonment on the ground of inability to fulfil a contractual obligation. Default or lateness in fulfilling an obligation gives the creditor the right to seek compensation for the loss he has sustained as a result and the debtor is under the obligation to cover the loss. With respect to signing contracts, compensation and liability for the loss, the rules of the law of contracts and torts, more specifically the provisions of the Law on contracts and torts ("Official Gazette of the Socialist Federal Republic of Yugoslavia", Nos. 29/78, 39/85, 57/89 and "Official Gazette of the Federal Republic of Yugoslavia", No. 31/93) apply.

Article 12

A) Domicile and residence

347. All matters related to the domicile and residence of citizens are regulated by the provisions of the Law on the domicile and residence of citizens ("Official Journal of the Socialist Republic of Serbia", Nos. 42/72, 25/89 and "Official Journal of the Republic of Serbia, Nos. 53/93, 48/94). Article 4 of this Law defines domicile as a place where the citizen resides with the intention of living there permanently. Adult citizens have the obligation to register and de-register their domicile and to report any change of address of their residence. Reporting the residence of foreigners is the subject of separate legislation. In reporting their domicile or change of address, adult citizens are obliged to register their under-age children as well (Article 4, paragraph 1, and Article 6).
348. Registration of domicile and change of address of one's residence is done within 8 days of settling in or change of address. Before leaving his place of residence, the citizen is required to de-register (Article 8).
349. When registering their domicile, the citizens must give accurate information. They may be asked to produce a piece of identification to prove their identity. The intention of permanently residing in a place of residence or at an address is proved by a tenancy agreement, owner's title deed, subletting agreement, etc.
350. Residence is a place where the citizen temporarily resides outside his domicile (Article 4, paragraph 2). Citizens staying away from their domicile for more than 15 days need to register their new residence and to de-register shortly before departure (Article 12).
351. The citizens who intend to stay abroad for more than two months are asked to report it before leaving for a foreign country. They are also asked to report their temporary arrival in or return to the country at least three days after their arrival or return to their domicile (Article 13, paragraphs 1 and 2).
352. Registration and de-registration in all these cases are made to local police or a local community office if the place is outside the municipal seat, which passes it immediately on to local police (Article 14).
353. Records of domicile, change of address and residence of citizens, as well as records of citizens staying abroad for more than two months are kept by local police. In a city having several boroughs these records are kept for the entire city area.
354. Displaced persons and refugees enjoy, under the same conditions as the other citizens of the Republic of Serbia, freedom of movement and freedom to choose their residence and they exercise these rights in accordance with the laws in force.

B) Passports

355. The issuance of passports is regulated by the Law on passports of Yugoslav nationals ("Official Gazette of the Federal Republic of Yugoslavia", Nos. 33/96 and 23/02) as well as by other enactments.
356. In order to be issued a passport, the person concerned must have a valid identity card, certificate of citizenship, two photographs and proof that he/she has paid both the legally prescribed fee and for the passport form. For underage persons a birth certificate is also a requirement.
357. The validity of a passport is ten years for adults and two years for children. Recruits and men of military age, who are under 27 and who have not yet done their military service are issued passports valid for 5 years and expiring in November of the calendar year in which the person concerned turns 27.
358. Issuance of public identification documents to refugees and displaced persons is the responsibility of the Ministry of the Interior of the Republic of Serbia and is done in accordance with applicable regulations.
359. Passport is confiscated or refused by a decision of the competent police authority in the following cases:

- if criminal charges have been brought and proceedings instituted against the applicant upon request of the competent court while the case is still pending;
- if the applicant has been sentenced to an unsuspended prison term of more than three months, until the sentence is fully served;
- if, in accordance with the applicable regulations, the applicant is banned freedom of movement for fear of spread of contagious diseases or an epidemic;
- if it is necessary in the interest of national defence, or if a state of war, an immediate threat of war or state of emergency has been declared.

360. The most recent amendments to the Law on passports held by Yugoslav nationals concern Article 46 stating reasons for refusing the issuance of a passport. Paragraph 5 of this Article was deleted. (Passport is refused to a person who has been found to avoid, by fleeing abroad, a maintenance due or any other outstanding obligation related to marriage and parent-child relations, on the basis of an enforceable decision and at the request of the interested person or his/her guardian/guardianship authority.) Paragraph 3 of the same Article was also deleted as the legislator was satisfied that it was inconsistent with the Constitution. (Passport or visa is refused to a person who by going abroad is attempting to evade his military service or any other duty in the Yugoslav Army, if so requested by the military authorities concerned.)
361. The Federal Court found the above-mentioned provisions of the Law on passports held by Yugoslav citizens not to be in accordance with Article 30 of the Constitution of the Federal Republic of Yugoslavia. The grounds for this finding were that: "The citizen is guaranteed freedom of movement and freedom to choose his residence; that he is free to leave the Federal Republic of Yugoslavia and to return to it (paragraph 1); that freedom of movement and freedom to choose one's residence and the right to leave the Federal Republic of Yugoslavia may be restricted by the federal legislation, if it is necessary to conduct criminal proceedings, to prevent the spreading of contagious diseases or to defend the Federal Republic of Yugoslavia". These provisions of the Law were a limitation to the constitutionally guaranteed freedoms and restricted the right of citizens to leave their own country. In view of this and the fact that they were not necessary for the successful conduct of criminal proceedings, the Ministry of the Interior of the Republic of Serbia instructed that all passports confiscated on these grounds be returned or that such applications be granted. The Ministry gave such instructions following the publication of the decisions of the Constitutional Court in the Official Gazette of the Federal Republic of Yugoslavia.
362. In case of an unfavourable decision the applicant may appeal as a way of recourse within 15 days of receipt of the decision. Decision upon the appeal is the responsibility of the Federal Ministry of the Interior. If in the second instance the party is dissatisfied with the decision, he/she may take administrative action before the Federal Court within 30 days from the receipt of the decision.
363. Between 1 January 1992 and 30 September 2002, a total of 5,830,852 applications for passports were made in the Republic of Serbia. The total number of granted applications was 5,820,272, which means that 10,580 applications were refused, or 0.2 per cent of all submitted applications. The grounds for refusing applications were along the lines of the cited provisions of the Law on passports of Yugoslav nationals.

C) Conditions for admission of foreigners to the country

364. Conditions for admitting foreigners to the Federal Republic of Yugoslavia are enunciated in Articles 5 and 26 of the Law on the movement and stay of foreigners, and are as follows:
    - to hold a valid national passport or any other travel document recognized by the Federal Republic of Yugoslavia;
    - a visa requirement for nationals of those countries with which visas have not been waived (visas granted at diplomatic missions and consular offices);
    - to possess sufficient funds for the duration of the stay or to have other means of subsistence available.

365. Movement and stay of foreigners in the Federal Republic of Yugoslavia are subject of the Law on the movement and stay of foreigners. Another relevant piece of legislation are the Rules concerning issuance of passports and other identification documents and visas to foreigners and forms thereof ("Official Gazette of the Socialist Federal Republic of Yugoslavia", No. 44/81 and "Official Gazette of the Federal Republic of Yugoslavia", Nos. 23/2000 and 24/2000).
366. A foreigner may travel to the Federal Republic of Yugoslavia and stay in its territory if he/she has a valid passport and a Yugoslav visa or a tourist pass, or a valid travel document for foreigners issued by the competent authorities of the Federal Republic of Yugoslavia and a Yugoslav visa.
367. The foreigner travelling to the Federal Republic of Yugoslavia on a passport other than Yugoslav passport may temporarily reside for a period not exceeding three months if his/her visa has not expired. If he/she transits the Federal Republic of Yugoslavia, he/she may stay no more than a week from the date of the crossing of the State border.

- **Temporary stay**

368. A foreigner may, at his/her own request, be granted temporary stay of more than three months for the purpose of education, specialization, scientific research, employment or performance of a professional activity.
369. Temporary stay is granted to foreigners by the appropriate authorities in the Republic of Serbia, in accordance with the Law on the movement and stay of foreigners.
370. Temporary residency permit is valid for up to one year, provided all requirements have been met. This permit may be renewed several times, each time for a period of up to one year.

- **Permanent residence**

371. A foreigner may be granted permanent residence in the Federal Republic of Yugoslavia in the following cases: if a member of his immediate family (spouse, child or parent) is a national of the Federal Republic of Yugoslavia or a foreigner who has been given permission to reside permanently in the Federal Republic of Yugoslavia; if he/she is married to a Yugoslav national; if he/she is of Yugoslav extraction; if he/she has made investment in the Federal Republic of Yugoslavia to perform an economic or social activity. Exceptionally, permanent residence may be granted to other foreigners in the Federal Republic of Yugoslavia.
372. Permanent residence permits are granted under Articles 38-43 of the Law on the movement and stay of foreigners. Permanent residence in the Federal Republic of Yugoslavia is within the purview of the federal authorities in charge of home affairs, i.e. the Federal Ministry of the Interior. The foreigner may appeal to the Federal Government against the decision refusing his application for permanent residence or the decision on the termination of the right to permanent residence. The decision on the appeal may not be the subject of proceedings under administrative law.
373. Besides special rules, as laid down in the Law on the movement and stay of foreigners, the general rules applicable to Yugoslav nationals under the Law on general administrative procedure ("Official Gazette of the Federal Republic of Yugoslavia", Nos. 33/97 and 31/2001) need to be observed in applying for a temporary stay or permanent residence permit. The same applies to service of decisions, the work of the first-instance authority acting upon the appeal, filing of the appeal, etc. In this way, foreign nationals are equal before the law with Yugoslav nationals as regards their fundamental rights, the procedure for the regulation of their status in the Federal Republic of Yugoslavia and in all other cases.

- **Asylum seekers**

374. Under Articles 44-49 of the Law on the movement and stay of foreigners, the status of asylum seeker is recognized to a foreigner persecuted for his advocacy of democratic views and movements, for social and national emancipation, human rights or freedom of scientific research and artistic creation. The same provisions govern the recognition and the refusal of the right of asylum (decided upon by the official heading the federal government agency in charge of home affairs) as well as accommodation, means of subsistence and health care provided to persons with recognized status of asylum seeker.

- **Refugee status**

375. Articles 50-57 of the same Law provide that the status of a refugee is recognized to a foreigner who has left his own country or where he has permanently resided as a stateless person to flee persecution for his progressive political views or because of his ethnicity, race or religion. The same provisions govern ways of recognizing or refusing the refugee status (to be decided by the federal authorities in charge of home affairs), provision of necessary accommodation, means of subsistence and health care to persons with recognized refugee status. It should be noted that under the same Law dependent children of foreigners who have been recognized the status of a refugee enjoy the same rights like their refugee parents.
376. The former (Socialist Federal Republic of) Yugoslavia ratified as early as 1959 the 1951 Convention relating to the Status of Refugees. It ratified the Protocol of January 1967 relating to the Status of Refugees in October 1967. Thus, its provisions have been incorporated into the country's legal system.
377. The laws and regulations of Serbia and Montenegro mostly address humanitarian assistance to refugees coming from the territories of the former Yugoslavia at the time when the Federal Republic of Yugoslavia faced a massive influx of refugees. This was the reason why the definition of a refugee was not consistent with that of the Convention relative to the status of refugees.
378. New legal texts are currently being drafted along with a new national plan of action for asylum seekers and refugees.
379. Serbia and Montenegro is host to 351,484 refugees from the former Yugoslavia: 228,451 from Croatia; 122,281 from Bosnia and Herzegovina; 652 from Slovenia; and 100 from Macedonia.
380. In addition, Serbia and Montenegro provides shelter and assistance to 235,034 internally displaced persons from Kosovo and Metohija, namely 205,619 in Serbia and 29,435 in Montenegro.

D) Ways of regulating freedom of movement of foreigners

381. Pursuant to the Law on the movement and stay of foreigners they are free to move about the country. However, in certain areas they may have restricted access or may be banned from residing permanently in some places in order to protect public order (*ordre publique*) or the interests of national defence, as well as for reasons related to international relations.
382. A foreigner who is persecuted for his advocacy of democratic views and support of the movements for social and national emancipation, human rights or freedom of scientific research shall be recognized the right of asylum and shall be accorded the privileges related to the status of asylum seekers. The foreigner who has left his own country or where he was a permanent resident as a stateless person fleeing the persecution on the grounds of his progressive political opinions, ethnicity, race or religion may be granted refugee status in the Federal Republic of Yugoslavia.
383. On the basis of the Successor Statement of the Federal Republic of Yugoslavia, it has continued to be a party to the Convention relating to the Status of Refugees of 1951 and to its Optional Protocol of 1967. A new Law on Refugees and Asylum Seekers is currently being drafted with the assistance of the Stability Pact for South Eastern Europe and the Office of the United Nations High Commissioner for Refugees (UNHCR) to bring it in conformity with the internationally accepted obligations.

E) The right of foreigners to seek employment in the Federal Republic of Yugoslavia

384. Under Article 8 of the Law on the Bases of Labour Relations a foreign national or a stateless person may be employed under the terms and conditions as set out in Article 7 of the same Law, namely under the same conditions as required for Yugoslav nationals.
385. The Law on employment of foreign nationals ("Official Gazette of the Socialist Federal Republic of Yugoslavia", Nos. 11/78 and 64/89 and "Official Gazette of the Federal Republic of Yugoslavia", Nos. 42/92, 24/94 and 28/96) requires that foreign nationals must have permanent residence or temporary stay status to be allowed to get employment. A further requirement is permission to do so from the relevant employment agency in the Republic (Article 2). The Law specifies when foreign nationals may be employed even if there is no public advertisement of the vacancy to be filled. The employer is under the obligation to provide in his general legal act for jobs to which foreign nationals may be assigned. At the time this Law was passed, all international rules governing this field were respected, primarily the principle of an equal treatment or non-discrimination in employment as regards foreigners and own nationals. Moreover, many bilateral social security agreements are now being resumed or signed with other countries to ensure that foreigners enjoy equal treatment with citizens of the Federal Republic of Yugoslavia in respect of social security. Consequently, freedom of movement of foreign labour force and freedom to choose one's residence have achieved a rather high level.

Article 13

A) Laws and practice related to the obligation of foreigners to leave the country

386. "Foreigners in the Federal Republic of Yugoslavia enjoy the freedoms and the rights and duties laid down in the Constitution, federal law, and international treaties. A foreigner may be extradited to another State only in cases provided for in international treaties that are binding upon the Federal Republic of Yugoslavia. The right of asylum shall be guaranteed to foreign nationals or stateless persons being persecuted for their advocacy of democratic views or for participation in movements for social and national liberation, for freedom and the rights of the human person or for freedom of scientific research or artistic creation" (Article 66 of the Constitution of the Federal Republic of Yugoslavia).
387. A foreigner on whom a security measure of expulsion from the country or a protective measure of removal from the territory of the Federal Republic of Yugoslavia has been imposed, or whose leave to stay has been cancelled, or who stays without the permission of the competent authorities, is obliged to leave the Federal Republic of Yugoslavia within the time-limit set by the competent authorities (Article 61 of the Law on the movement and stay of foreigners).
388. The Criminal Code of the Federal Republic of Yugoslavia stipulates in its Article 70, paragraphs 1 and 2, that a court may ban a foreigner from the Federal Republic of Yugoslavia for one to ten years or indefinitely. In imposing this measure, the court shall take account of the motives and the manner of commission of the offence and other circumstances indicating that his further stay in the Federal Republic of Yugoslavia would be undesirable.
389. The Law on minor offences of the Republic of Serbia (Article 49) and the Law on minor offences in violation of federal laws both provide for the protective measure of removal of a foreigner from the territory of the Federal Republic of Yugoslavia. This measure may be imposed on the foreigner for a minor offence making him undesirable for further stay in the country. The protective measure of removal may be imposed for a period ranging from six months to two years.
390. Article 35 of the Law on the movement and stay of foreigners provides that the temporary residence of a foreigner ends:

- if a security measure of expulsion or a protective measure of removal from the Federal Republic of Yugoslavia is imposed on him/her;
- if his/her leave to stay in the Federal Republic of Yugoslavia has been cancelled;
- if the competent authorities refused his/her application for temporary stay permit in the Federal Republic of Yugoslavia.

391. Article 36 of the same Law provides for the cancellation of leave to stay temporarily:

- if he/she does not obey the laws in force in the Federal Republic of Yugoslavia or does not comply with the decisions of Government agencies;
- if he/she runs out of funds to support himself/herself and has no other means of livelihood;
- if he/she engages in vagrancy or begging;
- if reasons of protection of public order or interests of national defence so require.

B) Procedure for expulsion of foreigners

392. The procedure for expulsion of foreigners is regulated by the Law on the movement and stay of foreigners (Articles 61-64) and the Law on the enforcement of penal sanctions (Article 307 in connection with Article 213 and Article 213).
393. A foreigner subject to the security measure of expulsion from the country or the protective measure of removal from the Federal Republic of Yugoslavia, or whose leave to stay in the Federal Republic of Yugoslavia has been cancelled, or who is in the territory of the Federal Republic of Yugoslavia without the permission of the competent authorities, shall be obliged to leave within the time-limit set by these authorities. If he fails to leave within the prescribed time-limit and his passport has not expired in the meantime, he shall be escorted to the State border and forcibly removed from the Federal Republic of Yugoslavia. The foreigner who fails to leave within the prescribed time-limit and has no valid passport shall be asked to contact or be escorted to the diplomatic mission or consular office of the State whose national he is to obtain a passport. In case the diplomatic mission or consular office refuses to provide him with a passport, he shall be sent or escorted to the State border. He may be either turned over to the competent authorities of a neighbouring State, if he is its national, or to the authorities of another country which has agreed to admit him.
394. Execution of decisions rendered by courts and authorities for minor offences concerning expulsion or removal of foreigners is entrusted to police departments. They make a decision to cancel temporary leave to stay giving the foreign national a deadline to leave the Federal Republic of Yugoslavia and banning him from re-entering the country for a specified period of time. The said decision may be appealed to the Ministry of the Interior of the Republic of Serbia within 3 days. In case of temporary leave to stay being refused it also takes a decision that may be appealed to the Interior Ministry of the Republic of Serbia within 15 days.
395. Article 61 of the Law on the movement and stay of foreigners provides that the foreigner who has not left the Federal Republic of Yugoslavia and whose passport expiry date has not run out shall be escorted to the State border and forcibly removed.
396. Provisions of Article 62 envisage detention centres for foreigners who cannot be immediately removed from the territory of the Federal Republic of Yugoslavia for some reason or other (identity check, illegal entry and stay, non-possession of a travel document or passport , etc.).
397. Police authorities enforce the measure by stamping on a passport page that leave to stay has been cancelled and if the foreigner insists on having it done in writing as well, the decision is made in a written form. In the period from 1 January 1992 through 30 September 2002 there were 3,967,648 reported foreigners who stayed temporarily. In the same period, leave to stay was cancelled to 74,011 foreign nationals on the grounds established by law, or 1.9 per cent of the total number of foreigners staying temporarily in the Republic of Serbia.
398. The process of intensive negotiation with the majority of European countries, with a view to signing an agreement on the return and/or readmission of Yugoslav nationals and the nationals of the other Contracting State who are obliged to leave the territory of either State (mostly persons who do not fulfil conditions for a leave to stay) is currently under way. The Federal Ministry of the Interior is charged with the implementation of readmission agreements. The Serbian Ministry of the Interior Affairs runs checks, upon request, on persons domiciled on the territory of the Republic, as well as on the nationality of persons to be readmitted under these agreements.

C) Procedure of expulsion of persons who have illegally entered the country

399. Persons who have illegally entered the Federal Republic of Yugoslavia and whose status as refugees has not been recognized or who have been refused the right of asylum are brought before a magistrate (a judge for petty offences). The magistrate may impose a monetary penalty, pass a prison sentence or

pronounce a protective measure of removal from the territory of the Federal Republic of Yugoslavia (Article 106, paragraph 1, subparagraph 4 of the Law on the movement and stay of foreigners).

400. As to the decision on the lawfulness of entry into the Federal Republic of Yugoslavia, the police authority finds facts. If it is satisfied that the entry was unlawful, it shall report it to the magistrate concerned. It shall not do so if the foreign person has been recognized the status of a refugee or if he is an asylum seeker (Instruction to implement the Law on the Movement and Stay of Foreigners prescribed by the Federal Secretary for Internal Affairs in 1990).

Article 14

A) The judiciary

1) Regular courts of law

- **Organization of the administration of justice**

401. At the second meeting of its regular session on 5 November 2001, the Serbian National Assembly passed the following laws on: the establishment of courts, judges, the High Council of the Judiciary, Public Prosecutor's Office and on the seats and jurisdictions of courts and public prosecutor's offices. All these laws were published in the Official Journal of the Republic of Serbia, No. 63/2001.
402. On 19 February 2002, amendments to the above-mentioned laws were adopted ("Official Journal of the Republic of Serbia", No. 42/2002).
403. The Constitutional Court of the Republic of Serbia gave an opinion on 19 September 2002 ("Official Journal of the Republic of Serbia", No. 60/2002) that, pending its final judgment, individual pieces of legislation and actions should be on hold in accordance with Articles 7, 10, 15, 16 and 18 of the Law Amending the Law on Judges.
404. Unlike the previous Law on Courts of 1991, the Law on the establishment of courts contains very specific provisions of principle on courts as independent organs of government authority. They are established and abolished by law and are independent from the legislative and executive branches of power. Their competence is defined by law and the citizen has the right to be tried by a judge who has been assigned his case according to the principles laid down in advance. Any influence exerted on a court at law is prohibited. Grievances may be aired against proceedings of the court.
405. These provisions of principle define very clearly courts as being organizationally and independent in the performance of their functions from the executive and legislative authority.
406. Under the previous Law on courts, courts were established as courts of general jurisdiction and as commercial courts. The previous judicial system determined the position of the Supreme Court of Serbia as being predominantly an appeals court. That was reflected in a heavy workload of this Court judging by the number of cases pending. The Law on the establishment of courts provides for the establishment of courts of general jurisdiction - municipal, district, the Appeals of Serbia and the Supreme Court of Serbia - and special courts: the Trade Court, the Higher Trade Court and the Administrative Court. Republic level courts include the Supreme Court of Serbia, appeals courts, the Higher Trade Court and the Administrative Court.
407. Under the new Law, district courts are both first-instance and appeal courts and there are four courts of appeal (based in Belgrade, Kragujevac, Nis and Novi Sad). They are competent to decide on appeals against the decisions of municipal and district courts, thus ensuring greater unification of court practices.
408. A novelty is also court recess which aims to adapt the work of the judges to annual leaves and to have the citizens deter the matters they intend to take to courts except those of an urgent nature.
409. With regard to justice administration, the Law on the establishment of courts introduced important new elements:

    1. The rules of procedure for courts of law are now the shared responsibility of a Government Minister in charge of administration of justice and the President of the Supreme Court of Serbia, whereas previously the adoption of the rules of procedure was the responsibility of the Justice Minister;
    2. Supervision of the application of rules of procedure may only be carried out by a person eligible for appointment to the court whose proceedings are subject to supervision. The report made by

the supervisor is submitted both to the president of its higher-instance court and to the President of the Supreme Court of Serbia. Another new element is that the president of the court which is subject to supervision must inform the president of the higher-instance court, President of the Supreme Court of Serbia and the Minister responsible for the administration of justice of what action has been taken to redress the shortcomings observed by the supervisor;

3. A very important novelty concerns the Personal Profile Sheet. Profile Sheets are compiled for every judge, lay judge and court official. The information contained in Personal Profile Sheets is confidential. The intent of personal profiling is to have detailed records on all judicial officials, which was not the case until recently. That was the reason why analytical assessment of qualifications, age and other characteristics was not sufficiently accurate and up to date. A judge's Personal Profile Sheet is meant to play an important role in the career and nomination of the best professionals for senior court appointments. Under the former Law on Courts of Law, the Ministry of Justice was tasked to gather general and professional experience information on candidate judges from their applications. The information collected in this manner was often incomplete as it was up to the candidates themselves to decide what personal data and career highlights to include in their personal histories (CVs).

   The new Law has designated the Ministry responsible for the administration of justice to keep Personal Profile Sheets on file. Even though the content of Personal Profile Sheets of judges is defined by the above-mentioned Law, updating of information to be included in them is an obligation envisaged under the rules of procedure applicable to courts as a general legal act issued by the Ministry of Justice Administration. Details of Personal Profile Sheets for lay judges and for judicial employees will be elaborated by the Ministry of Justice Administration.
4. Under the new Law, the Ministry of Justice Administration with responsibility for the administration of justice gives its consent for the rules concerning internal set-up and post grades existing in a court of law. The main role of justice administration, i.e. to implement the laws and other legislation relating to the establishment and proceedings of courts, is fulfilled in this way. The past practice shows that cooperation between courts and the Ministry was insufficient. The consequence were various defects of the rules, whether in respect of the conception of the internal organizational set-up of courts or that of the work post and its determining features. Regarding these matters, the Law introduced important new elements in the section dealing with judicial employees (new job names, new positions, performance evaluation, etc.). The benchmarks as to the number of judicial officials will be developed by the High Council of the Judiciary. The Ministry concerned will then be in a position to give its go-ahead for the rules.
5. Legal guards and their existence is an important and useful new responsibility of the Ministry under the new Law on the establishment of courts. The circumstances in which the courts have thus far heard cases were such that the safety of individuals and their property have often been at risk.

410. The courts sit as trial chambers and departments; namely cases are tried by trial chambers whereas the departments harmonize the views of the trial chambers in the same legal field. The permanent chamber is designated by the president of the court in parallel with the annual assignment of cases by him.
411. The Law on the seat and jurisdiction of courts and on public prosecutor's offices provides conditions for the establishment of 138 municipal courts, 30 district courts, 18 trade courts (instead of 16 previously). It further determined their seats, and areas within their jurisdiction. Municipal courts have been decided for the areas covered by the same district court hearing and trying various kinds of legal matters for which the relevant municipal court is competent. (For example, the First Municipal Court of Belgrade is concerned with international legal assistance within the Belgrade City boundaries and for the execution of Letters of Request. The Second Municipal Court of Belgrade is competent for matters relating to land registries covered by the First, Second, Third and Fifth Municipal Courts of Belgrade. The Third Municipal Court of Belgrade is competent for the enforcement of penal sanctions. The Fourth Municipal Court is competent for enforcements and finally, the Firth Municipal Court for the issuance of payment orders and for disputes that might arise following appeals against payments orders.)
412. The citizen exercises his right of access to courts as provided by law, i.e. a court may not refuse him protection in a matter for which it is competent.

- **Independence of the judiciary from the executive branch**

413. The Constitution of the Republic of Serbia stipulates that:

a) The Republic of Serbia is based on the rule of law (Article 1);
b) Judicial power is vested in the courts of law (Article 9, paragraph 4);
c) The courts of law protect freedoms and the rights of citizens, rights and interests of individuals and legal entities established by law, and ensure constitutionality and legality (Article 95);
d) The courts of law are autonomous and independent in their work and they adjudicate according to the Constitution, law and other general enactments (Article 96, paragraph 1);
e) Judges shall have a life tenure. The reasons for the termination of a judge's tenure and for the dismissal of judges are those stated in the Constitution. The Supreme Court of Serbia establishes whether such reasons exist and informs the National Assembly accordingly. A judge must not be transferred to another post against his will (Article 101);
f) Organizational arrangements, establishment and jurisdiction of and the procedure at the courts shall be regulated by law (Article 102).

414. Independence of the judiciary is also provided through certain guarantees of law, such as:

- permanence of tenure (until reaching retirement age);
- non-transferability to a new post is ruled out (reassignment or transfer only with the consent of the judge);
- financial security (pay corresponding to the importance of the post held);
- immunity enjoyed for opinions or the vote cast in the performance of judge's duties; a judge may not answer for a criminal offence unless the National Assembly waived his immunity;
- freedom to render decisions (according to his assessment of facts and applicable laws);
- once assigned cases are non-transferable (cases are assigned on an annual basis);
- case assignment based on schedule as envisaged in the court's rules;
- right of association;
- right to receive specialized training (expenses are to be covered by the Republic of Serbia while the Supreme Court of Serbia defines the kind and method of training to be received).

415. The need for the independence of the judicial authority from the executive and the legislature is ensured by a provision that everyone is obliged, in particular the executive branch of power, to respect a final court decision and comply with it. Also, any other influence on courts is prohibited.

- **Appointment of judges – procedure**

416. Appointment of judges is prescribed by the Law on Judges and implies requirements for nominations, procedure of appointment and assuming office.
417. The requirements to be nominated as a judge are the following: FRY nationality, a degree in law, bar exam and worthiness to hold the post. In addition, the candidate must meet all requirements for a civil servant. Besides the bar exam, the candidate is expected to have certain experience in the legal profession: two years, for a judge of a municipal court; four years, for a trade court judge; six years, for a district court judge; eight years, for an appeals judge, a judge of the Higher Trade Court and the Administrative Court, and 12 years for a Supreme Court of Serbia appointment.
418. The procedure of nomination is opened by the announcement of vacancy notices by the High Council of the Judiciary in both the Official Journal of the Republic of Serbia and in the *Politika* daily newspaper. The closing date for the submission of applications is fifteen days from the date of the announcement. Applicants submit their applications to the High Council of the Judiciary along with proof that they are qualified for the nomination. Applicants working in a court are supposed to submit their Personal Profile Sheets through that court or tribunal (content thereof is determined by law and by the relevant court rules of procedure). Upon obtaining opinion from the court or the organization where the applicant is employed on his professional skills and worthiness, the High Council of the Judiciary makes a well-considered proposal of nominees and submits it to the National Assembly for election. The National Assembly will do so strictly within the said proposal.

419. Before taking office, the judge is sworn in by the President of the National Assembly. The President of the Supreme Court is sworn in before the National Assembly of the Republic of Serbia.
420. The Judge takes office at a solemn session of all the judges sitting on the court where he is appointed. Once the judge assumes office at the new court, his appointment at the previous court is terminated. A judge shall be deemed not to have been appointed if he fails, for no specific reason, to take up his appointment within two months of the election.
421. As the nominating body, the High Council of the Judiciary is composed of permanent members and members by invitation. Permanent members of the Council include the President of the Supreme Court, the Republic's Public Prosecutor, the Justice Minister, a representative of the bar and a member elected by the National Assembly (e.g. an eminent lawyer who is not a judge, a public prosecutor or his deputy). Members by invitation comprise six judges elected by the Supreme Court of Serbia.

- **Types of courts** [7]

422. Municipal, district, appeals courts and the Supreme Court of Serbia are of general jurisdiction, while trade courts and the Higher Trade Court are specialized courts.
423. The highest court in the Republic of Serbia is the Supreme Court of Serbia. The other Republic-level courts include the Higher Trade Court and the Administrative Court that are based in Belgrade.
424. For appeal courts, the Higher Trade Court and the Administrative Court a higher-instance court is the Supreme Court of Serbia. The Higher Trade Court represents an immediately higher-instance court for trade courts, whereas appeals courts represent immediately higher-instance courts for district and municipal courts.

2) Military courts and military prosecutors' offices

425. Military courts and military prosecutors' offices, of which there are three in Serbia and Montenegro (in Belgrade, Nis and Podgorica), as well as the Supreme Military Court and the Supreme Military Prosecutor (both based in Belgrade), conduct proceedings according to the same process and substantive laws applied by the regular courts in time of peace or war alike.
426. Article 138 of the Constitution of the Federal Republic of Yugoslavia is the legal basis for the existence of military judicial authorities as federal legal institutions. This Article stipulates that military courts and military prosecutors are established under federal statute. This constitutional provision resulted in the passing of two laws: one on the Military Courts (Official Gazette of the FRY, Nos. 11/95, 74/99, 3/2002) and the other on the Military Prosecutor (Official Gazette of the FRY, Nos. 11/95 and 3/2002). These laws specifically regulate the organization, competence and activity of military courts and military prosecutors.
427. The President of the Federal Republic of Yugoslavia appoints military court judges and military prosecutors. In the performance of their duties they are independent and autonomous, with their term of office not being limited. However, they are expected to be knowledgeable about and to study issues of interest to the unification of court practices and to the uniform application of the law.
428. Military courts put military personnel on trial on all criminal charges, civilian personnel employed in the Yugoslav Army on charges of criminal acts committed in the performance of their official duty and other civilians on charges of criminal acts against the Yugoslav Army that are enunciated in the Law on Military Courts. They also try prisoners of war. In case of dispute these courts are competent to determine who may be considered a PoW. Furthermore, they perform other duties as set out in the federal law and resulting from the nature of the court procedure.
429. Disciplinary proceedings in the first instance are conducted by military disciplinary tribunals attached to the Yugoslav Army General Staff and in the second instance, by the Yugoslav Army General Staff's Disciplinary Court.
430. The maximum penalty for breach of discipline is an imprisonment of up to 20 years and dishonourable discharge for a military man and exceptionally an imprisonment of to 60 days under Article 165 of the Yugoslav Army Law. However, a prison sentence may not be passed on a person who at the time of breach of discipline was under the age of 18.

[7] Table 6 – Presentation of the state of affairs of courts as in December 2002

431. Regarding trials by military courts it should be noted that under the Amnesty Law of 7 October 2000 a total of 9,910 persons (a rundown as at 31 December 2001) were pardoned. Their criminal acts involved failure to take measures to protect a military unit (Articles 214-215) or relief of military service against the law (Article 217) under the FRY Criminal Code. Of this number 2,024 were soldiers, 834 commissioned and non-commissioned officers, whereas 7,052 were persons outside the Yugoslav Army.

B) Organization and work of authorities for minor offences

432. Minor offences are the subject of the Law on minor offences that has been amended several times since its enactment. This Law regulates:

    1. organization and proceedings of the authorities concerned with minor offences;
    2. responsibility for minor offences, imposition and enforcement of sanctions for minor offences, sanctions regime, procedure to enforce a decision on a minor offence.

433. A municipal judge (magistrate) for minor offences conducts proceedings for a minor offence in the first instance.
434. Pursuant to Article 84a and 92 of this Law, the Republic of Serbia decided to establish the authorities for minor offences and fixed the number of judges in these authorities and in minor offences chambers.
435. Under this decision 11 minor offences chambers and 173 municipal authorities for minor offences have been formed. (The minor offences chambers include Belgrade, Valjevo, Zajecar, Kragujevac, Kraljevo, Leskovac, Nis, Smederevo, Uzice, Novi Sad. The territory that used to be covered by the minor offences chamber in Pristina now only has the municipal authorities for minor offences functioning in Kosovska Mitrovica, Zvecan and Leposavic.) There are 173 municipal authorities dealing with minor offences.
436. Municipal authorities dealing with minor offences and minor offences chambers are independent government bodies. They base their decisions on the Constitution, law and other regulations and are accountable to the Government of the Republic of Serbia.
437. The number of judges for minor offences is decided by the Government of the Republic of Serbia at the recommendation of the Minister of Justice.
438. The situation in the authorities for minor offences in 2002 was as follows: The municipal authority for minor offences with two or more judges has an appointed head for a term of 4 years who may be re-appointed for another term. The head of the municipal authority for minor offences having only one judge is that judge. The judge for minor offences may not be an MP, deputy or a local Councillor. He may not exercise political or administrative functions or perform other duties or hold a post or position that may affect his independence or integrity or diminish his reputation or the reputation of his authority for minor offence. The judge for minor offences may be relieved of his judicial duties against his will (Article 108).

    - **New solutions contained in the draft Law on minor offences and magistrates for minor offences**

439. The draft Law on minor offences and magistrates for minor offences has been under consideration since November 2001 when the Government of the Republic of Serbia received a refined text of the draft Law and it was submitted to the National Assembly for adoption in April 2002.
440. New solutions built into the proposed draft Law on minor offences and magistrates for minor offences will bring it in line with European Union law. The authorities for minor offences will get a more appropriate name - magistrates for minor offences. A second-instance authority, i.e. the Republic magistrate for minor offences, is being introduced as an instrument to achieve uniformity of the legal practice and penal policies in all of Serbia. It raises the minimum and maximum fines, namely 200 to 20,000 Yugoslav currency for a physical or responsible person within the juridical person; 4,000 to 400,000 Yugoslav currency for the juridical person; 2,000 to 200,000 YU-currency for the contractor. In addition, fines to be paid instantly have also been increased as follows: 200 to 2,000 YU-currency for the responsible or physical person and 200 to 20,000 YU-currency for the juridical person or contractor.

441. Procedure for release on parole is initiated at the request of the convicted person. Parole application is made to the Republic Magistrate via the first-instance magistrate who took a decision on punishment.
442. A three-judge chamber established by the Republic Magistrate for Minor Offences decides on parole. But before they do so, they should be satisfied that the time required by law for parole has elapsed. At the same time, they ask of the governor of the penitentiary where the convicted person is imprisoned to report to them. They would be interested to know how the convict behaves, how he fulfils his work obligations considering his abilities and the other circumstances that will permit them to conclude whether the aim of punishment has been achieved, if such a report was not already attached to the application.
443. A miscellaneous law has also been proposed for adoption to harmonize provisions on minor offences in all Republic legislation with the provisions of the draft Law on minor offences and magistrates for minor offences. Proposed improvements in the procedure for minor offences are aimed at saving costs and increasing efficiency.

Article 15

Prohibition of retroactivity

444. Pursuant to Article 27, paragraph 1 of the FRY Constitution no one shall be punished for an act that at the time when it was committed did not constitute a punishable offence under the law or a regulation based on law. Nor shall a penalty be imposed on him for that offence.
445. Non-retroactivity principle means that the perpetrator of a criminal offence is subject to the law that was applicable at the time when it was committed. If following the commission of the criminal offence the law was amended one or more times, the law imposing a lighter penalty on the perpetrator shall be applicable.
446. Retroactivity is also prohibited under Article 20 of the Charter of Human and Minority Rights and Civil Liberties. According to these provisions no one shall be held guilty of or punished for an act that at the time when it was committed was not punishable under the law. Penalties imposed are those applicable at the time of commission unless a subsequent law provides for less severe penalties.

Article 16

Legal subjectivity

447. A physical person becomes a subject of law by birth. A conceived child is considered born if it is in its interest.
448. Legal persons under trade law acquire legal subjectivity by their entry in the court register.

Article 17

The right of privacy [8]

449. The right of privacy is another right guaranteed in the Constitution. Several articles of the Constitution testify to it:
450. Physical and mental integrity of an individual shall be inviolable, as well as his privacy and personal rights. The dignity and security of the human person shall be guaranteed (Article 22 of the Constitution of the Federal Republic of Yugoslavia).
451. The home shall be inviolable. Federal statute may prescribe that a person acting in an official capacity and possessing a court order may enter the home or other premises against the will of their tenant and carry out search. The search must be conducted in the presence of two witnesses. The official may enter another's home or other premises without a court order and search them without witnesses being present if this is necessary to apprehend the perpetrator of a criminal offence or to save human lives

[8] Table 7 – Criminal Offences under the Criminal Code of the Republic of Serbia against the rights of man and citizen concerning invasion of privacy and criminal offences representing unlawful attacks on honour and reputation in the years 2001 and 2002.

and property, in the manner laid down by federal law (Article 31 of the Constitution of the Federal Republic of Yugoslavia). A similar provision is also embodied in Article 21 of the Constitution of the Republic of Serbia.

452. Privacy of correspondence and other means of communication shall be inviolable. Federal statute may prescribe that based on a court decision, the principle of inviolability of private correspondence and other means of communication may be derogated if so required for the purposes of the conduct of criminal proceedings or for the defence of the country (Article 32 of the Constitution of the Federal Republic of Yugoslavia and Article 19 of the Constitution of the Republic of Serbia).
453. Protection of the secrecy of personal data is guaranteed. The use of personal data for purposes other than those for which they were compiled is prohibited. Everyone has the right of access to personal data concerning him, as well as the right of court protection in case the data are abused. Collation, utilization and protection of personal data are regulated by federal statute (Article 33 of the Constitution of the Federal Republic of Yugoslavia and Article 20 of the Constitution of the Republic of Serbia).
454. Article 24 of the Charter of Human and Minority Rights and Civil Liberties explicitly provides for the right of respect for privacy and family life. Consequently, no one may enter another's home or other premises against his will or conduct search, except on court order. Entry into another's home may be allowed, however, only if that is necessary to make immediate arrest of the perpetrator of a criminal offence or to prevent imminent or grave danger to people or property. This is done in a way prescribed by the law.
455. Furthermore, inviolability of correspondence or other means of communication may be derogated from for a specified period of time on a court order only, if that is necessary for the conduct of criminal proceedings or for reasons of national defence.
456. Protection of personal data is guaranteed. Their gathering, keeping on record and utilization are regulated by the law. Everyone has the right to be informed about the personal data collected about his person in accordance with the law.
457. Law enforcement officials may depart from the principle of inviolability of correspondence and other means of communication and from the inviolability of home only if they have been authorized to do so by a court. However, they may do so in a way and under conditions prescribed by the relevant provisions of the Code of Criminal Procedure.
458. This procedure has been upheld by the Decisions of the Federal Constitutional Court Nos. 171/94 and 153/93 ("Official Journal of the Republic of Serbia", No. 8/2001). They, *inter alia*, stated that the provisions of Article 13 of the Law on Internal Affairs were not in accordance with the Constitution of the Federal Republic of Yugoslavia. These provisions read as follows:
459. "When the conduct of criminal proceedings or the protection of the security and the defence of the Republic so require, the Supreme Court may, at the request of the Republic's Public Prosecutor or Minister, decide on a derogation from the principle of inviolability of the secrecy of correspondence or other means of communication in relation to certain individuals or organizations. The act referred to in paragraph 1 above shall be issued by the President of the Supreme Court of Serbia or by a judge designated by him. On the basis of the act referred to in paragraph 1 above, the Minister shall decide which measures will be taken against individuals and organizations concerned in derogation from the principle of inviolability of the secrecy of correspondence and other means of communication."
460. Under Article 78 of the Code of Criminal Procedure, searches of the home or of other premises are ordered by law courts in writing. Law enforcement officials only execute such an order. Authorized law enforcement officials may enter the home or other premises and search them if necessary, even if they are not furnished with a warrant in cases that are specified and enunciated.
461. Law enforcement officials are also empowered under Article 232 of the Code to execute court orders to carry out surveillance work or to wiretap telephone or other conversations, to listen in to communications by other technical devices or to photograph persons reasonably believed and suspected of having committed, either alone or in community with others, one or more of the following criminal offences: overthrow of the constitutional system or undermining the security of the country; crimes against humanity and international law; crimes involving organized crime bribe-giving and bribe-taking, extortion and kidnapping.

Article 18

A) <u>Protection of the absolute nature of the right to freedom of religion</u>

462. Freedom to have or to adopt a religion or belief of one's choice and freedom to manifest in private one's religion or belief in worship are guaranteed by Article 43 of the Constitution of the Federal Republic of Yugoslavia.
463. The Charter of Human and Minority Rights and Civil Liberties spells out that religious communities are equal and separate from the State. They enjoy freedom and independence as to their internal organization, conduct of religious affairs and performance of religious services. Also, religious communities have the right to found religious schools and charity organizations in accordance with the law.
464. Before the restructuring of the State, a draft Law on freedom of religion was submitted to the Federal Parliament for adoption. It attempts to regulate systemically relations between the State, on the one hand, and Churches or religious communities, on the other.
465. The passing of the Law on Religious Freedoms will fill the legal void characterizing the present state of the legal system in the country. This legal void has left many extremely important issues related to the relationship between the State and religious communities unregulated, as well as those relating to the enjoyment of religious freedoms in general. At the moment, unregulated religious matters in Serbia and Montenegro include: legal status of Churches and religious communities; manner of their registration; provision of spiritual guidance to the Yugoslav Army; hospitals, penal institutions and nursing homes; financing of religious communities; freedom to seek, receive and impart information in religious matters; legal protection of clerics; abuse of freedom of religion, etc.
466. According to the proposed draft Law on Freedom of Religion (Article 1), everyone is guaranteed the right to freedom of thought, conscience and religion. This implies freedom to have or not to have, to adhere to or change religion or belief and freedom , either individually or in community with others and in public or private, to manifest one's religion or belief in worship, teaching, attendance of services and performance of religious rites and fostering of religious traditions. In addition, no one must be subject to coercion which would impair his freedom to have or to adopt a religion or be forced to state his religious or other beliefs or non-existence thereof.
467. The Serbian Orthodox Church, being prevalent by the number of believers, has an equal legal status in all aspects with the other religious communities existing in the FRY under the draft Law on Freedom of Religion. Of course, it is more present in practice than the other religious communities. It has the largest number of followers and its history is closely intertwined with the history of the State.
468. At present, of the 40 bishoprics of the Serbian Orthodox Church (including four vacant bishoprics in the Former Yugoslav Republic of Macedonia) the majority are outside the territory of the Federal Republic of Yugoslavia.

B) Limitations to the right to freedom to manifest one's religion or belief

469. Under the draft Law on Freedom of Religion (Article 24 thereof), freedom to manifest religion or beliefs may be subject to such limitations as are prescribed by law and are necessary in democratic society to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
470. Freedom of religion may not be abused in a way constituting a breach of the rights and freedoms of others as guaranteed by the Constitution. In particular, such breaches should not incite or stir up national, religious or racial intolerance and hatred. They must not jeopardize, either, the right to life or the right to physical or mental health; the rights of the child; the right to respect privacy and family integrity or the right to property.
471. Religious beliefs do not absolve anyone of the obligation to fulfil his civil or professional duties. Exceptionally, the right to conscientious objection as an alternative way of serving the military term without arms may be exercised in accordance with special regulations.
472. The above-mentioned Article imposes necessary limitations on the exercise of freedom of religion. Its paragraph 1 stipulates that freedom to manifest religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

C) Confessions

473. According to the results of the 1991 census in the FRY (excluding Kosovo and Metohija and the municipalities of Bujanovac and Presevo, where the census-taking was not completed in full) there

are: 6,988,901 or 80 per cent of Orthodox Christians; 533,369 or 6.10 per cent of Roman Catholics; 468,713 or 5.36 per cent of Muslims; 89,369 or 1.02 per cent of Protestants; 1,008 or 0.01 per cent of Jewish religionists; 14,256 or 0.16 per cent of other religious communities; 520 or 0.005 per cent of pro-Oriental religious cults; 8,468 or 0.009 per cent of religionists not belonging to any faith; 170,528 or 1.95 per cent of atheists.

474. The criterion for naming specifically seven different Churches and religious communities in the Preamble to the draft Law (Serbian Orthodox Church, Islamic Community, Roman Catholic Church, Jewish Community, Evangelical Christian Church of the Habsburg Faith, Christian Reform Church, various minor religious communities) was that they were subject to special regulations back in the Kingdom of Yugoslavia and the drafters were guided by the desire to ensure continuity with previous legislation relating to the legal status of religious communities.

D) Places of worship

475. According to Article 20 of the proposed draft Law on Freedom of Religion, religious communities may perform religious rites on the premises and buildings intended for these purposes, in an open-air space belonging to the shrine, at cemeteries and in open public spaces, as provided for in the regulations on public assembly.
476. In addition, paragraph 2 of the same Article envisages that government authorities cooperate with religious communities in the choice of sites for erecting a place of worship corresponding to the real religious needs of the population and according to town planning regulations.

E) Publication and dissemination of religious materials

477. Under Article 22 of the proposed draft Law, religious communities have the right, in accordance with the Constitution and the law, to publish and disseminate religious publications, magazines and other religious matter. They also have the right to establish and use public media to inform the public about religious matters and affairs.
478. It is the duty of all religious communities to have their full name printed in their religious publications, magazines and other religious materials, on their stationery and in informing the public about their activities.
479. Following the passing of the Broadcasting Act of the Republic of Serbia ("Official Journal of the Republic of Serbia", No. 42/2002), churches and religious communities are allowed to open media outlets. They bid in a tender for the allocation of frequencies in the Serbian broadcasting network and take part in the supervision of the use of allocated frequencies. They are exempted from a fee payable upon allocation if they have initiated procedure to recover property expropriated in the post-World War II period by an act of nationalization, confiscation, expropriation or otherwise pending the completion of the restitution procedure (Article 67). In this respect, churches and religious communities have been given the right to nominate one of the 9-member Council of the Broadcasting Agency, a regulatory body that allocates frequencies and monitors their use (Article 23). Moreover, this Law establishes as one of the obligations of the Public Broadcasting Service respect for the traditional spiritual, historical, cultural, humanitarian and educational importance of the role of churches and religious communities in society in the interest of all (Article 78).

F) Measures taken to prevent and punish offences in violation of freedom to manifest religion

480. Government agencies concerned with relations with religious communities, both at the federal and Republic level, cooperate with the federal and Republican ministries of internal affairs to prevent possible violations of the right to freedom of religion. The responsibility for penalization of violations of freedom to manifest religion or belief lies with courts of law. Very often incidents (throwing stones at places of worship or graffiti scribbling) occur at night and perpetrators of these incidents are seldom caught. The Ministry of Religious Affairs of the Republic of Serbia has publicly condemned acts of violence and called for religious tolerance. Besides, Government representatives take an active part in the conferences and seminars held on the subject of tolerance, dialogue and mutual understanding among religious communities.

G) Application of the principle of non-discrimination as to religion

481. The draft Law on Freedom of Religion does not provide for a State religion. According to the proposed draft law, all religious communities are equal and have the same rights and duties. Religious communities are fully autonomous and independent in governing their internal relations, organization, administration, doctrinal issues and all other matters within their purview.
482. A simplified entry of seven traditional Churches and religious communities in the register (one-off entry taking into account the existence of the special legislation from the pre-World War II period) does not mean discrimination in favour of these Churches and religious communities. It is the result of their long historical presence in comparison with the other religious communities.

H) Procedure for legal recognition, permission or tolerance of various confessions

483. Under the draft Law on Freedom of Religion (Articles 5-7) religious communities acquire the capacity of a legal person by their entry in the Public Register of Religious Communities kept by the relevant federal agency. Organizational subdivisions and associations of religious communities may become a person before the law by entry in the Register based on the application of the religious community concerned.

a) The so-called traditional religious communities that have been mentioned by name in the Preamble to the draft Law and their existing subdivisions are considered as legal entities. Their entry in the Register is based on the data submitted to the competent federal authority; name and seat of the religious community or organization subdivision, forename and name of the person authorized to act for or on behalf of the community or its subdivision, and imprint of rubber stamp.

b) Other religious communities that have been registered under a previous piece of legislation (that are no longer in force) will not lose their legal personality acquired before the entry into force of this Law.

They may submit an application for entry in the Register, not containing any information, within six months of the coming into force of the Law. The application must be accompanied by a certified copy of the transcript of the registration decision or by any other public document proving legal personality.

If they fulfill conditions set by the Law, they will be stricken off the existing records of legal persons and entered in the Register of Religious Communities and their legal personality will be uninterrupted. The decision on entry is officially forwarded to the body where the legal person concerned was previously registered, so that it could be removed from its records.

c) In order to make an entry of a religious community the application submitted to the federal authority should contain: name of religious community; address of religious community; full name and position of the person authorized to act for and on behalf of the religious community. The submitted application should have the following enclosures: decision to establish religious community containing full names, identification document numbers and signatures of at least 10 Yugoslav nationals or foreign nationals permanently residing in the Federal Republic of Yugoslavia or having full business capacity; a statute or any other written document of the religious community concerned, including description of its organizational structure and identification of subdivisions having legal personality; summary of the basic religious doctrine, religious rites and religious goals; data on permanent sources of proceeds of the relevant religious community.

484. As provided for in the draft Law, the relevant federal authority decides on the application for entry into the Register within 90 days of the date of receipt of the application duly made. If the application is not complete, or if another religious community has already been entered in the Register under the same or similar name, the relevant federal authority will request the applicant to complement or make corrections in the application within 30 days. The said authority may also ask the religious community which has been entered in the Register earlier under a similar name to give its opinion. Unless the application is complemented or rectified within the 30-day period, it will be considered withdrawn.
485. The relevant federal authority adopts a decision to refuse application to enter a religious community in the Register, if the aims, doctrine, services and activities of the community are contrary to the Constitution and public order.

486. The relevant federal authority may further decline to enter the religious community in the Register if its aims, doctrine, practices or activity may threaten the rights and freedoms of others, in particular the rights to life, physical or mental health, rights of the child and those related to integrity of the family and property.

I) Religious classes (teaching)

487. The draft Law on Freedom of Religion implies that the State, within the framework of its obligation to guarantee the enjoyment of religious rights and freedoms, is obliged to provide for a possibility of religious classes in State schools. The taxpayers thus exercise their right to a religious education of their children, whereas it is up to parents and their children to choose whether to avail themselves of this right or not, depending on their beliefs. This Article accepts such an approach and the State is to provide religious instruction for those churches and religious communities enunciated in the Preamble to the draft Law. Since the State is unable to organize religious classes for all registered religious communities, it has been obligated to do so only in regard to those religious communities that had this right also before World War II under the laws of the Kingdom of Yugoslavia that were invalidated. Such a solution exists in many other countries and is not considered discriminatory in respect of smaller religious communities in the light of cost effectiveness and real possibilities of the State. The minimum of schoolchildren to attend such classes and a number of other matters relating to putting into practice religious classes will be prescribed by law and by-laws.
488. It is understood that religious instruction may be provided, among others, by schoolmasters and schoolmistresses and teachers already teaching other subjects in school. Therefore, paragraph 5 of this Article grants them the right not to be forced by anyone to teach religion, too. The same provision guarantees the right of religious communities to make suggestions and give their consent for the choice of religious teachers.
489. The draft Law also guarantees religious communities the right to have their own schools and charitable organizations (Article 15). This provision does not preclude the possibility for religious classes to be held at State schools in addition to those run by religious communities. This Article is particularly relevant to the religious communities whose religious classes are not funded by the State and which may provide religious education of their believers from their own sources.
490. How religion is taught at primary and secondary schools is regulated in the Law Amending the Law on Primary Education ("Official Journal of the Republic of Serbia", No. 22/2002) and the Law Amending the Law on Secondary Education ("Official Journal of the Republic of Serbia", No. 23/2002). According to the enacted legislation religious and ethical-humanistic classes as established by the Education Minister are elective subjects from grade one to eight in primary school. The parent or guardian of the child in enrolling his child in grade one has the right and the obligation to make a choice between these two classes that his child will attend.

Article 19

A) Freedom of conscience, thought and public expression of opinion

491. Freedom of speech and public expression is provided for under Article 39 of the Constitution of the Federal Republic of Yugoslavia. Pursuant to Article 44 of the Constitution of the Federal Republic of Yugoslavia and Article 48 of the Constitution of the Republic of Serbia, the citizen has the right to criticize publicly the work of Government and other officials, to submit representations and petitions to them and receive an answer from them, if requested. The citizen may not be held accountable nor can he suffer other harmful consequences for the views expressed in his public criticism or in the submitted representation, petition or proposal, unless he has thereby committed a criminal offence.
492. Freedom of thought and expression is also guaranteed under the Charter of Human and Minority Rights and Civil Liberties (Article 29). This right includes freedom to seek, receive and impart information and ideas either orally, in writing, by the use of visual images or otherwise. Moreover, everyone has the right of access to information in possession of Government authorities, in accordance with the law. The right to freedom of expression may be subject to certain restrictions, but these may only be such as are provided by law and are necessary: for respect of the rights and reputations of others, for maintaining the authority and impartiality of courts, for the protection of national security or of public health or morals or of public safety.

B) Freedom to seek, receive and impart information

493. Freedom of the press and other forms of public information is guaranteed (Article 36 of the Constitution of the Federal Republic of Yugoslavia and Article 46 of the Constitution of the Republic of Serbia). Citizens have the right to express and publicize their opinions in the mass media. Freedom to seek, receive and impart information is not only a passive but an active right as well, in the sense that citizens get properly informed and have the opportunity to air their opinions. Also, publication of newspapers and dissemination of information by other media are accessible to all without prior approval, by registration with the competent authorities.
494. The right to a correction of a published false information in breach of another person's right or interest is guaranteed under Article 37, as well as the right to compensation for the damage caused thereby. Furthermore, the right of reply in the public media is guaranteed.
495. Censorship of the press and of other forms of public information is prohibited (Article 38 of the Constitution of the Federal Republic of Yugoslavia). In addition, no one may prevent distribution of the press or dissemination of other publications. Their dissemination is banned if a court of law has found them to call for violent overthrow of the constitutional order, violation of the territorial integrity of the Federal Republic of Yugoslavia or the guaranteed freedoms and rights of man and the citizen, or to incite national, racial or religious intolerance and hatred.
496. Freedom of the media is further guaranteed in the Charter of Human and Minority Rights and Civil Liberties. Pursuant to Article 30 thereof everyone may publish newspapers or establish any other public information media. Television and radio stations are established in accordance with the laws in force in the member States of the State Union. There is no censorship in the State Union and everyone has the right to correction of published untrue, incomplete or inaccurately reported information infringing upon his right or interest. Besides, everyone has the right of reply to information published in the media and no one may prevent the distribution of the press or the dissemination of information and ideas by other means of public information. The exceptions being the cases when the court found it necessary to prevent propaganda for war or incitement to direct violence or advocacy of racial, national or religious hatred that constitutes incitement to discrimination, hostility or violence.
497. In the public information sector, at the federal level the Law on the Bases of the System of Public Information ("Official Gazette of the Federal Republic of Yugoslavia", No. 84/90) was passed in 1990. It was not in conformity with the Constitution of the Federal Republic of Yugoslavia.
498. The Law on Public Information of the Republic of Serbia ("Official Journal of the Republic of Serbia", No. 36/98) was passed in 1998. Harsh criticisms were levelled at this Law, first and foremost because of its penal provisions envisaging primarily high fines against the media and aiming to silence those media that did not toe the regime's line. Subsequently, most provisions of this Law were invalidated and only those relating to the Register have remained in force. The Ministry of Justice of the Republic of Serbia has become responsible for the Register.
499. The Broadcasting Law of the Republic of Serbia ("Official Journal of the Republic of Serbia", No. 42/2002) prescribes the manner of carrying out broadcasting activity in accordance with international instruments and standards. It provides for the establishment of a Broadcasting Agency of the Republic of Serbia as the institution of the Public Broadcasting Service. At the same time, this Law provides for conditions and procedures of obtaining licences to broadcast radio and television programmes.
500. This Law has assigned the following roles to the Broadcasting Agency of the Republic of Serbia:

a) Protection of minors. The Agency ensures that underage persons are protected and that the dignity of the human person is respected in television and radio programmes and, to that end, issues a general binding instruction. In particular, the Agency sees to it that the programmes that may harm the physical and mental development or morals of underage persons are shown at airtimes or thanks to the technical procedures applied ensuring that, as a rule, they are unable to watch or listen to them. Showing of programmes that are extremely harmful to the physical, mental or moral development of an underage person is prohibited.
b) Application of the regulations relating to copyright and related rights. This constitutes the basis for the Agency to impose a measure regardless of the other legal means available.
c) Prevention of broadcasting programmes containing information encouraging discrimination, hatred or violence against persons or groups because of their belonging or not belonging to a certain race, creed, nationality, ethnic group or sex.

501. The main body of the Agency is its Council. The Agency has a Statute governing its work. It is funded from the fees which broadcasters obtain in return for broadcasting their programmes.
502. The broadcasting institutions of the Republic and its Provinces are providers of the Public Broadcasting Service. Licences are granted by way of an advertised public competition.
503. There are two kinds of services:

    1) The Public Broadcasting Service must ensure quality reception of radio and television programmes for at least 90 per cent of listeners and viewers;
    2) The Commercial Broadcasting Service must provide the same reception to 60 per cent of listeners and viewers.

504. The obligation of a provider is to satisfy the general interest, i.e. the production and broadcasting of programmes intended for all segments of the population without distinction. Particular account should be taken of the needs of specific social groups such as children, young people, minority or ethnic groups, the handicapped, socially disadvantaged or health impaired, the deaf mutes (including the obligation of subtitling the sound or spoken segments of the programme).
505. During election campaigns the Law says that slots should be allocated for broadcasts promoting political parties standing in election.
506. The Law provides for another two forms of broadcast outlets:

    1) Radio and/or television stations of the civil sector are those meeting the specific interests of individual social groups and civic organizations. Such stations are non-profit organizations.

       The provisions of this Law relating to the Public Broadcasting Service apply to the civil sector radio and/or television stations as regards special responsibilities in the production of programmes.

       Finances come from donations, contributions from citizens, sponsors or other sources of proceeds, in accordance with the relevant law.

    2) A radio and/or television station of a local community is established by the municipal assembly or by two or more municipal assemblies. A municipal assembly may establish only one radio and/or television station of the local community. Two or more municipal or city assemblies may establish only one radio and/or television station of a regional community and these stations may broadcast only one radio and/or television programme.

- **Government authorities and public institutions charged with activities in the public information field**

507. The Regulation on the Federal Government ("Official Gazette of the Federal Republic of Yugoslavia", No. 41/2001) provided for the establishment of a Federal Secretariat for Information. It performs the functions related to the rights and duties of man and the citizen in the field of information, as guaranteed under the Constitution of the Federal Republic of Yugoslavia. It informs the public at home and abroad through the mass media about economic and political developments in the Federal Republic of Yugoslavia and about the work of the Federal Government, federal agencies and federal organizations. It hosts foreign news agencies, foreign media and their offices and correspondents covering the Federal Republic of Yugoslavia. It registers foreign news agencies in the Federal Republic of Yugoslavia and assists foreign reporters and correspondents. It prepares and publishes publications for internal information purposes. It oversees the work of enterprises and institutions in the field of information and papers where the federal Government appears as the founder (Federal Public Enterprise/News Agency TANJUG, Federal Public Institution *Borba*, Federal Public Institution Radio-Television Yugoslavia) and deals with other matters in the field of information.
508. In the course of 2002, the following public institutions were established under various Regulations of the Federal Government ("Official Gazette of the Federal Republic of Yugoslavia", No. 3/2002):

    Federal Public Institution "Radio Yugoslavia"

Federal Public Institution "Yugoslav Survey"
Federal Public Institution "Newsreels"
Federal Public Institution "Yugoslavia Television".

509. The Regulation on FPI *Borba* ("Official Gazette of the Federal Republic of Yugoslavia", Nos. 15/97, 56/98, 58/98, 10/2000 and 17/2000) was adopted in 1997. It established *Borba* as a federal public institution concerned with activities or functions related to public information on developments in the Federal Republic of Yugoslavia and in the world and responsible for the exercise of competences of the Federal Republic of Yugoslavia.
510. The Law on Radio and Television ("Official Gazette of the Federal Republic of Yugoslavia", Nos. 53/93, 55/93, 67/93, 48/98 and "Official Journal of the Republic of Serbia", No. 48/91) was passed in 1991. In pursuance of this Law, a public enterprise called "Radio Television Serbia" or RT Serbia Ltd., based in Belgrade, was set up to carry out broadcasting activities in the Republic of Serbia. It was empowered to establish separate joint-stock companies. This public enterprise appoints and dismisses editors-in-chief of its programmes by advertising public competitions, upon the recommendation of the General Manager. This Law has levied an electricity meter tax (as a kind of subscription fee) to finance the activities of general interest as set forth therein. The tax gave rise to a lot of controversy in the public and after a short period when it was abolished, it has been resubmitted to the Parliament for adoption.

- **Foreign news agencies operating in the country**

511. Foreign news agencies operating in the country are the subject of the Law on the import and distribution of foreign mass media and on foreign media activity in Yugoslavia ("Official Gazette of the Socialist Federal Republic of Yugoslavia", No. 39/74). This Law regulates matters related to the import and distribution of the foreign press, foreign films and other foreign mass media as well as the status and activities of foreign media representatives (foreign media offices and correspondents) and foreign media outlets.
512. Even though the said Law was accorded high priority and that it had to be brought into conformity with the Constitution, this field has not yet been codified and the highly restrictive nature of the Law is in sharp contrast to existing international practices.
513. The present Law gives an autonomous definition of the foreign press that differs from the definition of the domestic press contained in the laws on public information, and it puts in place a very rigid and restrictive regime of the import and distribution of the foreign press in the country.

- **Publishing activity and the press**

514. In 2001 Serbian-language periodicals included 457 magazines, 62 weeklies and 16 dailies. The national minorities also published a large number of periodicals in their own languages: in Bulgarian (one magazine and 2 weekly newspapers), in Hungarian (20 magazines, 4 weekly editions and one daily newspaper), in Slovakian (20 magazines, one weekly) in Romanian (2 magazines) and in Ruthenian (2 magazines).
515. The number of radio and television stations and the language of broadcasts in 2001 are as follows: As to the number of television programmes existing in the FRY there are 70 TV and 184 radio programmes. Of the total number of broadcasts 348,667 hours represented the airtime on television and 1,144,169 on the radio. Regarding the languages, the listings are broken down as follows:

1. Serbian language: 311,358 hours of TV programmes and 1,092,017 hours of radio programmes;
2. Bulgarian language: no TV programmes while radio broadcasts 395 hours of programmes;
3. Albanian language: 110 hours of TV time and 5,167 hours of radio time;
4. Hungarian language: 1,183 hours of TV broadcasts and 21,713 hours of radio programmes;
5. Roma language: 848 hours of television programmes and 2,265 hours of radio time;
6. Ruthenian language: 261 hours of TV programmes and 1,848 hours of radio programmes;
7. Slovakian language: 266 hours of TV time and 7,582 hours of radio time;
8. Ukrainian language: 16 hours of TV broadcasts and 105 hours of radio broadcasts;
9. Other languages: 34,309 hours of TV programmes and 6,496 hours of radio programmes.

516. As far as the numbers and representation of the media in the FRY are concerned, according to a Guide for the Yugoslav Media there are 235 television programmes, 504 radio programmes and 641 serial publications.

Article 20

A) Prohibition of a propaganda for war

517. In accordance with Article 78, paragraph 1, subparagraph 3 of the Constitution of the Federal Republic of Yugoslavia, the Federal Assembly decides on war and peace and declares a state of war, a state of an imminent threat of war and a state of emergency.
518. Under the Constitutional Charter of the State Union of Serbia and Montenegro, its Parliament passes laws and other enactments on the declaration or ending of state of war with prior approval of the Parliaments of the member States of the State Union (Article 19).
519. The Criminal Code of Yugoslavia ("Official Gazette of the Socialist Federal Republic of Yugoslavia", Nos. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 45/90, 54/90 and "Official Gazette of the Federal Republic of Yugoslavia", Nos. 35/92, 16/93, 37/93, 24/94, 61/01) prescribes a penalty of one to ten years in prison for advocating war or for war mongering that are considered as criminal offences.

B) Incitement or encouragement of national, racial, religious or any other discrimination

520. It is unconstitutional and punishable to incite or encourage national, racial, religious or other inequality, as well as to incite and stir up national, racial, religious or any other hatred or intolerance (Article 50 of the Constitution of the Federal Republic of Yugoslavia).
521. The Criminal Code of Yugoslavia penalizes incitement to and stirring up of national, racial or religious hatred, discord or intolerance among nations and national minorities living in the Federal Republic of Yugoslavia and makes them punishable by imprisonment ranging from one to 10 years (Article 134). In addition, this Law prescribes that anyone who, on the grounds of race, colour, nationality or ethnic origin, violates fundamental human rights and freedoms recognized by the international community shall be imprisoned for six months to five years (Article 154).

Article 21

C) Right of assembly and peaceful assembly

522. The right of assembly and any other peaceful assembly was guaranteed to the citizens of the Federal Republic of Yugoslavia under the Constitution without the requirement of a permit, subject to prior notification to the authorities. Restrictions may be placed temporarily on this right by a decision of the competent authorities in order to obviate a threat to public health or morals or to protect human lives and property (Article 40 of the Constitution of the Federal Republic of Yugoslavia).
523. The Charter of Human and Minority Rights and Civil Liberties, in its Article 31, guarantees freedom of assembly. The provisions of Article 31 assert that the right to freedom of peaceful assembly is recognized. No prior permission is required for assembly in closed spaces. On the other hand, for rallies or demonstration in open spaces the laws of the member States of the Union may prescribe the obligation to notify the authorities in advance. The right to freedom of assembly may, however, be subject to such restrictions as are imposed by the laws of the member States and as are necessary for the protection of public safety, public health or morals, national security or the rights and freedoms of others.
524. This matter is dealt with in more detail in the Law on civic assembly ("Official Journal of the Republic of Serbia", No. 51/92). Civic assembly means calling and holding meetings or other rallies in a space appropriate for these purposes, as designated by the legal act of the municipality or city concerning the venues of public meetings or rallies, upon prior notification to the police concerned. A rally may take place in an appropriate space, or it may be a moving event representing walks of protesters in a designated area. A moving public rally may only be uninterrupted walk except at the

points of departure or end (Articles 2 and 3 of the Law on civic assembly). The convener of a public rally is responsible for the maintenance of order.

525. The protection of personal and property safety of participants in a public rally and that of other citizens; maintenance of peace and order; safety of traffic and other tasks related to the security of a public rally are all the responsibility of the Ministry of the Interior of the Republic of Serbia. The competent municipal or city authorities provide utilities for such a rally.
526. No permission is required to hold a public rally. It suffices for the convener to notify the police station where the assembly is to be held, not later than 48 hours before the scheduled public rally.
527. Notification by the convener of a moving public rally should be received by the competent authorities at least five days in advance of the scheduled event. The notification must contain information on the programme and purpose of the public rally, its venue, timing and duration, measures taken by the convener to maintain order and monitors to do so, as well as an estimated number of participants. Besides these details, the notification must give a detailed description of the route of movement with departure and end points. Only notifications containing full details of the intended public rally are considered as duly made. A public rally without prior notification will be prevented and the competent authorities will take measures to maintain public peace and order.
528. A public rally will be provisionally banned in one of the following cases: if it is aimed at a violent overthrow of the constitutional order; if it violates the territorial integrity and independence of the Republic of Serbia; if it violates the freedoms and rights of man and the citizen guaranteed under the Constitution; if it encourages and incites national, racial or religious intolerance. The convener will be informed of the ban at least 12 hours before the scheduled rally.
529. The competent authorities will submit a request explaining the reasons for a ban to the District Court concerned within 12 hours. The District Court will hold a hearing within 24 hours of receipt of the request by summoning both the submitter of the request and the respondent convener and take a decision.
530. The District Court may decide to decline and annul the decision on a temporary ban or may ban the holding of a public rally. In the latter case, the convener may appeal to the Supreme Court of Serbia. The appeal is decided by the Court's panel of judges within 24 hours of its receipt.
531. In the period from 1 January - 30 September 2002, there were 359,650 public rallies held in the Republic of Serbia and only 58 decisions were taken to ban such events, namely: one in 1992; 13 in 1993; 5 in 1994; 9 in 1995; 1 in 1996; 8 in 1997; 11 in 1999; 4 in 2001, and 6 in 2002. During 1998 and 2000 no decisions were made to ban public rallies. The majority of these events were banned under Article 11, paragraph 2 of the Law on civic assembly. Nine rallies were banned in the area of responsibility of the Police Department in Urosevac on the grounds that they were hostile. In the first part of 1999, eleven rallies were banned in pursuance of a regulation on civic assembly in a state of war (9 in Krusevac; one in Subotica and Cacak each).
532. In the 1996-97 protests of citizens organized by the "Zajedno" (together) coalition of political parties, members of the special police force of the Serbian Ministry of the Interior (MUP), acting on orders of the then MUP leadership, used indiscriminate and disproportionate force against the protesters. These MUP units were misused and the identification of police officers who used force against the protesters was rendered difficult and became impossible as crowd control duties were delegated to the police units from Kosovo and Metohija and from Central Serbia whose commanders were not obliged to report back.
533. In the period between 24 September and 12 October 2000, in the Republic of Serbia two people were killed and 139 others sustained various injuries, including 33 police officers in the 915 public rallies staged by the Democratic Opposition of Serbia (DOS) gathering nearly 2,000,000 protesters or at the roadblocks. During the DOS-sponsored rally held in front of the Federal Parliament building on 5 October 2000 and drawing crowds from all of Serbia the largest number of people sustained injuries and many vehicles were damaged.
534. In cases of abuse or overstepping of powers in using force, the question of compensation for intangible harm to the person subjected to such mistreatment is often raised. Compensation was claimed by victims of ill-treatment of any kind by police officers exceeding their powers in lawsuits only, as provided for under the Law on contracts and torts. Thus, the citizen may exercise his right to compensation for psychological hurt only before a court, provided his/her claim is found justified and falling in the category of abuse or overstepping of powers by police. A citizen may exercise this right before a court even if he/she has not first approached the MUP asking compensation. Following an effective and enforceable decision of the court confirming the justifiability of the applicant's claim and setting the amount of compensation as established by the court, MUP should pay it out.

535. In the period from 2001 to October 2002 citizens lodged 260 applications to competent courts seeking compensation for the trauma caused by abuse or overstepping of powers by police. Until October 2002 this Ministry executed 27 effective and enforceable court decisions ordering payment of damages. The remaining compensation claims are pending.

Article 22

A) Normative law

536. Article 41 of the Constitution of the Federal Republic of Yugoslavia guaranteed freedom of political, trade-union or any other association or activities without the requirement of a permit, subject to registration with the competent authorities. Article 42 prohibited activities aimed at violent overthrow of the constitutional order, violation of the territorial integrity of the Federal Republic of Yugoslavia, violation of the guaranteed rights and liberties of man and the citizen, or the incitement of national, racial or religious intolerance or hatred. Article 12, paragraph 2 of the Constitution stipulates that the law may, if necessary, prescribe the manner in which certain rights and freedoms are exercised.
537. The provisions of Article 32 of the Charter of Human and Minority Rights and Civil Liberties lay down that everyone has the right to freedom of association, including the right not to be a member of an organization. Political and other organizations are established without prior permission, by entry into the register of the competent body. Restrictions may be placed on the exercise of the right to freedom of association if they are necessary for the protection of public safety, public health or morals, national security or the rights and freedoms of others. Organizations whose activities are aimed at violent overthrow of the constitutional order, abolishment of guaranteed human rights or incitement of racial, national or religious hatred may be banned by a court order.
538. Civic associations as one of the fundamental segments of human rights within the body of human rights recognized at the level of the Federal Republic of Yugoslavia are the subject of the Law on civic association into associations, social organizations and political organizations established in the Federal Republic of Yugoslavia ("Official Gazette of the Federal Republic of Yugoslavia", No. 42/90). This Law provided both for civic associations in the broadest sense of the word and for political organizations in the Federal Republic of Yugoslavia.
539. At the level of the Republic of Serbia, political organizations are dealt with in the Law of the Republic of Serbia on Political Organizations ("Official Journal of the Republic of Serbia", Nos. 37/90, 30/92, 53/93, 48/94). Social organizations and civic associations are regulated by the Law of the Republic of Serbia on Social Organizations and Civic Association ("Official Journal of the Republic of Serbia", Nos. 24/82, 39/83, 17/84, 50/84, 45/85, 12/89, 53/93, 67/93, 48/94).
540. The Law on the Ministries ("Official Journal of the Republic of Serbia", No. 27/2002) establishes the competences of the Ministry of Government Administration and Local Self-Government, *inter alia*, for political and other organizations, except for trade unions.
541. Considering that the Law on association has been submitted to the Parliament for adoption, the Ministry of the Interior is still responsible for the registers of social organizations and civic associations.

B) Civic associations, social and political organizations

- **Federal Republic of Yugoslavia**

542. Under the Law on association of citizens into associations, social organizations and political organizations established in the territory of the Federal Republic of Yugoslavia, civic associations and social organizations may be established by at least 10 citizens of the Federal Republic of Yugoslavia having the right to vote. A political organization may be established by at least 100 citizens of the Federal Republic of Yugoslavia (Article 9 thereof).
543. Article 2 of the said Law stipulates that no organizations may be established if their manifestos or statutory goals and the manner of their achievement are aimed at: violent overthrow of the constitutional order, violation of the territorial integrity and independence of the country, violation of the civil liberties and human rights guaranteed under the Constitution of the Federal Republic of

Yugoslavia or incitement of national, racial or religious hatred and intolerance. In order to form a civic association or a social and political organization it is not necessary to have a prior permission or approval from the competent authorities. An organization is formed at the convening meeting at which a decision on its establishment and its Statute are adopted. A political organization also adopts its political programme or a manifesto. Such organization has no right to pursue activities before it is entered in the register.

- **Republic of Serbia**

544. Pursuant to the Law of the Republic of Serbia on social organizations and civic associations, at least ten citizens who are eighteen years old may establish a social organization in this Republic.
545. No permission or approval of the competent authorities is necessary to establish an association. A social organization or a civic association is considered established if formed at least by 10 citizens, as provided for in Article 27, paragraph 1 thereof. They should hold a convening meeting where the founders decide on the establishment and a general act, i.e. the Statute regulating internal organization and relations between members of the association. As a matter of fact, this Law regulates the establishment of associations other than political, commercial or trade-union organizations. These associations are registered with the other competent authorities and under the provisions of other laws.
546. The field of political organization is dealt with in the Law on Political Organizations ("Official Journal of the Republic of Serbia", Nos. 37/90, 30/92, 53/93, 67/93, 48/94). The content and keeping of registers of political organizations are regulated by the Rules concerning the content and register keeping for political organizations ("Official Journal of the Republic of Serbia", No. 33/90).
547. For the purposes of this Law, a political organization means an independent and voluntary organization of citizens (like a political party, an association, alliance, movement or any other organization) that is established to achieve political aims. At least 100 citizens who are eighteen years old may establish a political organization. Upon its entry in the register of political organizations, the political organization concerned acquires the capacity of a legal person. The date of registration of a political organization is the date of its notification to the competent authorities.
548. The founding act of the political organization contains the names of its founders, its name, headquarters and the main political objectives, its interim body and the name of the person authorized to apply on its behalf for entry in the register of political organization.
549. The data of relevance for entry in the register are: name of the political organization; address of its headquarters; full name and address of the person authorized to apply for entry in the register; full name of the person authorized to represent or act for or on its behalf; date and time of entry in the register and reference number of the registration decision; refusal of application; information concerning proposed ban or a measure of temporary ban on the political organization; de-registration details. Two or more political organizations may not be entered in the register under the same name.
550. A duly authorized person applies for entry in the register held at the competent authorities. The application should be accompanied by at least 100 signed statements (by citizens of 18 years of age or over) to the effect that they intend to establish that political organization, copies of their birth certificates or identity cards, as well as by the founding act of the organization. The competent authorities are bound to adopt a decision on the entry in the register within 30 days from the submission of the application. Unless the competent authorities refuse the application or if they fail to take a decision, the entry shall be considered made.
551. A political organization will cease to exist if it adopts a decision to cease to pursue its activities, or if its membership comes down to below the number required for the founding of a political organization, or if it has been banned by an effective decision. If any of these conditions are fulfilled, the competent authorities will adopt a decision to strike it off the register.
552. Political organization is banned if its activities are aimed at overthrowing the constitutional order by violent means; if it instigates national, racial or religious hatred or intolerance; if it draws in minors as its members or abuses them for political ends; if it joins an international organization or association which is active in the pursuance of these objectives.
553. The competent authorities will decide to deny the entry if all the requirements have not been met or if the notified name of the political organization offends public morals or if the political organization having the same name has already been registered.
554. Any change of a fact or detail entered in the register will be made in the appropriate section of the registration sheet, right below the main entry which is crossed out by a red cross line.

555. An appeal may be lodged against the decision in the proceedings before the Supreme Court of Serbia under administrative law within thirty days of receipt of the decision.
556. The Register of political organizations has been in existence since 27 July 1990. Until November 2002, 252 political organizations were registered.
557. Only 9 political organizations have been de-registered whether upon notification of the authorized person acting for or on behalf of the organization, on the basis of the decision on termination or in view of the fact that its membership dwindled below the number necessary for the founding of a political organization. In other words, no political organization has been banned.
558. Those appealing against the decision on the change of the data in the register have done so, by using recourse to the Supreme Court of Serbia by way of administrative dispute. The majority of such appeals have been denied. In case they have been granted and the decision of the Ministry annulled, new administrative acts have been issued in accordance with the comments and suggestions made by the Supreme Court of Serbia.
559. The number of political organizations registered from 1990 through November 2002 is broken down as follows:

1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
54	15	28	14	9	6	10	26	12	16	23	20	19

560. The Law on political organizations does not stipulate for the authority with which the register is held to de-register a political organization which has not been operational for some time or to change the data entered in the register (name, headquarters, authorized person to represent and to act for or on behalf of) - although some facts are commonly known - unless the authorized person has not specifically requested it. Therefore, the Ministry of Public Administration and Local Self-Government sent a circular letter in August-September 2002 to the hitherto (244) registered political organizations asking them to inform the Ministry if there have been any changes to be entered in the register since they were established. The Ministry intended to bring the register up to date. Only 141 political organizations responded.
561. In view of the fact that this Law does not realistically reflect the options existing on the political stage of the Republic of Serbia and the fact that its liberal solutions (number of founders) have given a distorted picture of the multi-party system, the result has been a resentment by the majority of citizens of the already registered political organizations.
562. Considering that the Law on social organizations and civic associations was passed in 1982 and that it was not compatible with the constitutional arrangements of the then Federal Republic of Yugoslavia, and that the Law was amended several times and the last time in 1989, since when only the amounts of monetary penalties were subject to change, the Government of the Republic of Serbia submitted to the National Assembly a draft Law on associations. Likewise, the exercise of the right to freedom of association and the right to organize to achieve the constitutionally permitted objectives needs to be brought in harmony with the constitutional order. At the same time, the purpose of the proposed draft Law is to align it with the standards required under the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

C) Authorities responsible for holding registers

563. The register of civic associations, social and political organizations established under the Law on association of citizens into associations, social organizations and political organizations created in the Federal Republic of Yugoslavia is held with the federal administrative agency charged with administration and the affairs of the judiciary, i.e. the Federal Ministry of Justice.
564. On the date of their entry in the Register of associations, social and political organizations established for the territory of the Federal Republic of Yugoslavia, these associations and organizations acquire the capacity of a legal person. The competent federal agency is be obliged to enter the organization concerned in the Register within fifteen days of submission of the request for entry, if it has been established in accordance with the Law. The competent federal agency will adopt a decision thereon (Article 13).

565. The holding of registers and the registration form for associations, social and political organizations are based on the Rules on registers of associations, social and political organizations that are established for the territory of the Federal Republic of Yugoslavia and the relevant registration form ("Official Gazette of the Socialist Federal Republic of Yugoslavia", No. 45/90).
566. According to figures available at the end of 2002, about 4,800 civic associations and 623 social organizations and 152 political organizations were entered in the Register of associations, social and political organizations that are established for the territory of the Federal Republic of Yugoslavia.
567. The social organizations and citizens' associations established under the Law on social organizations and civic associations in the Republic of Serbia. The content and the manner in which the register is held is the subject of the Regulation on the registration of social organizations and citizens' associations ("Official Journal of the Republic of Serbia", No. 57/82).
568. The relevant Register is held with the administrative organ of the Republic responsible for internal affairs in the municipality where the headquarters of the organization or association or alliance is located. On the date of their entry in the Register the above-mentioned legal subjects may begin to pursue their activities and acquire the capacity of a legal person (Article 10, paragraph 3 and Article 35, paragraph 1 of the Law). Police authorities concerned are bound to decide on the entry in the Register within 30 days from the date of the submission of the request. This means that a system of approval of the entry in the Register of social organizations and civic associations is applied.
569. The administrative organ in charged of holding the Register of citizens' associations is also responsible for overseeing whether the activities of these associations are legal or not. An association will be refused entry in the Register and be banned if the right to freedom of association is used: to jeopardize the independence of the country or violate the rights of man and the citizen guaranteed under the Constitution, or to threaten the peace and equitable international cooperation or to pressurize citizens to state their ethnic belonging, or if the right to freedom of association is used in a way offending public morals.
570. The data available for 2000 show that 19,189 social organizations and civic associations, of which more than 4,000 are based in Belgrade, were registered in the territory of the Republic of Serbia.

D) Trade union organization

571. The sphere of trade union organization is regulated by the national legal norms, in accordance with the UN rules and the ILO instruments and with the obligations assumed by the Federal Republic of Yugoslavia/Serbia and Montenegro based on the ratification of these instruments, the Convention No.87 on trade union freedoms and the protection of trade union rights of 1948, the ILO Convention No. 98 on the rights of workers to organize themselves and to collective bargaining of 1949 and later on the Convention No. 135 on workers' representatives of 1971. Article 41, paragraph 1 of the Constitution of the Federal Republic of Yugoslavia guaranteed the citizens' freedom of trade union association and activities, without the requirement of a permit, subject to registration with the competent authorities. Paragraph 2 of the same Article stipulated that trade unions are set up for the protection of rights and promotion of the professional and economic interests of their members. Similar provisions are contained in the Constitution of the Republic of Serbia. Article 42 of the Constitution stipulates that professional members of the armed forces and police force of the Federal Republic of Yugoslavia may not belong to trade union organizations.
572. The procedure and conditions concerning the organizing of citizens in trade union associations at the federal level are regulated by the Law on citizens' associations, social organizations and political organizations for the territory of the Socialist Federal Republic of Yugoslavia ("Official Gazette of the FRY", Nos. 40/90, 24/94, 28/96).
573. The manner of founding and/or of the entry of a trade union in the register are not regulated by the law of the Republic of Serbia relating to labour nor by the federal Law on the Bases of Labour Relations. The by-laws of the Republic of Serbia regulate in more detail only the procedure of the entry in the register of trade unions which is kept (for trade unions at the republic level of organization) by the Ministry of Labour Relations of the Republic of Serbia. [9]

[9] Pursuant to Article 177 of the Law on Labour of the Republic of Serbia, the Minister for Labour Relations is authorized to bring the relevant by-law (Regulation on the entry of trade union organizations in the register)

574. Determining the lower limit of the number of members as a condition to set up a trade union (and/or an association of employers) is no doubt debatable and problematic from the aspect of the provisions of the Convention No. 87.
575. It is necessary, as is the case with the Convention No.87 (and, similarly, the Convention No. 97), to set the conditions for the founding of associations of both employees and employers by the same legal act. This should be the subject of the provisions of labour legislation, which is not the case at present either at the federal or republic levels.
576. The legal guarantee of the exercise of trade union freedoms and of the autonomy of trade union organizations and their activities is the fact that a trade union, as a legal entity, may not be dissolved by the State nor may its activities be suspended. Article 42 of the Constitution of the Federal Republic of Yugoslavia provided for cases in which the activities of political, trade union and other organizations are prohibited (only the activities aimed at the violent overthrow of the constitutional order, violation of the territorial integrity of the Federal Republic of Yugoslavia, violation of the guaranteed freedoms and rights of man and the citizen or the incitement of national, racial, religious and other intolerance and hatred).
577. Article 4, paragraph 1 of the Law on the Bases of Labour Relations stipulates that the employees, directly or through their representatives, have the right to participate in the management, to negotiate, to be informed and to express their views on essential issues in the field of labour relations. Article 6, paragraph 1 of the same Law provides for that the employer is obligated to enable the trade union representative to participate in the procedure for establishing the rights, obligations and responsibilities of employees deriving from the law and the collective agreement. However, this right is not absolute because the trade union representative himself enjoys the special protection only if he acts in accordance with the law and the collective agreement.
578. The laws in force provide the basis for establishing trade union plurality. Regardless of the mentioned deficiencies, the system of notification of the entry in the register is applied, without the requirement of a decision on the approval thereof. All trade unions entered in the register have the capacity of a legal entity.
579. There is no discrimination in the country's legal system with respect to employment, pursuant to Article 1 of the Convention No. 98. The law makes no provision regarding the possibility of the inclusion in the collective agreements of the "trade union security clause" according to which employment in certain professions would be limited to trade union members who are the signatories of the collective agreement. At present there are no such cases in practice either. Furthermore, there are no normative provisions according to which the employer could discriminate against employees because of their membership in a (specific) trade union. However, there are cases in practice in which some employers apply discriminatory measures vis-a-vis members of a certain trade union (assignment to other jobs, less favourable wages, notice of termination of employment contract), for example on account of participation in strike or in some other form of trade union action.
580. Unlike the federal Law on the Bases of Labour Relations that does not determine which trade union is considered authorized for collective bargaining and/or the conclusion of a collective agreement nor does it determine the subjects authorized to conclude it (at the republic or federal levels), the Labour Law of the Republic of Serbia of 2001 stipulates that the collective agreement is concluded between the employer or the representative association of employers and the representative trade union. Article 137 of this Law provides for that the representative capacity of a trade union is determined by the entry in the register and by the number of its members. Thus a significant step forward has been made towards abandoning the principle of one, majority trade union, and towards introducing the system of representative trade union (one or several trade unions).

Article 23

A) <u>The right to contract marriage</u>

581. The right to contract marriage is recognized in Serbia and Montenegro equally to Yugoslav nationals and to aliens.
582. In accordance with this, the regulations of the Republic of Serbia treat the contracting of marriage as a universal right, as life of man and woman in a matrimonial union established on the basis of their consent to contract marriage stated before the competent organ in the manner prescribed by law. The circumstance that one or both prospective spouses are foreign citizens is of relevance only in respect of additional documentation which they have to produce for the purpose of establishing their identity and fulfilling conditions to contract marriage.

583. Conditions for contracting marriage and for it to be valid are regulated by the Law of the Republic of Serbia on Marriage and Family Relations ("Official Gazette of the SFRY" Nos. 22/80, 11/88 and "Official Gazette of the FRY" Nos. 22/93, 25/93, 35/94, 29/20021).
584. The Law referred to above regulates both positive and negative preconditions for contracting and/or prohibiting marriage. The positive prerequisites for contracting a valid marriage are legal age (18 years of age), different sexes, the declared will of the prospective spouses, the legal form of contracted marriage and contracting of marriage for the purpose of life in a matrimonial union. The negative assumptions and/or obstacles to marriage are: being already married, inability for reasoning, kinship, being an underage person and the faults of the will (coercion and the state of being misled). The Law refers only to one ban on marriage, i.e. guardianship.
585. As far as conditions for contracting marriage with a foreigner are concerned, it should be mentioned that in the FRY/Serbia and Montenegro the applicable principle is that the existence of conditions for contracting marriage is assessed according to the national law of the prospective spouses (lex nationalis). This means that each of the prospective spouses must fulfil conditions set by the law of the State of which he/she is a citizen. However, even when there exist conditions for contracting marriage under the law of the State whose citizen is the individual wishing to contract marriage before the competent body in the Republic of Serbia, contracting of marriage will not be permitted if there exist obstacles in regard to this person under the Law on Marriage and Family Relations that have to do with a former marriage, kinship or inability for reasoning.
586. Furthermore, in the field of marriage law, within the Hague Convention for International Private Law, the Convention on Consent to Marriage, the Minimal Age for Contracting Marriage and the Registration of Marriages (1962) has also been concluded, which has been ratified by the Federal Republic of Yugoslavia.
587. The procedure for contracting marriage is also regulated by the Law on Marriage and Family Relations, and by the Rules governing the work of the registrar in the procedure of marriage contracting adopted in 1993. According to the said legislation the persons intending to contract marriage should apply to the registrar stating their intention orally or in writing. When the intention is stated orally, the registrar establishes the identity and domicile of the persons intending to contract marriage by examining their identification documents; when the intention is notified in writing, the registrar proceeds in accordance with the law regulating the general administrative procedure. The persons intending to contract marriage should enclose with their application also their birth certificates and, if necessary, proofs that obstacles to marriage and/or prohibition thereof have been removed. If the person intending to contract marriage is a foreign citizen, he/she will attach the birth certificate (duly legalized for use in this country); the certificate on free civil status (the so-called nulla osta) which should indicate that, under the law of the State of which the person is a citizen, there are no impediments for that person to contract marriage with the person whose name should also be mentioned in the certificate; a photocopy of passport and evidence of temporary registration of stay in the country.
588. The registrar holds an interview with the prospective spouses without the presence of the public. The registrar informs them about the obstacles to or prohibition of their contracting marriage, if any; also, about the legal consequences in case the marriage is contracted despite the existence of obstacles or prohibition. During the interview the registrar makes recommendations to the persons intending to marry each other to get informed about each other's health condition before the date of the ceremony; to visit the matrimonial advisory service and to familiarize themselves with the professional opinion regarding conditions for developing harmonious matrimonial and family relations; to visit the relevant health institution to get acquainted with the possibilities and advantages of family planning as well as with the legal possibilities to reach agreement about their future family names. Before the marriage ceremony the registrar will read aloud the minutes relating to the application for contracting marriage to the prospective spouses, which will be signed by the registrar and the persons mentioned in the application. The marriage is contracted in a ceremonial way in a special room. The fact of the conclusion of marriage is immediately entered in the marriage register by the registrar; the registrar reads aloud to the newly wedded and to their witnesses that the fact has been entered into the register and notes in the marriage register that the entry has been read out. The spouses confirm the entry in the marriage register by signing the register using their new family names, whereupon the witnesses also affix their signatures thereto. Upon completion of the entry, the registrar issues to the newly married couple an excerpt from the marriage register.
589. It has already been mentioned that a special, ceremonial form is required for contracting a matrimonial union; that the legal form of contracting marriage is one of the requirements for the validity thereof. In this context, it should be noted that the Law on Marriage and Family Relations of the Republic of

Serbia provides for that civil marriage is the valid form of marriage as the most widespread form of marriage in modern law. This is attested to by the fact that only a marriage contracted before the competent state authority and according to the procedure provided for by the law is considered a legal marriage. Besides, Article 64 of the Law provides for that persons who perform the ceremony of marriage according to religious rules may not do so before the spouses prove, by producing an excerpt from the marriage register, that they have contracted marriage.

B) Dissolution of marriage

590. The Law on Marriage and Family Relations of the Republic of Serbia provides for only two causes for divorce: 1) a serious and permanent disturbance of matrimonial relations; 2) dissolution of marriage by agreement.
591. The emphasis in the Law is shifted from examining the causes to examining the consequences; from putting the blame to establishing whether the marriage has lost sense or not; from the subjective assessment by one of the spouses to the objective assessment by the court and by professional services (the guardianship organ) cooperating with the court. In this way both spouses are ensured equal status in divorce proceedings.
592. Considering that the interest of the child is the guiding principle in family law, the court and all the parties involved in the divorce proceedings must take account of this important fact, in particular in case of divorce by agreement. In such a case the court may refuse to recognize the proposal for divorce by agreement if the interests of the child so require.
593. The competent court, when adopting the decision on the dissolution of marriage in the divorce proceedings, also decides who will be entrusted with the care and upbringing of the joint children. The court examines all the essential circumstances of the case, whereas the Law prescribes in particular the obligation of the court to obtain the opinion and proposal of the guardianship organ.
594. Regardless of the fact that a child has the right to live with its parents, this becomes impossible upon the dissolution of marriage. The court may decide: 1) that all children should be in the care of one parent who is also responsible for their upbringing; 2) that some of the children be left in the care of the mother and some others in that of the father; 3) that all children be entrusted to the care of a third person or an institution. When making such decisions the following facts are irrelevant: sex of the parent, national belonging, citizenship. etc. At the request of one parent or of the organ of guardianship, the court may change its previous decision if the changed circumstances so require. The parent who has been denied the care of the child has the right to maintain personal relationship with it. The child, too, has the same right.
595. The question of maintaining personal relationship with the child is solved by mutual agreement of the spouses. But the court may, by the decision on the dissolution of marriage, also regulate the maintenance of personal relationship between the child and the parent who is not exercising the parental right, if the circumstances of the particular case so require.

Contracted and dissolved marriages in the FRY in the period 1990-2000

Year	Contracted marriages	Dissolved marriages
1992	59522	6767
1993	58172	7040
1994	56050	6657
1995	56534	7569
1996	52949	7419
1997	52210	7378
1998	51194	7305
1999	49122	6660
2000	54452	8085

Table 8, The Federal Office of Statistics, Press Release 035

C) Common-law marriage

596. The protection of relations in a common law marriage is not equal to that in a lawful marriage. However, the relations between the parents and their children are legally equal, regardless of whether the children were born in or out of wedlock.
597. The Law of the Republic of Serbia on Marriage and Family Relations (in relation to marriage) protects a common law marriage (as far as the relations of the partners are concerned). This Law recognizes only the property effects of a common law marriage, but only after its termination, if two conditions have been fulfilled: 1) the general condition, i.e. that there do not exist any legal obstacles to contracting marriage; 2) special conditions, which differ depending on the kind of property right (support, division of joint property).
598. In the settlement of these questions, the same rules are applicable as in the case of the dissolution of lawful marriage. The Law explicitly stipulates that a common law marriage will not produce effects if there existed obstacles to marriage at the time of its establishment, except if some of the obstacles ceased to exist in the meantime.
599. A common law marriage does not produce legal effects on the personal relations of the partners.
600. Criminal offences against marriage and family. [10]

Article 24

A) Measures preventing the participation of children in armed conflicts

601. The Convention on the Rights of the Child has been incorporated in the Yugoslav legal system in 1990 ("Official Gazette of the SFRY - International Treaties" No. 15/90. Also, the Federal Republic of Yugoslavia ratified the Optional Protocol on the Participation of Children in Armed Conflicts in 2002 ("Official Gazette of the FRY - International Treaties" No. 22/02).
602. In case of war or other armed conflict, criminal legislation prohibits the treatment of the participants in the conflict and of the population of the country that is a party to the conflict in a way ignoring the fundamental human rights and freedoms. It is a matter of criminal-legal protection based on international law, so that most of the criminal-legal norms, in defining criminal offences, refer to international law.
603. Besides, the protection of children from participating in armed conflicts is also ensured by the legislation relating the Yugoslav Army and the performance of military service. This legislation establishes the lower limit for sending persons to do their military service, i.e. 21 years of age. Exceptionally, a conscript may at his own request be sent to serve his military term even before reaching the age of 21, but not before 18 years of age.

B) Legal age of the child

604. A physical person acquires full business capacity upon reaching the age of 18. The full legal capacity can be acquired before majority, on the basis of the approval of a court when a minor between the age of 16 and 18 has contracted marriage. Minors have no business capacity at all before reaching the age of 14. Partial business capacity is recognized to minors who are 14 to 18 years old. This means that they can themselves act as persons capable of legal business; however, in order for their actions to be valid, with the exception of transactions of minor importance, the approval of their parents and/or that of the guardian is required. For the transactions which the parent and/or the guardian cannot handle alone (e.g. the sale or encumbrance of the property of an underage person) the approval of the guardianship organ is also necessary. A child of over 16 years of age may make a will if it is capable of reasoning (this capacity is presumed); it can recognize paternity and/or maternity and/or agree to recognize paternity or maternity. For the adoption of a child of over 10 years of age, the child's consent is also necessary. The consent of a child of more than 10 years of age is also necessary for the change of his/her name.
605. A minor who is under 7 years of age is not held responsible for the damage caused by it (delict). The child's parents are held responsible for such a damage regardless of the child's guilt. A minor aged 7 to 14 is held responsible for the damage done if at the moment of causing it the he/she was capable of

[10] Table 9 – Criminal Offences against Marriage and Family under the Criminal Law of the Republic of Serbia in the period 2000-2001

reasoning. This capability is not presumed, but has to be proved. If the capability of the child for reasoning cannot be proved, the child's parents will be held responsible for the inflicted damage except if it can be proved that the damage has been incurred through no fault of the parents . A minor who has reached the age of 14 is accountable for the damage done, in accordance with the general rules regulating this matter, consequently, is considered capable of committing an offence (delict).

606. As far as criminal liability of minors is concerned, in the penal legislation of the Federal Republic of Yugoslavia and that of the Republic of Serbia, special attention is given to juvenile delinquency; special measures are invented and adapted to the specific characteristics of the age and mental development of juvenile offenders. A separate chapter of the Criminal Law of the Federal Republic of Yugoslavia is devoted to the general rules relating to the liability and punishment of juvenile delinquents and to educative measures as the basic sanctions applied to juvenile offenders. These general rules are elaborated in more detail in the Criminal Law of the Republic of Serbia.
607. As a rule, no penal sanctions can be pronounced against children under the age of 14. Only educative measures (disciplinary measures, measures of stronger supervision or committal to a reformatory institution) can be imposed on younger minors, that is, the children aged 14 or more, but who have not yet reached the age of 16. This is in accordance with the general purpose of penal sanctions the purpose of which is to ensure education and/or re-education of minors and their adequate development. This purpose is achieved by providing protection and help to juvenile offenders, by exercising supervision over them, over their vocational training and by developing their sense of responsibility.
608. The penalty of imprisonment for minors is provided for only very exceptionally and may be pronounced exclusively if a minor who, at the time of the commission of a criminal offence, was 16 or over 16 but not 18 years old (a senior minor) and only under the following conditions: 1) that such a senior minor has committed a criminal offence for which a penalty longer than 5 years of imprisonment is prescribed; 2) that he is criminally liable; 3) that, due to the serious consequence of the offence and the high degree of criminal liability it would not be justified to pronounce an educative measure. These conditions are cumulative.
609. The responsibility of minors for petty offences is regulated in a similar manner. The same age limits are applicable to the responsibility of minors for petty offences as in respect of criminal liability, and an educative measure is the main sanction. In the case of a minor who has committed a minor offence the penalty of imprisonment is provided for as an exception and is pronounced only against senior minors in accordance with the strictly defined criteria. The pronounced penalty cannot be longer than 15 days nor can a fine be replaced with imprisonment longer than 15 days.
610. In principle, the legal norm provides for the possibility of pronouncing a penalty (in criminal proceedings or in proceedings before a magistrate) only against senior minors. Similarly, a minor may not be remanded in custody if he/she is under 16. When it is a case for pronouncing an educative measure of an institutional character (institutional measures: committal to a reformatory, committal to an educative-correctional institution and sending to a special institution), the lower age limit is 14.

Minor beneficiaries of social protection with asocial behaviour

1995	1996	1997	1998	1999	2000
2599	2491	2368	1902	1744	1890

Table 10. Statistical Bulletin (Social protection for 1999, 2000)

Minor beneficiaries of social protection / juvenile delinquents under 14 years of age

1995	1996	1997	1998	1999	2000
1827	1826	1804	1502	1524	1407

Table 11. Statistical Bulletin (Social protection for 1999, 2000)

Minor beneficiaries of social protection / junior juvenile delinquents

1995	1996	1997	1998	1999	2000

3051	3095	3262	2798	2798	264

Table 12. Statistical Bulletin (Social protection for 1999, 2000)

Minor beneficiaries of social protection / senior juvenile delinquents

1995	1996	1997	1998	1999	2000
9139	9543	8806	7302	6940	7327

Table 13. (Statistical Bulletin/Social protection for 1999, 2000)

611. According to the data available to the Ministry of the Interior of the Republic of Serbia, a tendency of a decrease in the total number of criminal offences committed by minors can be perceived as well as a reduced share of crime committed by juvenile delinquents in the total number of criminal offences. The largest share of criminal offences committed by juvenile delinquents in the total number of those offences was registered in 1993 (15 per cent). Parallel with a tendency of a decrease in the overall number of crimes, the share of juvenile crime was also reduced. In 2001 the share of juvenile crime was 10.3 per cent. Also, from 1993 onwards the number of juvenile delinquents diminished in relation to the total number of perpetrators of criminal offences against whom criminal charges were brought (from 23.9 per cent in 1992 to 19.8 per cent in 1993 and to 12.2 per cent in 2001).
612. It is obvious from the above statistics that, having in mind the percentage of criminal acts committed to the detriment of children in the total number of crimes (2.6) per cent, children, i.e. minors are not the age category specifically threatened by crime; also, that it is not possible to speak about a considerable rise in juvenile crime. However, ever more pronounced in recent years is the threat to minors, even children, from drug addiction which is becoming increasingly widespread among schoolchildren as well. For these reasons the Government of the Republic of Serbia initiated a comprehensive action entitled "School without drug", also supported by the Ministry of the Interior of the Republic of Serbia. In this context, in cooperation with the Ministry of Education of the Republic of Serbia, security measures in schools and the overall protection of children in educational institutions have been enhanced and the institute of the so-called school policeman has been introduced in the most threatened schools. Furthermore, action has been taken for greater control of the sale of alcoholic drinks to minors.

C) Legal right to work

613. A child acquires the ability of work at the age of 15. This means that it can take up employment. In accordance with this, the child has all the rights at work and deriving from work, as well as the right to freely use its pay and the property acquired on the basis of work, including the obligation to contribute to its own support.

Measures of protection of children without family environment

614. Article 147 of the Law of the Republic of Serbia on Marriage and Family Relations contains the notion of "child without parental care". A child that has no living parents, whose parents are not known or have disappeared, or whose parents do not exercise their parental rights or do not fulfil their parental duties for any reasons, temporarily or permanently, is considered a child without parental care.
615. On the basis of the records available to the Centre for Social Work in the Republic of Serbia the structure of children without parental care is shown in the table below:

CHILDREN	1988	1999	2000	2001/newly registered
Whose parents died	1361	1332	1313	1254(192)

Whose parents are unknown	62	67	63	40(6)
Deserted by their parents	3167	3169	3142	3240(472)
Whose parents exercise their parental right inadequately	170	178	181	632(150)
Whose parents are prevented from exercising their parental right	2298	2384	2328	1809(305)

Table 14. Statistical Bulletin (Social protection 1999, 2000)

616. Article 148 of the Law on Marriage and Family Relations establishes certain measures of family-legal protection of children without parental care.

- *Adoption*

617. Adoption is the most complete and the most efficient form of the protection of children without parental care. Adoption ensures a child's development in the family where the adoptive parents assume the role of parents and perform all the rights and duties which constitute the substance of the parental right.
618. The Law on Marriage and Family Relations in force in the Republic of Serbia provides for two forms of adoption: ordinary (incomplete) adoption and complete adoption. Complete adoption means that the child is fully integrated into the family of the adopters. This includes the creation of a relationship of kinship and the rights and duties deriving therefrom between the child and its offspring on the one hand, and the adopters and their relatives, on the other. Upon the establishment of complete adoption the former record of the facts birth of the adopted child in the birth register is deleted and the new entry of the fact of birth of the adopted child is made, with the new personal name and data about the adopters as parents.
619. Ordinary adoption as incomplete adoption is frequently termed in practice is characterized by two main features. First, this adoption may be terminated under certain conditions. Secondly, with regard to the extent of its effect, it has been prescribed that the effect of adoption is limited to the adopters and the adoptee (and its descendants). This means that the relationship of kinship and the rights and duties based on this relationship are not created between the adoptee and the relatives of the adopters. Besides, the adoptee's inheritance rights may be limited if the adopters have their own children.
620. According to the data of the Ministry for Social Welfare the number of established domestic and foreign adoptions in the period 1995-2001 was as follows:

Adoption

Year	Domestic	Foreign
1995	337	18
1996	334	16
1997	289	22
1998	270	6
1999	262	0
2000	No data available	11

Table 15.

- *Foster family care*

621. The accommodation of children without parental and family care in another family is a form of protection providing a child with replacement for the natural family environment, which is closest to that environment. This is done without encroaching upon the family status of the child. Besides, no relationship of parenthood is established between the child and the members of the family in which the child is accommodated.

Foster families

Year	Number of foster families
1998	1834
1999	1707
2000	1608
2001	1338

Table 16

622. On the basis of the data presented in Table 3 it can be seen that the number of rearing families in Serbia has largely been decreasing. This fall has primarily been caused by the economic situation in the country, by the lack of adequate material situation of rearing families and by the absence of a campaign supporting this form of protection of children without parental care with a view to the engagement of new families to that end.
623. However, in 2002 a number of campaigns were launched at the local level with the aim of finding new rearing families. Also, a special project was launched by the Ministry of the Republic of Serbia for Social Welfare entitled "The Strategy of Family Accommodation Development" as a part of the reform objectives in the de-institutionalization and development of open alternative forms of protection of children without parental care.
624. The Law of the Republic of Serbia on Marriage and Family Relations (Articles. 212 and 213) provides for that the realization of the purpose of family accommodation is supervised by the guardianship organ as well as by the special institutions for social protection set up to organize family accommodation and in order to supervise the organization of the protection of children in family accommodation. The guardianship organ follows through direct insight the development of the child, the organization of care and rearing, upbringing and education.

Children without parental care (structure of applied measures - total)

FORMS AND MEASURES	1988	1999	2000	2001
Guardianship (permanent)	5566	5116	5216	4485
Adoption	238	237	184	182
Family accommodation	2690	2744	2007	2052
Accommodation in an institution for social protection	3800	3568	2166	2157

Table 17. Reports by the Centres for Social Work 1988/2001

625. A considerable number of children within the populace of refugee, expellee and displaced children are those that are temporarily or permanently deprived of parental care. For these reasons it is necessary

to take measures ensuring guardianship or social protection in respect of these children to protect their personality, their rights, interests and property in an adequate and efficient way.

626. The legislation of the Republic of Serbia regulating the family-legal protection of children does not know the terms refugee, expellee or displaced person; it can, therefore, be concluded that children without parental care who are refugees, expellees or displaced persons are not protected by the institute of guardianship. However, these children are not left outside the system of protection. Namely, by interpretation of Article 280 of the Law on Marriage and Family Relations of the Republic of Serbia which prescribes that the guardianship organ may take measures provided for by law in the protection of the rights and interests of a foreign citizen, pending the bringing of necessary decisions and the taking of certain measures by the competent organ of the State of which he/she is a citizen.

627. In such cases in which it is necessary to take measures ensuring guardianship protection of the children without parental care who are refugees, expellees or displaced persons the competent organ for taking those measures is the guardianship organ in the place where the children are temporarily residing, i.e. where their refugee or expellee status has been regulated. As far as the scope and content of the measures of guardianship protection of these children are concerned, the rules and regulations of the Republic of Serbia regulating the sphere of family- legal protection of children without parental care are applied.

Children without parental care (refugees, expellees and displaced persons)

children	Number of children without parental care	Number of children without parental care under guardianship	Number of children without parental care accommodated in an institution	Number of. without parental in family accommodation
Refugees	184	126		
Expellees	50	34	136	99
Displaced persons	125	73		
TOTAL	359	233		

Table 18

Children without parental care (refugees, expellees and displaced persons)

	Croatia	Bosnia and Herzegovina	Kosovo and Metohija	Others
Refugees	137	94	126	2
Expellees				
Displaced persons				
TOTAL	359			

Table 19.

D) <u>Registration of children after birth</u>

628. The procedure for the entry of the fact of birth of a child in the birth register has been regulated by the Law on Record Books ("Official Gazette of the Republic of Serbia" No. 15/90) and by the Instruction on keeping and forms of record books of 1990. The birth of a child is entered, as a rule, in the birth register of the area in which the place of birth of the child is located; however, the legislator regulates that the local organ is competent for the entry of the child's birth in the birth register also in the case of its birth in a means of transport as well as in the case of the child whose parents are unknown. The birth of a child in a health institution should be reported by that institution. The birth of a child outside a health institution should be reported by the child's father; if he is unable to do so, it should be reported by another member of the household and/or the person in whose dwelling the child was born, or by the mother as soon as she is able to do so, or by the midwife or the doctor who assisted at the delivery of the child; if there are no such persons or if they are unable to report the birth, the birth should be reported by the persons who have knowledge of the child's birth.
629. The birth of a child should be reported within 15 days from the date of birth. When registering the birth of a child the data about the parents are taken from their identity cards or from the birth certificate or the marriage certificate. The family name of the child is entered into the birth register according to the family name of the parents; if the parents have a different family name, a written statement is made on the agreement reached by them regarding the child's family name. If the parents fail to reach agreement about the family name of the child, the statement with the data on the birth of the child is referred without delay to the competent guardianship organ for the purpose of determining the child's family name.
630. Regarding the personal name of the child, a statement given by the parents to that effect is recorded; if there is no agreement between the parents about determining the child' s name, the same procedure is

applied as in the case of determination of the child's family name. The guardianship organ will determine the personal name, name or the family name of the child also in the case when the parents have not determined the personal name, name or the family name of the child within the period prescribed by law. The personal name is a citizen's personal right and it is acquired by the entry thereof in the birth register in accordance with the Law on Marriage and Family Relations. In addition to this Law, the 1983 Rules governing the procedure for the determination and change of the personal name is also applied in the procedure for determining the personal name. The recognition of paternity or maternity is entered in the birth register on the basis of the statement given before the competent State organ or on the basis of some other public document.

Article 25

The electoral system [11]

631. The right to the holding of free elections in the Federal Republic of Yugoslavia was regulated and guaranteed by the Constitution of the FRY. Pursuant to Article 34 of the Constitution of the Federal Republic of Yugoslavia a Yugoslav citizen who has reached the age of 18 is entitled to vote and be elected to public office.
632. In its Article 33 the Charter of Human and Minority Rights provides for that the citizens of the State Union of Serbia and Montenegro have the right to take part in decision-making regarding public affairs, either directly or through representatives freely elected by secret ballot, at general or periodic elections. A citizen of the State Union of Serbia and Montenegro who has turned 18 has the right to vote and be elected to the local self-government or state bodies of a member State and institutions of the State Union, in accordance with the Constitutional Charter and the laws of the member States. Suffrage is universal and equal and the voting is secret.
633. The right to free elections is also guaranteed by the Constitution of the Republic of Serbia. The Constitution is more elaborate regarding this question. According to its Article 2, paragraph 2, citizens exercise their sovereignty through a referendum, people's initiative and their freely elected representatives. According to Article 42, a citizen who has reached the age of 18 has the right to vote and be elected to the National Assembly and to other agencies and bodies. Elections are direct, by universal and equal suffrage, and are held by secret ballot. A candidate for representative of the National Assembly and of other agencies and bodies may be nominated by a political party, other political organization, or a group of citizens.

- **The Federal Assembly**

634. In addition to the Constitution of the Federal Republic of Yugoslavia the elections for the Federal Assembly are also regulated by the Law on election of deputies to the Chamber of Citizens and the Law on election of deputies to the Chamber of Republics of the Federal Assembly ("Official Gazette of the FRY" No. 3/2000). The Federal Assembly consists of two Chambers : the Chamber of Citizens and the Chamber of Republics. The Chamber of Citizens is composed of 138 deputies, one for every 65,000 voters; however, each member State of the Federation must have at least 30 deputies. This means that 108 deputies are elected in the Republic of Serbia and 30 deputies in the Republic of Montenegro. The Chamber of Republics has 40 deputies altogether, i.e. 20 deputies from the Republic of Serbia and 20 from the Republic of Montenegro.
635. The deputies of the Federal Assembly Chamber of Citizens are elected in direct elections by secret ballot (Article 80 of the Constitution of the Federal Republic of Yugoslavia). Also, this Article provides for that the deputies of the Chamber of Republics are elected from the member republics, which means that they are elected by the assemblies of the republics. Amendment III to the Constitution of the Federal Republic of Yugoslavia adopted in July 2000 (Article 80, paragraph 3 and Article 81, paragraph 2, are replaced and Article 86 is amended) provides for a direct election of deputies of the Chamber of Republics whereby this Chamber ceased to be the "Upper House". This aroused the reaction of the Assembly of Montenegro which, in July 2000, adopted a Resolution for the protection of the rights and interests of the Republic of Montenegro refusing to recognize the adopted amendments. Later on, the Assembly also made the decision not to participate in the federal elections.

[11] Table 20 – Criminal Offences against Electoral Rights and Freedom of Expression under the Criminal Law of the Republic of Serbia in the period 2000-2001

636. However, the deputies of both Chambers were elected by secret ballot in direct elections in September 2000. The elections for both Chambers were held on the basis of the principle of proportionality, the census for obtaining a mandate was 5 per cent of the number of voters who took part in the elections. The territory of the Republic of Serbia was divided into 26 voting districts and the Republic of Montenegro constituted one voting district at the elections for the Chamber of Citizens. Both republics represented one voting district each at the elections for the Chamber of Republics.
637. The mentioned federal elections disclosed numerous deficiencies:

1) The election legislation failed to establish a uniform ballot list of the Republic of Serbia that would be accessible for insight to all political parties and prevent the possibility of multiple voting.
2) The ballot lists submitted by political parties at the September 2000 elections authorized political parties to determine by themselves, after the elections, who will get mandates for the Assembly.
3) On the occasion of the election of deputies to the Chamber of Citizens, there was a marked disproportion between the number of voters in some voting districts in the territory of the Republic of Serbia and the number of mandates to be assigned to them.
4) The Federal Election Commission which makes its decisions by a majority vote was comprised of ten permanent members (elected by the then ruling coalition) and the members elected by parties (a maximum of 8 members).
5) According to the Election Law there was a possibility for the citizens who are unable to vote for justified reasons (these reasons are not defined) in the place in which their names figure in the extract from the list of voters, to vote in some other polling station. In this way serious abuses in the voting were made possible.

638. In accordance with the Constitutional Charter of the State Union of Serbia and Montenegro the Parliament of Serbia and Montenegro is unicameral and consists of 126 members, 91 from Serbia and 35 from Montenegro. Members of Parliament are elected from each member State in accordance with European and democratic standards, under the laws of the member States. In the course of the first two years after the promulgation of the Constitutional Charter, Members of Parliament will be elected indirectly, in proportion to the representation in the National Assembly of the Republic of Serbia and the Assembly of Montenegro, respectively.
639. In the first elections Members of Parliament are elected from among the deputies in the National Assembly of the Republic of Serbia, in the Assembly of the Republic of Montenegro and the Federal Assembly. If parliamentary elections are held in a member State during that period, the composition of its delegation to the Parliament of Serbia and Montenegro will be adjusted in proportion to the election results. After the initial period members of Parliament of Serbia and Montenegro will be elected in direct elections for a term of office of four years (Article 20).
640. The Speaker and the Deputy Speaker of the Parliament of Serbia and Montenegro are elected from among its members. The Speaker and the Deputy Speaker cannot be from the same member State (Article 21). Also, the Speaker of the Parliament of Serbia and Montenegro and the President of Serbia and Montenegro cannot come from the same member State (Article 22).

- **The President of the FRY**

641. Before the adoption of the amendment to the Constitution of the Federal Republic of Yugoslavia (July 2000), the election of the President of Yugoslavia was regulated by Article 97 of this Constitution which provided for that the President of the Republic is elected by the Federal Assembly for a term of office of four years, by secret ballot. Also, that the same individual may not be re-elected President for a second term. The President of the Republic may not hold other public office or engage in professional activities. Article 97 of the Constitution of the Federal Republic of Yugoslavia ceased to be valid on the basis of Amendment V and, in accordance with the same Amendment, the President of the Republic is elected in direct elections, by secret ballot. The same person may be re-elected to that office for a second term..
642. The election of the President of the FRY is regulated also by the Law on the Election of the President of the Federal Republic of Yugoslavia ("Official Gazette of the FRY" No. 32/2000). According to the Law a candidate who has obtained an absolute majority of votes is elected President; if no candidate has a majority of votes, a second round of election takes place in 14 days. In the second round of election, out of the two most successful candidates, the candidate with the larger number of votes is

the winner. The presidential elections do not require a turnout of 50 per cent of voters. So, in theory a very small number of voters may elect the President of the FRY. By the Decision on the establishment of the results of the elections for the President of the Federal Republic of Yugoslavia in 2000 ("Official Gazette of the FRY", No. 50/2000) the Federal Election Commission established that neither of the candidates had won the required 50 per cent of the votes plus one from the total number of the voters who actually voted and that, consequently, a second round of election should be held. However, after mass protests and the Decision of the Federal Constitutional Court ("Official Gazette of the FRY" No. 53/2000) which annulled the said decision, the Federal Election Commission, by its Decision ("Official Gazette of the FRY" No. 55/2000) established the victory of Vojislav Kostunica who became the new President of the Federal Republic of Yugoslavia.

643. According to the Constitutional Charter of the State Union of Serbia and Montenegro, the Speaker and the Deputy Speaker of the Parliament of Serbia and Montenegro propose to the Parliament a candidate for the President of Serbia and Montenegro. If the proposed candidate fails to win the required majority of votes, the Speaker and the Deputy Speaker of the Parliament of Serbia and Montenegro propose a new candidate within ten days. If that candidate, too, fails to obtain the necessary majority of votes, the Parliament of Serbia and Montenegro is dissolved and new elections will be called. If the elected President of Serbia and Montenegro comes from the same member State as the Speaker of the Parliament of Serbia and Montenegro, the Speaker and the Deputy Speaker of the Parliament will switch their posts. The President of the State Union may not come from the same member State twice in succession and the procedure of the election and relief of the President of Serbia and Montenegro is regulated by law (Article 27).
644. The President of Serbia and Montenegro is accountable for his/her work to the Parliament off Serbia and Montenegro (Article 28). The President's term of office is four years (Article 29). The term of office may end before the expiry of the period for which the President was elected by his/her resignation (verified by the Parliament of Serbia and Montenegro), by his/her relief or by the dissolution of the Parliament of Serbia and Montenegro (Article 30).
645. The Parliament of Serbia and Montenegro may remove the President of the State Union of Serbia and Montenegro if he/she has been found to have been in breach of the Constitutional Charter. The breach of the Constitutional Charter is established by the Court of Serbia and Montenegro. The procedure for the establishment of the breach of the Constitutional Charter is initiated by the Parliament of Serbia and Montenegro.
646. In accordance with the provisions of Article 32, the President of Serbia and Montenegro whose term of office has ended due to the dissolution of the Parliament of Serbia and Montenegro will continue in office pending the election of a new President. If the President resigns or has been removed, his/her duties will be temporarily taken up by the Deputy Speaker of the Parliament of Serbia and Montenegro pending the election of a new President of Serbia and Montenegro.

- **The National Assembly of the Republic of Serbia**

647. The elections for the National Assembly of the Republic of Serbia are regulated by the Constitution of the Republic of Serbia (Articles 74 and 75) and by the Law on the election of national deputies ("Official Gazette of the Republic of Serbia" No. 35/2000). The National Assembly consists of 250 deputies elected directly, by secret ballot. At the December 2000 elections the Republic of Serbia constituted one election unit and the census for obtaining mandate was 5 per cent of the votes won on the basis of the proportional system, by the application of the D'Hondt method. Candidates were nominated by political parties, coalitions of parties, political organizations or groups of citizens. Their names were included in the lists which had to have at least 100,000 signatures of support verified by the municipal courts. Only these lists were accepted by the Republic Election Commission.
648. In order to prevent voters from voting several times, the so-called invisible spray was used to mark the voters' index finger. Also, transparent ballot boxes were introduced for these elections for the first time, thus preventing the insertion of several ballot papers, which had happened in previous elections. Persons doing their military service at the time voted at the nearest polling stations and not in the barracks.
649. Flaws of the December 2000 elections were the following:

    1) The maintenance of the election threshold of 5 per cent in a situation where the Republic of Serbia represents one election unit is a direct obstacle to the entry of national minorities in the Assembly.

2) According to the new Law the submitter of the list is totally free to distribute mandates and has no obligation to take account of the order of names on the election list.
3) The voters and parties have the possibility of only a partial insight into the voters' register, whereas the voters who were not in the territory of the Republic of Serbia at the time of the elections did not have the possibility of voting.
4) The Law on the election of national deputies does not provision for citizens to participate in the elections as individual candidates.

- **The President of the Republic of Serbia**

650. The elections for the President of the Republic of Serbia are regulated by the Constitution of the Republic of Serbia (Article 86) and by the Law on the Election of the President of the Republic of 1992. Pursuant to the provisions of the Constitution and the Law, the President is elected by secret ballot, in direct elections. If no candidate has won more than 50 per cent of those who have voted, the two most successful candidates take part in the second round of election. The candidate who has won the largest number of votes in the second round of election will be elected President provided that more than 50 per cent of the voters entered in the list (Article 9 of the Law) have voted.

Article 26

Prohibition of discrimination

651. The Constitution of the Federal Republic of Yugoslavia guaranteed the equality of citizens regardless of their nationality, race, sex, language, faith, political or other beliefs, education, social origin, property or other personal status. Also, all are equal before the law and each person is duty-bound to respect the freedoms and rights of others and is responsible for it (Article 20). According to Article 26, each person was entitled to equal protection of his rights in a legally prescribed procedure. Everyone is guaranteed the right of appeal or other legal remedies against a decision which infringes a right or legally founded interest.
652. The Charter of Human and Minority Rights and Civil Liberties prohibits discrimination. Pursuant to its Article 3 all are equal before the law and everyone has the right to equal legal protection without discrimination. Furthermore, any direct or indirect discrimination based on any grounds, particularly on race, colour, sex, nationality, social origin, birth or other status, religion, political or other opinion, property status, culture, language, age or mental or other physical handicap, is prohibited. However, special measures may be temporarily introduced which are required for the realization of equality, necessary protection and progress of persons or groups of persons who are in an unequal position in order to enable them full enjoyment of human and minority rights under equal terms. Such measures may be applied only until the objectives because of which they have been introduced have been achieved.
653. In its Article 13 the Constitution of Serbia also provides for that citizens are equal in their rights and duties and that they enjoy equal protection before the State and other authorities without distinction as to race, sex, birth, language, nationality, religion, political or other belief, level of education, social origin, property status or any other personal attribute.
654. There is no special law in the legal system of the Federal Republic of Yugoslavia regulating the sphere of discrimination in a general manner. However, a model law against discrimination is under preparation.
655. The criminal-legal prohibition of discrimination is provided for by the penal laws. In this context, incriminations existing in the penal system of the Federal Republic of Yugoslavia completely cover all forms of discrimination:

1) Incitement of national, racial or religious hatred, discord or intolerance (Article 134 of the Criminal Law of Yugoslavia).

2) In accordance with this Article, whoever provokes or fans national, racial or religious hatred, discord or intolerance among the nations and national minorities living in the Federal Republic of Yugoslavia will be punished by imprisonment of 1 to 5 years. If such an offence has been committed by coercion, maltreatment, threat to safety, exposure to derision of national, ethnic or religious symbols, damage of belongings of others, desecration of shrines, memorials and graves,

the perpetrator will be punished by a prison term of 1 to 8 years. Also, whoever commits this offence by the abuse of official position or powers or if, as a consequence of these offences, disorders, violence or other serious consequences have occurred for the life in common of nations and national minorities living in the Federal Republic of Yugoslavia, the perpetrator will be punished by imprisonment of 1 to 8 and/or 1 to 10 years.

3) Racial and other discrimination (Article 154 of the Criminal Law of Yugoslavia)

Pursuant to this Article, whoever, on the grounds of race, colour, nationality or ethnic origin, violates the fundamental human rights and freedoms recognized by the international community will be punished by imprisonment of six months to 5 years. Whoever engages in the persecution of organizations or individuals because of their advocacy of human equality will also by punished by the same punishment. However, whoever spreads the ideas of superiority of one race over another or instigates racial hatred or stirs up racial discrimination, will be punished by imprisonment of three months to 3 years.

4) Violation of equality in the pursuit of economic activity (Article 161 of the Criminal Law of Yugoslavia). Pursuant to this Article whoever, by the abuse of official position or power, restricts free and independent linking of other economic subjects in order to pursue economic activity in the single economic area of the FRY; denies or limits the right of an enterprise or another economic subject to pursue economic activity in a given area; places economic subjects in an unequal position in relation to other economic subjects in regard to the conditions of economic activity or restricts free engagement in economic activity, will be punished with a prison term of six months to 5 years. This punishment will also be imposed on a person who uses his social position or influence to commit the said offence.

5) Violation of equality in employment (Article 162 of the Criminal Law of Yugoslavia)

A person who denies or limits the right of a citizen to free employment in the entire territory of the FRY under equal conditions applicable in the place of employment will be punished by imprisonment of six months to 5 years.

6) Violation of equality of citizens (Article 186 of the Criminal Law of Yugoslavia)

An official person who on the grounds of difference of nationality, race, religion, political or other belief, ethnicity, sex, language, level of education and social status denies or limits the rights of citizens spelled out by the Constitution, by law or other legislative or general enactment, or by a recognized international treaty or who on the grounds of this difference accords citizens privileges or advantages, will be punished with imprisonment of three months to 5 years.

656. Similar to the Criminal Law of Yugoslavia, the Criminal Law of the Republic of Serbia incriminates certain acts and actions which represent discrimination of certain citizens in relation to others. In this context, the Law contains the following incriminations: violation of equality of citizens (Article 60) and violation of the equality of use of the language and script (Article 61).

Article 27

A) <u>Minorities</u>

657. The right of minorities to preserve their own identity was guaranteed under Article 11 of the Constitution of the Federal Republic of Yugoslavia : "The Federal Republic of Yugoslavia shall recognize and guarantee the rights of national minorities to preserve, foster and express their ethnic, cultural, linguistic and other peculiarities as well as to use their national symbols, in accordance with international law". The preservation of the identity of minorities in the Constitution of the Republic of Serbia is not mentioned explicitly, but the obligation to protect minorities can be derived indirectly

from the interpretation of Article 3, paragraph 2 of the Constitution, which guarantees "the individual, political, national, economic, social, cultural and other rights of man and the citizen".

658. After the victory of the Democratic Opposition of Serbia in the elections in the autumn of 2000, parallel with the efforts towards democratization of society in all spheres of life, special attention was devoted to the promotion of the status of ethnic minorities.

659. To that end a series of measures at the national level (the forming of the Federal Ministry of National and Ethnic Communities, work on the preparation, and shortly afterwards, the passage of the federal Law on the Protection of Rights and Freedoms of National Minorities, etc.) as well as at the international level (accession to the Framework Convention for the Protection of National Minorities, preparations for the accession to the European Charter of Regional and Minority Languages, the beginning of work on the preparation of relevant bilateral treaties with neighbouring countries, etc.).

660. The importance of the passage of the federal Law on the Protection of Rights and Freedoms of National Minorities should be pointed out in particular. It contains a special provision (Article 4, paragraph 2) whereby the Roma national community is recognized the status of national minority; it also provides for measures of affirmative action aimed at promoting their socio-economic position. In accordance with this, the Federal Ministry of National and Ethnic Communities has already undertaken a number of specific measures and activities for the improvement of the overall position of Roma in this country.

661. The members of 26 different nations and national minorities permanently live in the territory of the Republic of Serbia. According to the results of the 1991 population census, 10,394,026 persons lived in the territory of the Federal Republic of Yugoslavia, of whom 9,778,991 live in the Republic of Serbia.

	FRY	Republic of Serbia
Serbs	6,504,048 (62.32 per cent)	6,446,595 (65.65 per cent)
Montenegrins	519,766 (5.00 per cent)	139,229 (1.43 per cent)
Albanians	1,714,768 (16.60 per cent)	1,574,353 (17.22 per cent)
Hungarians	344,147 (3,32 per cent)	343,942 (3.53 per cent)
Yugoslavs	349,784 (3.30 per cent)	323,625 (3.26 per cent)
Muslims	336,784 (3.30 per cent)	323,625 (3.26 per cent)
Roma	143,519 (1.32 per cent)	140,237 (1.40 per cent)
Croats	111,650 (1.11 per cent)	105,406 (1.12 per cent)
Slovaks	66,863 (0.64 per cent)	66.798 (0.69 per cent)
Macedonians	47,118 (0.47 per cent)	46.046 (0.49 per cent)
Romanians	42,364 (0.41 per cent)	42.331 (0.43 per cent)
Bulgarians	26,992 (0.24 per cent)	26,876 (0.26 per cent)
Ruthenians	18,099 (0.18 per cent)	18,073 (0.19 per cent)
Vlachs	17,810 (0.17 per cent)	17,807 (0.18 per cent)
Turks	11,263 (0.11 per cent)	11,235 (0.12 per cent)
Slovenes	8,315 (0.08 per cent)	8,801 (0.09 per cent)
Others	141,358 (1.36 per cent)	127,126 (1.30 per cent)

Table 21.
Note: The group "Others" includes small communities such as Jews, Germans, Bunyevtsi, Ukrainians, etc.

B) Measures to preserve ethnic, cultural, religious and linguistic identity of minorities

662. The improvement of conditions necessary for the preservation and development of the culture of members of national minorities and the safeguarding of elements of their identity is regulated in more detail by a series of relevant federal and Republic regulations. The most important among them is the Law on the Protection of Rights and Freedoms of National Minorities. In its Article 12, paragraph 1, the Law explicitly establishes that the expression, safeguarding, fostering, transfer and public manifestation of national and ethnic, cultural, religious and linguistic characteristics as a part of tradition of citizens, national minorities and their members is an inalienable individual and collective right. The provision of paragraph 2 of the same Article states specifically that, with a view to the preservation and development of national and ethnic specificity, the members of national minorities have the right to set up separate cultural, artistic and scientific institutions, societies and associations in all fields of cultural and artistic life. The provision of paragraph 3 of the said Article specifies that these institutions, societies and associations are autonomous in their work and that the State will participate in their funding according to its possibilities. Special foundations may be established, as provided for in Article 12, paragraph 2 of this Law, for the affirmation and support of these institutions, associations and societies.

663. Related to the preservation of the national identity of national minorities and the freedom of expression of national affiliation is the constitutional provision that no one is obliged to declare his/her nationality (Article 45 of the Constitution of the Federal Republic of Yugoslavia). In its Article 5, paragraph 5, the Law on the Protection of Rights and Freedoms of National Minorities adds that no one may suffer damage on account of his/her belonging to or expression of his/her nationality or refraining from doing so.

- **The use of minority languages**

664. The Constitution of the Federal Republic of Yugoslavia guaranteed the freedom of use of minority languages. The Law on the Protection of Rights and Freedoms of National Minorities specifies in its Article 10 that this right means the right to freely use, in private or in public, one's own language and script.
665. The Constitution of the Republic of Serbia (Article 8, paragraph 2) specifies that, in the regions of the Federal Republic of Yugoslavia inhabited also by national minorities the languages and scripts of these minorities will also be in official use in the manner prescribed by law.
666. In the Republic of Serbia the right to the official use of language and script is regulated in more detail by the Law on the official use of language and script ("Official Gazette of the Republic of Serbia" No. 45/91). According to this Law, the decision on whether the languages of the minorities will be officially used is taken by the municipalities in whose territory the minorities live. The said Law does not define the criteria to be taken into account by the municipalities when determining which language will be in official use. This shortcoming has resulted in the existence of different solutions in municipalities in respect of this question.
667. In order to rectify such a state of affairs the Law on the Protection of Rights and Freedoms of National Minorities provides for in its Article 11 that the language and script of a national minority will be introduced as official in a self-governed unit in which the share of members of national minorities in the total population in the area, according to the results of the population census, exceeds 15 per cent; this also includes the obligation to maintain the existing official use of the language and script in local self-governed units in which the language of a national minority was in use at the time of the adoption of this Law. The Law on the Protection of Rights and Freedoms of National Minorities leaves open the possibility that minority languages be introduced in official use also in the units of local self-government in which the share of members of national minorities in the total population does not exceed 15 per cent if the relevant local self-governed units so decide.
668. The Law of the Republic of Serbia on the official use of languages ans scripts, in its Article 19, provides for that, in regions in which the languages of nationalities are in official use, the names of places and other geographical names, the names of streets and squares, the names of organs and organizations, traffic signs, notices and warnings for the public and other public inscriptions should be written also in the languages of nationalities.

- **The right to education**

669. The right of national minorities to education in their own language is guaranteed by the Constitution of the Republic of Serbia (Article 68).
670. In the Republic of Serbia, in accordance with the Law of the Republic of Serbia on Elementary Schools ("Official Gazette of the Republic of Serbia" No. 50/92), if more than 15 pupils apply, instruction must also be given in the relevant minority language. According to the provision of Article 5 of this Law, if less than 15 pupils apply for instruction in a minority language, instruction may be given in that minority language, subject to the approval of the minister of education. Instruction may be given only in the minority languages or bilingually. If instruction is carried out only in a minority language, attending instruction of the Serbian language classes is compulsory.
671. The Law on the Protection of Rights and Freedoms of National Minorities provides for that the right to education in the mother tongue is realized in public institutions of pre-school, elementary and secondary education. The provision of Article 13, paragraph 6 of this Law represents an innovation in the Yugoslav legal system. According to this provision representatives of national minorities, through their national councils, participate in the preparation of curricula for the teaching of subjects that express the specificity of national minorities in the language of national minorities, for bilingual teaching and learning of national minority languages with elements of national culture.

- **The right to information**

672. The Constitution of the Federal Republic of Yugoslavia guaranteed the right of members of national minorities to information, i.e. to public information in their own language (Article 46, paragraph 2). The Constitution of the Republic of Serbia does not guarantee this right.
673. The Law on the Protection of Rights and Freedoms of National Minorities provides for in its Article 17 that the State will ensure that radio and television programmes include informative, cultural and educational contents in the language of national minorities. Moreover, the possibility has been provided of establishing separate radio and television stations broadcasting programmes completely in languages of national minorities. Participation of minority representatives in the management of the media broadcasting their programmes also in languages of national minorities will be regulated by separate republic regulations because it is a sphere that falls within the competence of the member republics according to the Constitution of the FRY.
674. The Law on the Protection of Rights and Freedoms of National Minorities contains a provision in its Article 12 according to which museums, archives and institutions for the protection of historical sights, whose founder is the State, are obliged to ensure the presentation and protection of cultural and historical heritage of national minorities in their territory. They also have the obligation to enable representatives of national councils of national minorities to participate in decision-making regarding the way of the presentation of cultural and historical heritage of national minorities.

C) Measures to ensure equal economic and social opportunities for minorities

675. In its Article 4, paragraph 1, the Law on the Protection of Rights and Freedoms of Minorities provides for in general terms that the authorities may, in accordance with the Constitution and the law, pass legal rules and individual legal acts and take measures with a view to ensuring full and effective equality of persons belonging to national minorities and to the majority nation. Taking into account the particularly difficult economic, social and cultural position of Roma, the provision of paragraph 2 of the same Article specifically provides for that the authorities will pass legal acts and take measures to improve the position of persons belonging to Roma national minority. Thus, whereas in regard to other minorities there is a possibility of passing relevant regulations and individual legal acts and taking measures aimed at securing full and effective equality of these collectivities and of their members as and when necessary, in the case of Roma minority, the Law explicitly provides for the obligation of the authorities to take concrete measures in order to improve their position.
676. A series of laws passed at the federal level and at the level of the republics prescribe measures the main purpose of which is the promotion of equality. Such measures are also prescribed by a large number of by-laws.
677. In the sphere of economic life measures have been taken for promoting equality in the regions inhabited by national minorities, but which are less developed in comparison with other areas. Special mention should be made of a string of measures taken in the sphere of economic life in three municipalities in southern Serbia inhabited the Albanian national minority. The coordinating body of the Federal and Republic governments for the South of Serbia spent 500 million dinars from the budget of the Republic of Serbia for a series of activities by which full and effective equality is promoted between the members of national minorities and those belonging to the majority nation. The said funds were mainly used to assist economic activities of enterprises in the municipalities of Preševo, Bujanovac and Medvedja. A part of the funds has been spent for the payment of guaranteed wages in individual enterprises in the area. In 2002 activities aimed at the economic recovery of enterprises were continued through assistance to social programmes. A series of enterprises covered by this programme employ a large number of Albanians from southern Serbia. Of particular importance for the enhancement of full and effective equality in the sphere of economic life is the programme of accelerated employment in southern Serbia being implemented in cooperation with UNDP. The projects of reconstruction of transmission lines in individual units of local self-government are also important for the economy in the south of Serbia.
678. The most significant measures promoting effective equality in the sphere of social life were taken to ensure employment of members of the Albanian national minority in the police force. It is the implementation of a part of a wider plan for reintegration of the Albanian national minority in the social life of the country - "Programme for the solution of the crisis resulting from the activity of Albanian extremist groups in the municipalities of Preševo, Bujanovac and Medvedja". The

Programme has been agreed by the Coordinating Body of the Government of the Federal Republic of Yugoslavia, the Government of the Republic of Serbia and representatives of the OSCE Mission in Belgrade. The Programme has been conceived as a confidence-building measure and as a way of ensuring stability in this area. In this context, after numerous meetings with representatives of the Albanian community and OSCE, agreement was reached about the need to form a multi-ethnic police in the three municipalities in southern Serbia inhabited by the Albanian national minority.

679. In the period from 21 May to 14 July 2001, 70 policemen successfully completed a five-day and a five-week training course and immediately took up their duties. The experience and knowledge acquired at these crash courses were also used in the preparation of a curriculum for the course for multi-ethnic police organized by and realized in the Training Centre in Mitrovo Polje on Mt Goč.
680. In the period from 6 August 2001 to 28 June 2002, a total of 375 (of whom 28 women) policemen, within four groups, completed a training course for multi-ethnic police force; 245 participants were Albanians, 125 Serbs, four Roma and one Yugoslav. The Public Security Department of the Ministry of the Interior of the Republic of Serbia (MUP), in cooperation with the OSCE Mission - Law Enforcement Department, was in charge of the realization of the training course (on the basis of the Decision of the Minister on the recruitment of participants for the training course for multi-ethnic police force in Preševo, Bujanovac and Medvedja).
681. The domestic teaching staff, hired by the director of the Training Centre according to a list of lecturers from the police educational institutions and from among the ranks of prominent experts from the departments of the Republic of Serbia MUP, as well as some foreign lecturers (training instructors) engaged by OSCE, participated in the implementation of the Programme. Upon completion of training in the Training Centre in Mitrovo Polje, practical (field) training was continued in the police stations according to a special programme agreed upon between the Republic of Serbia MUP and OSCE. The purpose of the implemented Programme for multi-ethnic police for Preševo, Bujanovac and Medvedja was to enable the participants to gain knowledge, skills and practices in order to be able, after the completion of training, to successfully discharge the basic police duties in the area of these municipalities.
682. In accordance with the recommendations of OSCE, the Council of Europe and relevant UN agencies, the concept of introducing multiethnic police as a universal principle will be applied also in other regions with mixed ethnic makeup of the population (the district of Raška). In this way inter-ethnic tensions and more serious conflicts as well as possible attempts of destabilization of these areas will be averted because the citizens will look upon multi-ethnic police with greater confidence than is the case at present.

D) <u>Participation of minorities in the bodies of central and local government</u>

683. The lack of constitutional provisions on proportional representation of the members of minorities in public services and State authorities made possible in the Republic of Serbia the passage of the election law which turned Serbia into one election unit while prescribing, at the same time, the electoral threshold of 5 per cent of the votes to be won in the elections to obtain a deputy mandate (the Law of the Republic of Serbia on the election of national deputies). Such a solution made it practically impossible for political parties of small national minorities to participate in parliamentary life except through coalitions. The Law on the Protection of Rights and Freedoms of National Minorities devote a considerable space to effective participation of national minorities in decision-making on issues relating to their specificities, in the organs of authority and in administration. This Law provides for that, in regard to employment in public services, the national composition of the population and the knowledge of the languages spoken in the territory of the relevant authority or service should be taken into account. At the federal level a commission has been set up to prepare the amendments to the election laws at all levels with a view to changing the existing situation and enabling the participation of members national minorities in public services and State organs of authority.
684. The effective participation in individual spheres of social life of importance to national minorities will be made possible with the assistance of the institution of national councils of national minorities which are conceived as bodies with some public and legal powers that may be accorded them in the fields of education, media and culture. According to the explicit provision of Article 19 of the Law on the Protection of Rights and Freedoms of National Minorities, national councils represent national minorities in the fields of the official use of language and script, education, media and culture. Pending the adoption of a separate law, national councils will be elected by assemblies of electors of national minorities. Electors of national minorities, in keeping with Article 24 of this Law, may be

deputies in the Assembly of the FRY, member republic or autonomous province elected to these functions on account of their belonging to a national minority, or who have declared their belonging to a national minority and who speak the language of the minority. Any deputy in the assembly of a unit of local self-government in which the language of a national minority is in official use may also act as an elector for the purpose of electing national councils. Every citizen who declared his belonging to a national minority and whose candidacy has been supported by at least 100 members of a minority who have the right to vote, or who has been put up as a candidate by a national organization or an association of a national minority, may also be an elector for the election of national councils. According to Article 14 of the Regulation concerning the manner of work of the assemblies of electors for the election of national councils of national minorities ("Official Gazette of the Federal Republic of Yugoslavia" No. 41/2002) national councils will be elected at the assembly of electors in accordance with D'Hondt's electoral system.

685. At the moment of preparing this report national councils of two national minorities - Hungarian and Ruthenian - have been formed. Round tables are under way devoted to the education of other minorities about the formation of assemblies of electors for the election of national councils of national minorities.
686. Representation of members of national minorities in the organs of authority is realized in practice. Representatives of minorities are included in the work of the executive branch of power both at the level of the republics and at the federal level. For example, one of the Vice-Premiers of the Republic of Serbia comes from the ranks of the Hungarian national minority; one Assistant to the Prime Minister is a member of the Ruthenian national minority. The Federal Minister of National and Ethnic Communities is a Bosniac; one of his Assistants is a member of the Hungarian minority, whereas one of his advisers comes from the Roma community.
687. Members of minorities participate in the work of the legislative branch of power at both the federal and the Republic levels. There are members of minorities in both Chambers of the Federal Assembly. Out of 138 deputies in the Federal Assembly Chamber of Citizens at present, two deputies are Hungarians and one is a Slovak. In the Chamber of Republics which, according to the Constitution of the Federal Republic of Yugoslavia has 40 deputies, one deputy is a Hungarian and one is a Bosniac.
688. In the National Assembly of the Republic of Serbia, out of 250 deputies under the Constitution, 10 deputies are Hungarians, 3 are Bosniacs and 2 are Romanians.
689. Members of national minorities are represented the most in the organs of authority of the Autonomous Province of Vojvodina where they constitute a considerable part of the total number of population.

E) Protection of minorities from persecution and hatred

690. The Constitution of the Federal Republic of Yugoslavia contains a general provision relating to the protection of minorities from persecution and hatred. Any incitement or encouragement of national, racial, religious or other inequality as well as the incitement and fomenting of national, racial, religious and other hatred and intolerance (Article 50 of the Constitution of the Federal Republic of Yugoslavia) is contrary to the Constitution and punishable.
691. The Constitution of Serbia is less specific in this respect compared to the federal Constitution because it does not contain the general provision on unconstitutionality and punishability of various forms of persecution, hatred and intolerance on grounds of nationality. However, the Constitutions provides for the possibility of the limitation of freedom of the press and freedom of association if their exercise is aimed at "incitement of national, racial or religious hatred and intolerance".
692. The Law on the Protection of Rights and Freedoms of National Minorities provides for a political mechanism for the protection of minority rights through the Council for National Minorities. The makeup and competencies of this Council will be determined by the Federal Government, but it is foreseen that representatives of national councils will obligatorily be members of the Federal Council.
693. In the legal system of the country no specific legal means are provided for the protection of minority rights guaranteed by the constitutions, but these rights can mainly be protected by the federal constitutional complaint as a means of protection of constitutional rights. The Law on the Federal Constitutional Court ("Official Gazette of the FRY" No. 36/92) provides for in its Article 37, paragraph 3, that a constitutional complaint may be filed on behalf of the person whose rights or freedoms have been violated, by the federal organ concerned with human and minority rights. The Law on the Protection of Rights and Freedoms of National Minorities provides for that the federal organ concerned with the rights of minorities and the national councils of national minorities will be authorized to file constitutional a complaint in case they judge that constitutional rights and freedoms

of persons belonging to national minorities have been violated or in case they are addressed by a member of a minority community who considers that his/her constitutional rights have been violated.

694. The protection of minority rights is realized also through criminal proceedings. Many criminal offences incriminated by the Criminal Law of the Federal Republic of Yugoslavia and those of the member republics, are prescribed with a view to the protection of minority rights (for example, prohibition of incitement of national intolerance and hatred; prohibition of discrimination, etc.).

- **Discrimination against Roma**

695. In the period from 1 January 1992 to 30 September 2002, 128 attacks on 161 members of the Roma national minority were registered in the territory of the Republic of Serbia (excluding Kosovo and Metohija). Three persons lost their life (Belgrade, Čačak, Jagodina), 9 were inflicted serious bodily injuries and 49 sustained light injuries. Criminal charges were brought against 29 persons and 59 requests were submitted for instituting infraction proceedings. Not all of these attacks were motivated by nationalist or racist reasons, but most of them were caused by other motives, such as the acquisition of material gain, unsettled family and property relations, brawls, etc.
696. There were 349 attacks on 373 members of the Roma national minority in the territory of Kosovo and Metohija (most of them in the period 1998-1999 by Albanian terrorist groups). In these attacks 25 Roma lost their life, 37 suffered serious bodily injuries and 22 were slightly injured. Also, 50 Roma were abducted by the KLA (so-called Kosovo Liberation Army), many of whom were killed.
697. On the basis of the presented indicators it is obvious that in the reporting period the largest number of attacks on the members of the Roma national minority were committed in the territory of Kosovo and Metohija (almost three times as many as in the rest of the Republic of Serbia), in particular in 1998 and 1999 when the activities of Albanian terrorist groups escalated and when besides the members of Serb nationality mostly targeted were the members of the Roma national minority.
698. The attacks on Roma in the territory of the Republic of Serbia, excluding Kosovo and Metohija, were made mostly by the members of an informal group called "Skinheads" who emerged in the Republic of Serbia at the beginning of the 1990s. The Ministry of the Interior of the Republic of Serbia identified over 400 members of the informal group called "Skinheads", 200 of whom in the area of Belgrade.
699. Skinheads are particularly aggressive towards Roma, mostly employed with the city cleaning service, whom they attacked and maltreated mainly during night hours. After the brutal murder of a minor Roma boy, Dušan Jovanović, committed on 18 October 1997, conflicts and revanchist behaviour of the extremists on both sides somewhat escalated but not to a significant extent.
700. In the period from 1992 to September 2002, 45 attacks on 78 Roma were committed by Skinheads for nationalist and racist motives and one attack on a person of other nationality. In these attacks 2 persons lost their life (Belgrade and Čačak), 5 were inflicted serious injuries and 35 persons suffered light injuries. The largest number of attacks occurred in Belgrade (33), in Čačak and Zrenjanin (3 in each of the two cities) and Jagodina, Zaječar, Pančevo, Kraljevo, Novi Sad and Priština (1 in each of these cities). There were no consequences in six cases since the attacked persons managed to flee from the attackers. The members of the police placed nine persons under arrest: two were charged with the murder of Dušan Jovanović in Belgrade, one for the murder of Vitko Dekić in Čačak, five because of the committed criminal offence of inciting national, racial and religious hatred, discord and intolerance from Article 134 of the Criminal Law of the Federal Republic of Yugoslavia, and two persons because of the committed criminal offence of infliction of serious bodily injuries on a Roma, Boban Petrović, on 6 March 1995. Requests for instituting proceedings for minor offences were submitted against 39 members of Skinheads.
701. These events provoked a revanchist behaviour of a certain number of Roma. Thus, 8 cases of attack on 13 members of Skinheads and other young persons who by their appearance resembled members of this group were registered in that period. In these assaults one person was seriously injured and eight suffered slight injuries. All attacks, with the exception of those in Subotica and Novi Sad, took place in Belgrade (one of them in Lazarevac). In four cases the members of the police brought criminal charges against 28 persons for the criminal offence of inciting national, racial and religious hatred, discord and intolerance from Article 134 of the Criminal Law of the Federal Republic of Yugoslavia. Three persons were brought in and requests for instituting proceedings for minor offences against them were submitted.

702. The measures taken by the Ministry of the Interior of the Republic of Serbia prevented further conflicts, so that after 1998 a negligible number of attacks on Roma by the Skinheads was registered both in the area of Belgrade and in other major cities in the territory of the Republic of Serbia.

CRIMINAL OFFENCES AGAINST FREEDOMS AND RIGHTS OF MAN AND THE CITIZEN UNDER THE CRIMINAL LAW OF THE REPUBLIC OF SERBIA FOR THE PERIOD 2000-2001

Name of criminal offence and No. of Article from the Criminal Law of the Republic of Serbia	2000			2001		
	Reported persons	Accused persons	Sentenced persons	Reported persons	Accused persons	Sentenced persons
Violation of equality of the citizen, Art. 60	**1**	-	-	**6**	-	-
Violation of equal rights to use one's language and script, Art. 61	-	**2**	**2**	**22**	**4**	**2**
Coercion, Art. 62	**178**	**67**	**44**	**190**	**100**	**68**
Unlawful deprivation of freedom, Art. 63	**55**	**31**	**13**	**116**	**19**	**12**
Kidnapping, Art. 64	**55**	**23**	**15**	**63**	**29**	**19**
Extraction of statement Art. 65	**32**	**7**	**6**	**66**	**13**	**9**
Maltreatment in employment, Art. 66	**145**	**67**	**22**	**66**	**13**	**9**
Threatening of security, Art. 67	**145**	**67**	**22**	**215**	**50**	**15**
Offence against inviolability of home, Art. 68	**11**	**61**	**15**	**45**	**76**	**11**
Illegal search, Art. 69	**1**	**5**	-	**8**	**2**	-
Unauthorized wiretapping and sound recording, Art. 70	**1**	-	-	**3**	**6**	**1**
Unauthorized photographing, Art. 71	-	**3**	-	-	**4**	**2**
Unauthorized publishing of another person's document, portrait, photographs, film or phonogramme, Art. 71a	-	-	-	-	**4**	**2**
Violation of secrecy of correspondence or other mail, Art. 72	**2**	**3**	**1**	**3**	**3**	**2**
Unauthorized disclosure of secrets, Art. 73	-	-	-	-	**1**	-
Violation of rights to have recourse to legal remedy, Art. 74	**3**	-	-	**3**	-	-
Prevention of printing and distribution of printed matters and radio and TV broadcasts, Art. 75	-	-	-	**2**	-	-
Preventing or disturbing a public meeting, Art. 76	-	**1**	-	**6**	-	-

Note: The Amendments to the Criminal Law of the Republic of Serbia of March 2002 increased the penalties for minor offences under Arts. 64, 68-73 and Art. 76 and introduced a new criminal offence – Violation of the freedom of movement and freedom to choose residence
Table 1

CRIMINAL OFFENCES AGAINST DIGNITY, PERSONALITY AND MORALS UNDER THE CRIMINAL LAW OF THE REPUBLIC OF SERBIA IN THE PERIOD 2000-2001

Name of criminal offence and Article from the Criminal Law of the Republic of Serbia	2000			2001		
	Reported persons	Accused persons	Sentenced persons	Reported persons	Accused persons	Sentenced persons
Rape, Art. 103	**203**	94	77	**169**	142	113
Coercion to sexual intercourse or unnatural carnal act, Art. 104	1	**-**	**-**	**2**	**1**	**-**
Sexual intercourse or unnatural carnal knowledge of infirm person, Art. 105	**16**	**3**	**2**	**20**	**7**	**6**
Sexual intercourse or unlawful carnal knowledge of a person under 14, Art. 106	**25**	**29**	**26**	**32**	**29**	**28**
Sexual intercourse or unnatural carnal act by abuse of official position, Art. 107	**6**	**3**	**-**	**6**	**3**	**2**
Carnal acts, Art. 108	**95**	**58**	**44**	**113**	**71**	**55**
Seduction, Art. 109	**2**	**3**	**2**	**1**	**-**	**-**
Unlawful carnal act, Art. 110	**23**	**8**	**6**	**29**	**19**	**15**
Pimping or enabling carnal acts Art. 111	**5**	**7**	**5**	**5**	**4**	**3**

Note: The Amendments to the Criminal Law of the Republic of Serbia of 2002 increased the penalties for criminal offences under Arts. 103-107 and Art. 110.

Table 2

ENFORCEABLE DEATH SENTENCES
IN THE PERIOD FROM 1992 TO 2001

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Enforceable death sentence	**-**	**-**	**-**	**-**	**-**	**2**	**3**	**-**	**12**	**2**

Table 3

CRIMINAL OFFENCES AGAINST LIFE AND BODY
IN THE REPUBLIC OF SERBIA FROM 2000 TO 2001

Name of criminal offence and Article from the Criminal Law of the Republic of Serbia	2000			2001		
	Reported persons	Accused persons	Sentenced persons	Reported persons	Accused persons	Sentenced persons
Murder, Art. 47	**400**	180	149	**419**	274	238
Voluntary manslaughter, Art. 48	2	**9**	**9**	**-**	**18**	**16**
Murder in the second degree, Art. 49	**13**	**14**	**13**	**6**	**13**	**10**
Infanticide, Art. 50	**17**	**14**	**13**	**14**	**9**	**7**
Inducement to and assistance in committing suicide, Art. 51	**5**	**4**	**3**	**10**	**3**	**2**
Illegal abortion, Art. 52	**1**	**4**	**2**	**58**	**5**	**4**
Grievous bodily injury, Art. 53	**1487**	**1134**	**949**	**1626**	**1199**	**1019**
Light bodily injury, Art. 54	**2358**	**3000**	**1967**	**2473**	**3232**	**2107**
Participation in fights, Art. 55	**302**	**222**	**153**	**317**	**218**	**175**
Threat by dangerous weapon in fight or quarrel Art. 56	**572**	**393**	257	**702**	**430**	278
Exposure to danger, Art. 57	**8**	1	-	**6**	**1**	**-**
Desertion of infirm person, Art. 58	7	**3**	2	3	**3**	**1**
Failure to help, Art. 59	2	**8**	3	3	**-**	**-**

Note: The Amendments to the Criminal Law of the Republic of Serbia of March 2002 in Art. 47 commuted death sentence with 40 years of imprisonment

Table 4

CRIMINAL OFFENCES UNDER THE CRIMINAL LAW OF THE REPUBLIC OF SERBIA RELATED TO TORTURE
IN THE PERIOD FROM 2000 TO 2001

Name of criminal offence and Article from the Criminal Law of the Republic of Serbia	2000			2001		
	Reported persons	Accused persons	Sentenced persons	Reported persons	Accused persons	Sentenced persons
Unlawful deprivation of freedom, Art. 63.	**55**	31	13	**116**	19	12
Extraction of statement, Art. 65	32	**7**	**6**	**66**	**13**	**9**
Maltreatment in employment, Art. 66	**145**	**67**	**22**	**215**	**50**	**15**
Sexual intercourse or unnatural carnal act by abuse of official position, Art. 107	**6**	**3**	**-**	**6**	**3**	**2**
Abuse of official position, Art. 242	**1795**	**681**	**432**	**2576**	**666**	**380**
Violation of the law by a judge, Art .243	**277**	**4**	**2**	**691**	**4**	**1**

Note: The Amendments to the Criminal Law of the Republic of Serbia of 2002 under Art. 244a, a new criminal offence was introduced "Failure to take measures to prevent sexual abuse of a detained person".

Table 5

Statistical data for 2002

Courts of general jurisdiction		Special courts		
The Supreme Court of Serbia	**1**	**Higher Trade Court**	**1**	
District courts	**25**	**Trade courts**	**17**	
Municipal courts	**129**	**Administrative court**	**1**	
Courts of Appeal	**4**			
TOTAL				**178**

Note: The number of courts does not include courts in Kosovo and Metohija

Election of presidents of courts and judges in 2002

Presidents of courts who are not elected (excluding Kosovo and Metohija)		Elected presidents of courts		Judges elected in 2002	
Presidents of District Courts	**4**	**Presidents of Courts of general jurisdiction**	**2**	**Supreme Court of Serbia**	**7**
Presidents of Municipal Courts	**10**	**Presidents of Trade Courts**	**2**	**District Courts**	**11**
Presidents of Trade Courts	**1**			**Municipal Courts**	**-**
				Trade Courts	**10**
TOTAL	**15**			**TOTAL**	**28**

Table 6

CRIMINAL OFFENCES AGAINST FREEDOMS AND RIGHTS OF MAN AND THE CITIZEN UNDER THE CRIMINAL LAW OF THE REPUBLIC OF SERBIA
- INFRINGEMENT UPON PRIVACY
FOR THE PERIOD FROM 2000 TO 2001

Name of criminal offence and Article from the Criminal Law of the Republic of Serbia	2000			2001		
	Reported persons	Accused persons	Sentenced persons	Reported persons	Accused persons	Sentenced persons
Disturbance of inviolability of home, Art. 66	**11**	**61**	**15**	**45**	**76**	**11**
Illegal search, Art. 69	**1**	**5**	**-**	**8**	**2**	**-**
Unauthorized wiretapping and sound recording, Art. 70	**1**	**-**	**-**	**3**	**6**	**1**
Unauthorized photographing, Art. 71	**-**	**3**	**-**	**-**	**4**	**2**
Unauthorized publishing of another person's document, portrait, photographs, film or phonogramme, Art. 71a	**-**	**-**	**-**	**-**	**2**	**2**
Violation of secrecy of correspondence or other mail, Art. 72	**2**	**3**	**1**	**3**	**3**	**2**
Unauthorized disclosure of secrets, Art. 73	**-**	**-**	**-**	**-**	**1**	**-**

Note: The Amendments to the Criminal Law of the Republic of Serbia of March 2002 increased the penalties for offences under Arts. 68,69,70,71 and 72

CRIMINAL OFFENCES AGAINST HONOUR AND REPUTATION UNDER THE CRIMINAL LAW OF THE REPUBLIC OF SERBIA
IN THE PERIOD FROM 2000 TO 2001

Name of criminal offence and Article from the Criminal Law of the Republic of Serbia	2000			2001		
	Reported persons	Accused persons	Sentenced persons	Reported persons	Accused persons	Sentenced persons
Defamation, Art. 92	**72**	**705**	**227**	**148**	**950**	**274**
Insult, Art. 93	**58**	**2167**	**1036**	**75**	**2272**	**1165**
Disclosure of personal and family matters, Art. 70	**-**	**21**	**12**	**4**	**23**	**8**

Table 7

CRIMINAL OFFENCES AGAINST LIFE AND BODY
IN THE REPUBLIC OF SERBIA IN THE PERIOD FROM 2000 TO 2001

Name of criminal offence and Article from the Criminal Law of the Republic of Serbia	2000			2001		
	Reported persons	Accused persons	Sentenced persons	Reported persons	Accused persons	Sentenced persons
Murder, Art. 47	**400**	180	149	**419**	274	238
Voluntary manslaughter, Art. 48	2	**9**	**9**	**-**	**18**	**16**
Murder in the second degree, Art. 49	**13**	**14**	**13**	**6**	**13**	**10**
Infanticide, Art. 50	**17**	**14**	**13**	**14**	**9**	**7**
Inducement to and assistance in committing suicide, Art. 51	**5**	**4**	**3**	**10**	**3**	**2**
Illegal abortion, Art. 52	**1**	**4**	**2**	**58**	**5**	**4**
Grievous bodily injury, Art. 53	**1487**	**1134**	**949**	**1626**	**1199**	**1019**
Light bodily injury Art. 54	**2358**	**3000**	**1967**	**2473**	**3232**	**2107**
Participation in fights, Art. 55	**302**	**222**	**153**	**317**	**218**	**175**
Threat by dangerous implement in fight or quarrel, Art. 56	**572**	**393**	257	**702**	**430**	278
Exposure to danger Art. 57	**8**	1	-	**6**	**1**	**-**
Desertion of inform person, Art. 58	7	**3**	2	3	**3**	**1**
Failure to help, Art. 59	2	**8**	3	3	**-**	**-**

Note: The Amendments to the Criminal Law of the Republic of Serbia of March 2002 in Art. 47 commuted death sentence with 40 years of imprisonment

Table 8

CRIMINAL OFFENCES AGAINST MARRIAGE AND FAMILY UNDER THE CRIMINAL LAW
OF THE REPUBLIC OF SERBIA IN THE PERIOD FROM 2000 TO 2001

Name of criminal offence and Article from the Criminal Law of the Republic of Serbia	2000			2001		
	Reported persons	Accused persons	Sentenced persons	Reported persons	Accused persons	Sentenced persons
Plural marriage, Art. 112	**-**	**1**	-	**-**	**1**	-
Solemnization of marriage subject to nullification, Art. 113	**3**	**1**	**1**	**1**	**1**	**1**
Coercion to marry Art. 113a	**-**	**-**	**-**	**-**	**-**	**-**
Providing an unlawful marriage, Art. 114	**-**	**-**	**-**	**3**	**5**	**3**
Companionate marriage with a minor, Art. 115	**68**	**78**	**64**	**73**	**49**	**36**
Taking away of a minor Art. 116	**103**	**48**	**27**	**91**	**50**	**30**
Changing of family status, Art. 117	**11**	**5**	**4**	**4**	**-**	**-**
Neglecting and molesting a minor, Art. 118	**65**	**22**	**12**	**48**	**27**	**16**
Evasion of alimony, Art. 119	**600**	**536**	**338**	**634**	**534**	**330**
Breach of family duties, Art. 120	**29**	**18**	**15**	**23**	**14**	**12**
Incest, Art. 121	**2**	**3**	-	**6**	**1**	**-**

Note: The Amendments to the Criminal Law of the Republic of Serbia of March 2002 increased the penalties for offences under Arts. 116, 118, qualification under Article 119 has been changed and a new criminal offence has been introduced, Article 118a – Violence in family

Table 9

CRIMINAL OFFENCES AGAINST ELECTORAL RIGHTS AND FREEDOM OF EXPRESSION UNDER THE CRIMINAL LAW OF THE REPUBLIC OF SERBIA IN THE PERIOD FROM 2000 TO 2001

Name of criminal offence and Article from the Criminal Law of the Republic of Serbia	2000			2001		
	Reported persons	Accused persons	Sentenced persons	Reported persons	Accused persons	Sentenced persons
Violation of the right to stand for election, Art. 79a	**-**	**-**	-	**2**	**-**	-
Violation of the right to vote, Art. 80	**8**	**-**	**-**	**2**	**-**	**-**
Violation of the right of choice when voting, Art. 81	**4**	**-**	**-**	**12**	**-**	**-**
Abuse of the right to vote, Art. 82	**1**	**1**	**1**	**-**	**3**	**1**
Violation of secrecy of vote, Art. 83	**3**	**1**	**1**	**1**	**2**	**-**
Election fraud, Art. 84	**8**	**-**	**-**	**6**	**7**	**-**
Destruction of election documents, Art. 85	**-**	**-**	**-**	**1**	**1**	**-**

Note: The penalties for all criminal offences under Arts. 79a to 85 were increased by the Amendments to the Criminal Law of the Republic of Serbia of March 2002.

Table 10

COORDINATION CENTRE FOR KOSOVO AND METOHIJA
- JUSTICE AND HUMAN RIGHTS SECTION -

CONSIDERATION OF THE CRIMINAL-LEGAL SYSTEM AND THE SITUATION OF HUMAN RIGHTS IN KOSOVO AND METOHIJA SINCE THE ARRIVAL OF THE UNITED NATIONS INTERNATIONAL FORCES (1999-2002)

October 2002

I GENERAL CONSIDERATIONS

A. INTRODUCTORY REMARKS

The Justice and Human Rights Section of the Coordination Centre for Kosovo and Metohija (hereinafter the Justice Section) prepared a survey of the criminal-legal system of Kosovo and Metohija with special emphasis on the situation of human rights and the present status of minority ethnic communities. The survey covers the period from the arrival of the forces of the United Nations and the establishment of the civil administration of UNMIK , i.e. June 1999 to May 2002. With a view to the objective information of the public about the situation of human rights in Kosovo and Metohija and the activities being taken to ensure their full respect, the Justice Section prepared the said survey using four periodical reports prepared by the relevant institution attached to the Mission of the Organization of Security and Cooperation in Europe in Kosovo and Metohija (hereinafter OSCE) as the source material; also the statements of Mr. Marek Antonio Novicki, the ombudsman for Kosovo, and other relevant literature and documents (laws, international conventions, periodicals). Besides the written sources, of importance in the preparation of this work were also the experiences gained by members and contributors of the Section in the cooperation with representatives of the civil administration. Equally important in this respect is the direct participation in the defence of the cases relating to persons accused of the most serious crimes as well as in representing the families of injured parties in cases in which the Albanians were accused of having committed ethnically motivated crimes.

It can be noticed already at first sight that the mentioned rights and freedoms are seriously threatened and violated in Kosovo and Metohija. That is why there is a need for a comprehensive engagement of UNMIK, international organizations active in Kosovo and Metohija, the Coordination Centre and individuals in order to solve these problems. Therefore, the Coordination Centre, cooperating with the international community, wishes to point to the perceived shortcomings and to contribute to the largest possible extent to eliminating the past negative experience in regard to human rights. In this sense, the Coordination Centre stands ready for cooperation and channelling of all forms of assistance that may be offered by groups or individuals. This is stressed in particular having in mind the well known position and desire of the international community to see a multi-ethnic Kosovo, including the full respect for the rights of all ethnic communities.

The problem of Kosovo and Metohija is all the more interesting because all civil authority (legislative, executive and judicial) is exercised by UNMIK while military authority is in the hands of KFOR. Thus, by observing the functioning of the organs of international authority it is possible to assess the degree of success achieved by the international community in the management of specific problems relating not only to the global but also the local policy. It is clear that the participation of the Coordination Centre in this serious task, as a representative of the two Governments for the solution of the problem of Kosovo and Metohija, should be active and constructive. The problem is all the more compounded if one has in mind some extremely commonplace rhetoric that could be heard on both sides until recently. This rhetoric is now outdated and a minimum of basic civilizational criteria and conditions of life must be equally ensured to all inhabitants of Kosovo and Metohija regardless of their ethnic origin or religion.

In their nationalist and chauvinist enthusiasm the Albanians perceived the possibility of gaining, through the disappearance of the sovereignty of the Federal Republic of Yugoslavia and that of Serbia in Kosovo and Metohija, an independent, ethnically pure, state, disregarding in the process the criteria of civil society, the State and modern civilizational trends as well as the present state of international relations in an endeavour to abuse the disposition of the international community to address the problems of their ethnic community. These criteria do not recognize ethnic cleansing, religious intolerance, destruction of property and the most brutal violation of human rights and freedoms, all of which have become widespread. Particularly critical was the period from June 1999 through the year that followed, when hundreds of Serbs, Roma, Goranci and members of other minority communities were tortured or

killed; thousands of houses were looted and burned; more than 1300 persons were abducted and their fate is unknown to this date; dozens of Serbian Orthodox churches were flattened or considerably damaged; the region of Metohija was ethnically cleansed whereas the few Serbs who had remained there live in fear and uncertainty in the enclaves surrounded by Albanians from all sides. All this notwithstanding, the international forces made no attempt to deal in an effective way with the escalated Albanian extremism. Moreover, with their tolerant attitude towards Albanian misdeeds they contributed to creating the distrust of the minority communities towards the mission in general, and were witnesses of and participants in a number of incidents in which Serbs were the victims, as will be discussed in more detail later in the text.

As to the situation of human rights, there are reports of international organizations whose mission consists in overviewing the functioning of the legal system and assessing the degree of respect for human rights, especially minority rights. Attention is therefore drawn to all four OSCE reports published so far. In this context, it should pointed out that the OSCE mission represents the so-called pillar III of UNMIK and is under the supervision of the Special Representative of the United Nations Secretary-General; consequently, it is not completely independent like some other non-governmental organizations watching the state of human rights, but less influential than OSCE. On the other hand, the relevant data which testify to the violation of human rights in the field of the administration of justice in Kosovo and Metohija come from Serbian lawyers as direct participants in dozens of cases of the defence of accused Serbs, and in representing the wronged parties in the proceedings against the accused Albanians. Despite many obstacles to normal work (access to courts made difficult, difficult access to clients, insufficiently regulated judicial system, poor security arrangements, problems in obtaining documents needed for the case in hand, other problems to be mentioned further in this work), the Serbian lawyers got organized and began to provide legal aid to interested members of minority ethnic communities. They provided assistance primarily in the sphere of criminal law, but also in the sphere of property rights. This service started to function in June 2001. Since then a good number of cases in which Serbian lawyers acted as defence counsels or represented the wronged parties were completed. Hundreds of property-legal claims for the restitution of seized properties were collected and many other jobs finished relating to the realization of the rights of Serbs and other non-Albanians before the institutions of Kosovo and Metohija. The cases of the defence of Serbs charged with alleged ethnically motivated war crimes and murders, their unlawful detention for many months as well as their sentencing in the first instance by Albanian mono-ethnic trial chambers, are warning examples of the most flagrant forms of violation of the fundamental human rights.

B. THE LAW IN FORCE IN KOSOVO AND METOHIJA

Viewed globally the major problem in the functioning of justice in Kosovo and Metohija is the *question of the law being applied*, that is the question of the hierarchy of legal acts. The supreme legal act in Kosovo and Metohija, as already mentioned, is UNSC resolution 1244, to which should be added the Constitutional Framework for Interim Self-Governance in Kosovo adopted in May 2001. According to the Decree of the Special Representative, the decrees of the Special Representative and the law that was *in force until 22 March 1989* as the date of the taking over by the Republic of Serbia of legislative power from the then Socialist Autonomous Province of Kosovo, are to be applied in Kosovo and Metohija. In case of conflict, the decrees of the Special Representative will prevail. Besides, all persons exercising public functions must respect *international human rights standards* and in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms. The appointed international judges are faced with great problems at the outset of their term of office, because most of them are not familiar with the applicable law. The consequence of this are delayed proceedings and passing of inadequate rulings which are of importance to the further course of the proceedings. Among the laws important for the respect of human rights mention should be made of the fact that the old 1977 Penal Law of Kosovo and the Law on Criminal Procedure (hereinafter the LCP) are being applied. Through the activities of the Special Representative in respect of adopting decrees, some provisions of the LCP have been suspended or amended, which will be elaborated on later in this report.

II THE JUDICIAL SYSTEM OF KOSOVO AND METOHIJA

A. THE SITUATION IN THE ADMINISTRATION OF JUSTICE. PARTICIPATION OF INTERNATIONAL JUDGES AND PROSECUTORS

After the initial period of work of the courts and prosecutor' s offices, in which exclusively representatives of Albanians took part, the appointment of international judges and prosecutors should be commended, especially in those cases in which the members of non-Albanian ethnic groups are the accused. These judges and prosecutors are expected to make the proceedings unbiased and objective and to help the accused regain confidence in getting a fair trial in contrast to the past proceedings conducted by mono-ethnic Albanian trial chambers and prosecutors.

According to the words of a number of international judges and prosecutors, the major problems facing them at the early stage of their engagement are the insufficient knowledge of the domestic law and the animosity of local (Albanian) judges and prosecutors. Thus, the first international judge was Mr. Cristar Karphamar, appointed in February 2000, in the case of 49 Albanians who provoked disorders on the bridge across the river Ibar dividing the northern and southern parts of Kosovska Mitrovica. He points out the problems in the accurate translation and application of the Penal Law of Kosovo, the LCP, tensions among local Albanian judges who were exposed to the pressure of extremists. Furthermore, foreigners are not familiar with the deep-rooted customs of the local population and their culture, which can breed the animosity referred to above.

He notes that there does not exist the system of protection of witnesses, the wronged and the suspects nor is there a compensation for the unjustifiably accused. Also, the interim nature of the function of judges and prosecutors, i.e. their dependence on the executive authorities which assess their suitability and capacity in order to extend their six-month contract, is also a problem. This is no doubt unacceptable and may cause great harm to both the justice system and the accused.

B. INFLUENCE OF EXECUTIVE AUTHORITIES ON THE JUDICIARY

On the other hand, the manner of their appointment is subject to criticism as well as their attitude towards the UNMIK Justice Department as an organ of executive power. The local judges and prosecutors are elected, more recently for an indefinite period of time, by the Special Representative at the proposal of the Kosovo Council for Judges and Prosecutors. Likewise, they may be relieved at the proposal of the said Council in case of breach of work discipline or of doubt in their objectivity. The situation in respect of international judges and prosecutors is different because these general rules governing the appointment and relief are not applicable to them, but the rules applicable to all employees of the United Nations. This means that they sign contracts with the Justice Department for a period of only six months with a possibility of renewal. It may happen that their contract be not extended on account of moral integrity or discriminatory work.

Furthermore, in the application of the institute of exception of a judge or a prosecutor provided for by the Law on Criminal Procedure, there are also double standards for these two groups of bearers of judicial functions. Thus, the exception of an international judge or prosecutor is decided upon by the director of the UNMIK Justice Department. In case of an exception, he appoints another international judge or prosecutor, whereas the exception of a local judge or prosecutor is decided upon by the president of the competent court. If the LCP were applied strictly, the presidents of the courts (they are invariably Albanians) would decide on the exception of foreigners. Consequently, not only are international judges and prosecutors outside the regular justice system, without any domestic legal remedies or guarantees applicable to their work, but even the Justice Department has been accorded additional powers in respect of court proceedings. These powers to designate individual judges or prosecutors who are expected to disqualify other international judges designated by the Justice Department itself, compromise the independence of the judiciary and bring international judges and prosecutors themselves in an awkward position.

Another form of interference of the executive power in the judicial authority is the *issuance by the Special Representative of enforceable warrants of detention.* Such a practice should be abandoned, especially in cases where criminal proceedings are under way and where the court has already made a ruling regarding detention. This matter will be discussed in more detail at the appropriate place herein.

C. THE OMBUDSMAN

Within the discussion about the applicable law, the view of Mr. Marek Novicki, performing the function of the ombudsman for Kosovo, will be presented. The Decree No. 2000/38 provides for the existence of ombudsman, who is the defendant of civil rights *sui generis* or the "people' s defence counsel". He is authorized to make inquiries regarding the interim civil administration or any other central or local institution. Any person may apply to the ombudsman and file a complaint against the UN interim administration or against local authorities if he/she considers that his/her rights have been violated by these institutions. The ombudsman has a very important place in the legal system of Kosovo and Metohija because UNMIK and KFOR enjoy absolute immunity in their work and it is not possible to sue them to a regular court. So, the injured individuals, regardless of their social or civil status, may try to defend their rights only by applying to the ombudsman. The ombudsman is a person of high moral authority and dignity, very knowledgeable of law, in a word, a person capable of exerting influence on the organs of authority to get them to rectify the breach of an individual's right before the given organ. At present the ombudsman, Mr. M. Novicki, notes that, for objective reasons, he is approached more frequently by Albanians requesting assistance in clarifying the widespread property-legal problems as a consequence of the unlawful seizure of property by members of the former KLA. As far as Serbs are concerned, he says that he has visited the Serb enclave in Lipljan and saw a real ghetto in which people live there. Within a period of two years 37 Serbs were killed in Lipljan; 14 disappeared and their whereabouts are unknown; 180 bombing attacks have been registered and 250 other forms of harassment. On 23 March 2001, in the vicinity of the Finnish base of KFOR, Albanians opened fire with automatic rifles at a group of Serbs. There were casualties, killed and injured persons. But the military did not react during the incident, claiming that such cases fall within the competence of the UNMIK police. However, the police, for its part, has no logistic power to respond to excessive use of violence on a larger scale. Mr. Novicki says that Serbs in Lipljan have no electricity or telephone lines and that allegedly representatives of UNMIK are not familiar with these problems. As far as the functioning of the judiciary is concerned, he notes that the greatest problem are the Albanian trial chambers for criminal cases. They pronounce punishments of 13, 15 or 20 years of imprisonment against Serbs on the basis of inconclusive evidence; whereas in cases in which there was evidence against Albanians, judgements of not-guilty were passed or no proceedings were instituted at all; or the Albanian prosecutors stopped the investigation and released the detained persons. These are glaring examples of the use of double standards for Albanians and Serbs. Mr. Novicki points out another occurrence dubbed "administrative persecution" by one of the observers. Thus, for example, an electricity bill amounting to 1000 Deutsche marks is sent to a Serb, who is unable to pay the bill. He can make a complaint though to Elektrodistribucija (Electricity Distribution enterprise), but it is controlled by the former KLA members, so the logical outcome is power cut. Finally, it is noted that, with a view to preventing the sell-off of Serb estates, a decision has been brought that no sale and purchase contract can be certified without the approval of the civil administrator. Consequently, the ombudsman Novicki, as an official and a member of the mission, clearly points to the unequal and disadvantaged position of minority ethnic communities (especially the Serb community as the most numerous); also, that there are obvious large-scale violations of human rights; that this is caused, inter alia, by violence being continuously committed by Albanians, which goes unpunished by UNMIK.

D. THE IMMUNITY OF UNMIK AND KFOR

As far as the work and decision-making of the head of UNMIK is concerned, a peculiar fact is that there is no legal remedy against decisions brought by the Special Representative; consequently, his decisions are not subject to the examination of legality by any authority whatsoever. The Decree No. 2000/47 states that KFOR is obliged to respect the laws of Kosovo and Metohija in force and the UNMIK decrees if they are not contrary to the discharge of the mandate accorded them by UNSC resolution 1244. However, the resolution does not give KFOR the right to breach international standards of human rights and freedoms. In this context, one threads on a very sensitive legal ground where KFOR, as an incontestably numerous and powerful military force, has the possibility of assessing arbitrarily and according to its own discretion when the Decrees and laws are contrary to Resolution 1244; that is, as a consequence of this normative confusion, KFOR becomes potentially the most serious threat to the successful exercise of human rights. A representative of the KFOR Legal Department asserts that resolution 1244 gives KFOR the authority to place people in detention for an indefinite period of time without any protection. Such cases where people were detained "on the orders of the KFOR Command", the so-called COMKFOR detentions, could not be challenged in court before the adoption of the above mentioned Decree; however, the practice is somewhat different in the sense that this kind of detention continues to exist and the possibility of being successfully refuted by legal means is practically negligible, because it is a matter of arbitrariness on the part of KFOR.

III PRACTICAL APPLICATION OF LEGAL NORMS

A. REMAND INTO CUSTODY AND KEEPING PERSONS IN DETENTION

In addition to the provisions of the Law on Criminal Procedure relating to the conditions required for remand into custody and for the extension of the period of detention of a defendant, the Decree No. 2000/62 authorizing the competent authorities to issue warrants of detention for a period of up to 30 days when there exist "grounds to suspect that a person perpetrated or was involved in the perpetration, preparation or instigation of acts of violence threatening public peace and order in or outside the territory of Kosovo". The person affected may request that such a warrant be revised by the international judge who should make the final decision.

Cases were registered in Kosovska Mitrovica and Prizren in which a number of women, involved in prostitution by their own confession, were sentenced to relatively short prison terms and deportation, including the ban on return to Kosovo and Metohija. However, the presence of a defence counsel was not ensured in any of these cases despite the fact that the accused persons faced a possible remand into custody.

For a year and a half there was no legal provision according to which any detention, especially detention imposed by KFOR or the UNMIK police, could be challenged in court, which is, however, clearly provided for by Article 5(4) of the European Convention on Human Rights. Overall, it has been noticed that the main reason of resistance on the part of the courts to the application of international norms of human rights is precisely their insufficient knowledge thereof. The adoption of the Decree No. 2000/62 practically introduced something that has already been provided for by the said Convention, and by the LCP for that matter, i.e. a legal remedy against the warrant of detention. However, the above described and other cases that will be mentioned later on testify to the fact that for a year and a half a good many people were unable to challenge the ruling on detention. The described legal situation could be explained from two legal aspects: first, that it is a matter of filling a legal gap by the Decree No. 2000/62 (an explanation that would suit KFOR and the UNMIK police in order to justify the unlawful actions taken); secondly, that in question is the inconsistent application of the provisions of the Convention on Human Rights and those of the LCP (this interpretation would serve as a satisfaction to detained persons that they were not provided a possibility to use the legal remedy against the warrant of detention although they were entitled to it under the law). Considering that this matter was positively regulated by the law in force even before the adoption of the Decree the position that in question is the avoidance of the application of the relevant legal provisions and/or of the international norm seems more appropriate. The facts suggest that many different cases of violation of the rights of the accused persons have been the result of this practice.

B. RECORDED INSTANCES OF INCONSISTENT APPLICATION OF THE LAW BY THE COURTS:

*** Instances of violation of the right to use one's language in court proceedings**

The problems of poor translation are present in all cases *without exception* and without any doubt are the darkest side of the practical functioning of the system of justice in Kosovo and Metohija. The breach of the right to use one's own language, in accordance with the LCP in force is sanctioned as a major violation of the LCP on account of which the sentence must be annulled and the case remanded to the court of the first instance for re-trial and ruling. Also, the European Convention for the Protection of Human Rights and Fundamental Freedoms provides for that the defendant and other parties to the case have the right to use the language which they understand. As time went by, the problem was solved by the engagement of a larger number of translators, but this is still a far cry from an efficient and successful conduct of the proceedings. Due to the trilingual translation (English, Serbian and Albanian), the meaning of a question or of a statement of the parties to the case is often lost; so, the defence counsels many times attended lengthy debates about certain clearly technical questions associated with the conduct of the proceedings, which were the consequence of the lack of professionalism of translators who do not have adequate knowledge in the legal field. In cases where witnesses were Serbs, the investigative judges failed to read aloud the statements to the witnesses; they simply asked them to sign the printed deposition in the Albanian language without verification of its accuracy in the language which the witness

understands. Furthermore, there were cases when the Albanian translators suggested answers to the defendants or witnesses, a point to which the defence counsels drew the attention of the judges on several occasions. In view of the importance of the use of the language which the accused understands, these numerous manipulations and breaches of the law by the Albanian participants in the proceedings (judges, prosecutors, translators) it is considered that UNMIK should, as a matter of urgency, ensure adequate and accurate translation in order to enable in this way a fair trial of the accused.

Another acute and still unresolved problem in the administration of justice in Kosovo and Metohija is inadequate minute taking. The greatest number of objections that can be made concern the manner in which the minutes are taken. It has been noticed that the defence counsels have to devote a great deal of attention to the inclusion of the contents of statements into the minutes. Initially, the rulings on remand into custody or a prolongation of detention served on the accused Serbs were exclusively in the Albanian language. A special problem was the fact that the minutes from the preceding hearing are sent only a few days later, due to the need to be translated; however, mention should be made of the fact that the translation is not in all cases identical to its English or Albanian originals. Furthermore, as a consequence of this, the defence is unable to make timely objections to the contents of the minutes, which may completely distort the real picture of the statement in question. Only recently did the president start the practice of dictating the content of the minutes; however, the minutes are not signed immediately afterwards, but after corrections have been made by the presiding judge and after a few days. This makes possible manipulations and insertion of something that was not said at the main hearing, but into which the defence has no insight. All the above mentioned represents forms of serious violation of the right of the accused to a fair trial conducted in a lawful way.

IV DETENTION, THE RIGHT TO A FAIR TRIAL CONDUCTED IN A LAWFUL WAY

A. PROHIBITION OF ARBITRARY (VOLUNTARY) DEPRIVATION OF FREEDOM AND DETENTION

It came to the notice of the observers that the standard procedure is for the UNMIK police and KFOR to keep the arrested person in detention for 72 hours before bringing him to the investigative judge. This practice represents a violation of the provisions of the LCP which provides for urgent proceedings to be conducted in the manner as described earlier. The observer mission drew the attention of the UNMIK police to this bad practice but despite its being brought to the notice of the police there has been no practical sign that the UNMIK police gave up the so-called 72-hour rule. The report states that the detainees in Gnjilane, Prizren and Priština spent 8, 9 or more days in detention before being questioned by the investigative judge. For example, Arben and Arsen Bajrami were arrested because of a theft committed in a non-governmental organization in Uroševac and were taken to the District Prison in Priština. Only after 13 days were they questioned by the investigative judge. Throughout the duration of the detention no written decision about detention was served on to them.

B. THE RIGHT TO A TRIAL WITHIN A REASONABLE PERIOD OF TIME

A detained person has the *right to a trial within a reasonable period of time* or to be released. The proceedings must be conducted very urgently if a person is in detention and the court is obliged to set the dates for the trial within two months from the bringing in of the indictment. There is a widespread violation of these provisions; it can be noted in particular that the courts are in arrears in regard to the finalization of trials. Thus, for example, ZORAN STANOJEVIĆ was detained on 14 August; on 9 May 2000 he was charged with the murder of an Albanian in Račak in January 1999. The set date for the first trial was 25 July 2000, but the trial was postponed indefinitely due to the non-appearance of the injured parties and witnesses. A second trial before a new trial chamber should have taken place on 24 January 2001, however, it had to be postponed because of power failure and was for 6 February 2001. On that date it was deferred again for process reasons for an indefinite period of time. Namely, the public prosecutor informed the two alleged victims that their allegations had been deleted from the indictment. The proceedings were resumed on 20 February 2001 and the sentence of the first-instance court was confirmed.

The trial of IGOR SIMIĆ for genocide, detained in August 1999 and indicted in June 2000, began on 5 December 2000. It was postponed several times for various reasons: inadequate heating in the courtroom; the equipment for simultaneous interpretation out of order; non-appearance of the UN staff;

non-appearance of witnesses; and, above all, for security reasons. In April 2001 the international prosecutor gave up the indictment and Simić was set free.

The following fact which came to the notice of OSCE is particularly interesting. Namely, the *filing of complaint against the warrant of detention considerably postpones the carrying out of the investigative procedure;* because of this the accused tend to give up the right to lodge complaints against such warrants, and thus deprive themselves of the right to file a complaint by which the legality of the warrant of detention could be challenged. A case of a minor boy has been registered in Gnjilane, whose defence counsel filed a complaint against the warrant of detention at the end of November 2000. The matter reached the Supreme Court of Kosovo wherefrom it was returned as late as 7 January 2001, thus considerably prolonging the proceedings. The interviewed detainees confirmed to the monitors that they are advised by their defence counsels not to complain about the warrant of detention because in this way they stand a better chance of being released earlier.

C. EXTENDED PERIOD OF DETENTION DURING INVESTIGATION

The inquiries made by the observer mission confirm that such cases *affected Serbs and minors far more* than others. The Decree No. 1999/26 provides for that detention during the investigation may be extended to up to *twelve months before bringing in the indictmen*t, which is a deviation from the provision of the LCP providing for a period of 6 months for such a case. Mention will be made here of a minor Serb boy with probable mental disorder who was detained on 27 September 1999 on account of charges of having committed the criminal offence of genocide. The investigation against him was completed on 23 December 1999, by the date of trial set for 10 July 2000 was postponed for 14 August 2000 at the instance of the international prosecutor, without the consent of the president of the judges hearing the case. At the outset of the trial the prosecutor altered the charge of genocide and charged the accused with "causing general public danger". The minor boy spent almost a whole year in detention before the trial started. In addition to all the aggravating circumstances, his name was published in the Albanian press, which is a violation of the LCP prohibiting such an act. The minor was found guilty and, despite the recommendations of the international prosecutor and the counsel for the defence for his release, he was sentenced to a prison term of 1-5 years to be spent in a penal-correctional institution. Some other Serbs - Slobodan Joksimović, Ljubomir Stolić and Miloš Škulić went through similar experience; they were detained without being indicted.

D. DETENTION DURING INVESTIGATION ON THE GROUNDS OF THE PROTECTION OF PUBLIC ORDER

An arrested Albanian, a member of the former KLA, was involved in a series of shootings in the centre of Priština. He was charged with having committed a murder in self-defence. This claim is in contradiction with the fact that the ballistic expertise showed that the victim was killed from the back. The investigative judge made a major mistake when he released the suspected shortly after the arrest because his stay outside the prison could cause a great concern of citizens which is why the investigative judge should have ruled that he be placed in custody. There are here examples of the obvious intimidation of judges by the gangs of criminals and by individuals, which results in the fact that they freely move around in Kosovo, endangering public peace and order as well as the safety of citizens.

E. DETENTION OF MENTALLY ILL PERSONS

There are a number of problems associated with mentally ill persons in criminal proceedings: 1) Is such a person capable of enduring the trial. The LCP contains provisions which provide for the termination or temporary suspension of the proceedings in cases of mental illness. It has been noticed that the proceedings are not terminated at the early stage, although it was obvious that the defendant was unable to understand the court proceedings; 2) Was the person at the time of the commission of criminal offence in a mental condition in which such a person could be aware of the consequences of his/her behaviour.

The Law applied in Kosovo and Metohija in the pronouncement of measures of security is not in conformity with international standards of human rights due to the fact that the court may remand a mentally ill person into custody for an indefinite period of time. The European Convention on Human

Rights provides for that rulings on detention for these persons are subject to revision and that they have the right to challenge the legality of the warrant of detention.

There is no specialized medical institution in Kosovo and Metohija which would ensure appropriate medical treatment of mental patients and report on the progress of the treatment to the court. The case of VOJISLAV STEVIĆ, accused of having thrown a hand grenade into the room in which were his wife, his daughter-in-law and his mother-in-law, all of whom sustained serious injuries on that occasion, suggests that Stević, in the opinion of a KFOR doctor, was mentally ill and was not aware of the meaning of his act. It turned out in the court that Stević hardly understood questions posed to him and, therefore, his answers were confused. The court ruled that Stević should undergo obligatory psychiatric treatment within the framework of in an out-patient treatment programme and to be released, but it remained unclear whether there is such a programme at all. In the past period, UNMIK undertook few activities aimed at solving the problem of prolonged detention and detention outside the court. There does not exist an adequate institution for the treatment of mentally ill persons and the situation is very bad in this respect.

F. DETENTION ON THE ORDER OF THE KFOR COMMANDER - COMKFOR DETENTIONS

The so-called COMKFOR detentions are a flagrant form of violation of the international conventions and decrees, which is reflected in usurping lawful court decisions. It must be pointed out that KFOR continues to impose detentions even when the judge had previously ruled that the person involved be released. In this way international standards of human rights are openly breached by KFOR, having in mind that, as a military force under the UN flag, KFOR is bound to respect all the standards of this Organization. When KFOR brings a person into the system of civilian criminal justice, it is bound to comply with the decision of the judiciary brought within the legally prescribed procedure. The precedents of this type are a counterpart to the powers of the Special Representative to impose detention on a person released by the court. But, however objectionable these solutions sui generis may be, there were examples in practice of the Special Representative' s useful decisions on imposing detention, especially in situations when the Albanian judges released Albanians charged with ethnically motivated crimes (e.g.Afrim Zequiri).

G. THE RIGHT OF PERSONS IN DETENTION TO MEDICAL TREATMENT

The standard minimum UN rules for the treatment of prisoners provide for that in each institution there should be at least one medical worker with expertise in the field of psychiatry. There is no adequate institution for mentally ill persons in Kosovo and Metohija. So, all the persons mentioned in this report were detained in the ordinary detention centres pending trial although by the nature of things these detention centres were not in a position to ensure the necessary care and treatment of the persons involved.

H. DETENTION OF MINORS

The international standards of human rights prescribe that minors who have breached the law should have a different treatment as compared to that of adults as well as that detention should be imposed on minors only as a measure of last resort. With a view to normative harmonization, a period of three months is regarded as the maximum duration of detention for minors. What causes most serious concern is the rising rate of juvenile crime and this means that there is a growing possibility of imposing detention on juvenile delinquents .

I. THE RIGHT TO A LEGAL COUNSEL

As far as the right to engage professional legal aid, it should be recalled that minority ethnic communities were deprived of adequate legal aid due to the fact that the majority of lawyers left Kosovo and Metohija, thus destroying the core of the bar associations. There were isolated cases of representation, but the number of them is very limited. Only if there is an organized access of defence counsels to their potential clients will it be possible to speak about an improvement in this segment. But this is also limited to the most serious cases of the defence of those accused of murders, war crimes or ethnically motivated crimes, and to representation of the wronged parties in the same category of cases.

With the ensurance of the freedom of movement and full security this problem will probably be solved in a more appropriate way.

Cases in which the defence counsels themselves were exposed to excessive pressure on the part of the Albanian public, the accused and the staff of the court security service are mentioned below:

*** In the case of DRAGAN NIKOLIĆ, charged with the murder of an Albanian before the District Court in Gnjilane, the members of the Kosovo police force searched several times the personal belongings of Serb lawyers, which included excessive harassment and abusive language, all of which was happening in the presence of UNMIK policemen who did not respond by preventing these unfortunate scenes. In this same case the lawyers were repeatedly left in front of the court building without any protection of the UNMIK police after the office hours of the court. They were left at the mercy of local Albanians who spat towards them and cursed them in the middle of a great confusion. The lawyers managed to escape more serious consequences by pure chance.**

*** In the case of SAVA MATIĆ, accused of having inflicted slight bodily injuries on another person before the District Court in Prizren, the women lawyers were met in front of the court building by a line of dozens of members of the Kosovo police force and the public who put pressure to bear on them using abusive language on account of their ethnicity and openly inviting to lynch. In the same case, the automatic rifle of a member of the UNMIK police fired in the middle of the courtroom but, fortunately, no one was. In such a charged atmosphere the Serb lawyers in Prizren, an ethnically pure Albanian city, do not dare to make a step in or outside the court without being escorted by several UNMIK policemen.**

*** In the case of HALIT GURI and MENTOR KRASNIQI before the District Court in Prizren, both of them accused of the murder of two Serbs and of inflicting bodily injuries on the wives of the murdered, the public kept threatening the two Serb lawyers, while the defence counsels kept abusing them verbally saying that they have no business to do in Prizren, that it is an Albanian state, and that the next time when they come they better bring passports with them. Also, on the occasion on each arrival in Prizren, in which merely thirty or so Serbs still live under extremely difficult conditions, the members of the Kosovo police force threatened the Serb lawyers with force. The fact that the main hearing tends to last for several hours is a special problem because the Serb lawyers cannot have meals during the recess of the court, let alone have some rest outside the court building due to great security risks.**

All international conventions on human rights unambiguously provide for the right of the accused to engage a defence counsel already during the first interrogation. The LCP guarantees the access of the defence counsel to the papers of the case and to material evidence gathered during the proceedings as well as the possibility of the presentation of new evidence. Also, the accused, i.e. the defence counsel may file a complaint regarding the indictment within eight days from the date of receipt and thereby state their defence. The OSCE inquiries have shown that out of 196 interviewed detainees NOT A SIGNLE ONE had access to the defence counsel during detention before the first interrogation. Detainees had difficulties in contacting the defence counsel prior to the interrogation. In Priština and Peć, the detainees were not allowed to receive visits during the first 72 hours (not even from members of their family).

In Mitrovica the Serb defence counsels said that they were denied the conversation with their clients before the first interrogation. Also, that they do not have the possibility of confidential communication until the completion of the investigation and after the bringing in of the indictment. The defence counsels in Gnjilane point out the complicated procedure on the entry to the Bondstill Base and the fact that the waiting lasts 1-3 hours, which affects the scope and substance of visits. There is a widespread practice in these two cities of the visits of the defence counsels being monitored by a prison officer. The judges continue to apply the provision of Article 74 of the LCP which authorizes the investigative judge to restrict communication between the defence counsel and the defendant, regardless of the fact that this provision is contrary to international law in the sphere of human rights.

V IRRELEVANT AND UNACCEPTABLE EVIDENCE

A. GENERAL

The LCP clearly states that it is the obligation of the presiding judge to ensure that the matter at hand be completely examined, that the truth be established and that everything prolonging the proceedings but not clarifying the matter must be eliminated. A considerable number of trial chambers allow the prosecutor to present testimonies which are without any substantive value because of irrelevance and bias.

B. RECORDED CASES

The most obvious and the most glaring example was the case of MOMČILO TRAJKOVIĆ, the former chief of the police station in Kosovska Kamenica. He remained there even after the pullout of the Serb army and police. He was arrested on 9 July 1999 because he allegedly fired shots at an Albanian from the balcony while the latter was trying to hoist the Albanian flag at the MUP building. Two indictments were brought in against him: one for the attempted murder and unauthorized possession of weapons and the other for war crimes. The witnesses point out in their statements that the attempted murder took place on 27 June 1999, whereas the defendant says that he had not been in Kosovska Kamenica at all on the said date and mentions two witnesses, Stojan Nedeljković and Stojan Jovanović, who had been with him at the time and who attested to his alibi. This event was reported after two months elapsed and KFOR arrested him then. He was sentenced on 6 March 2001 to a prison term of 20 years for committing a war crime, for attempted murder and for unauthorized possession of weapons, by the District Court in Gnjilane. The trial chamber consisted of four Albanians and one international judge who proposed that senior officers of MUP be also heard, but the Albanian judges outvoted this proposal. The trial chamber, including the international judge, allowed the public prosecutor to present evidence of the previous acts of torture allegedly committed by the defendant on various occasions from 1982-1984. During the testimony it was mentioned that the defendant's son, in common with policemen, beat passengers in a coach in 1998. At this point it should be noted that the indictment contained only the acts allegedly committed in 1999. None ofl the stated facts are connected with the indictment and from the legal point of view are immaterial for the proceedings, but the court judgement is based precisely on such facts. There are no proofs in the judgement linking the defendant with any of the crimes, but it is stated in general terms that they had been committed by "policemen" or "police forces". There will be a re-trial of the case because there is new evidence, and the completion of the proceedings is expected at the end of September.

During the trial of ŠEFĆET RAHMANI, accused of murder, the trial chamber allowed that two letters be read out as evidence, in which support is given to the defendant. One of the letters was in the form of a petition by the inhabitants of the village where the defendant lives and his good behaviour is pointed out in it. The other letter was that of fellow KLA soldiers of the defendant which claims that the two victims were collaborators of the Serbian regime and that they had done a lot of harm to the defendant because they had reported him to the Serbian police who beat him and intimidated him. Without questioning the truthfulness of these allegations, consider that the court acted in breach of the process law by allowing that the reading aloud of the letters constitutes the presentation of evidence and openly sided with the Albanian defendant.

In the case of ALEKSANDAR MLADENOVIĆ from Lipljan, accused of a war crime, there is an obvious example of revenge of a group of Albanians on a respectable Serb family and on him personally as well as a case of organized exertion of pressure on Albanian witnesses to falsely accuse Mladenović. Upon the arrival of KFOR Aleksandar Mladenović continued to live in Lipljan despite the threats and pressure. On the occasion of visiting the grave of his brother he was stopped by a police patrol and, after a short arguing and at the inducement of one of the Albanians who were present who pointed his finger at him, Mladenović was taken to the police station and later on to the prison in Priština. During the proceedings before an international trial chamber the conspirers of the chase of Mladenović appeared in the role of the allegedly wronged parties, i.e. the three brothers Salihu, who by their clumsy, contradictory and obviously false testimony practically hinted themselves at a sentence proclaiming him not guilty. Mladenović spent 13 months in detention. After release he spoke about the conditions in the prison and said that UNMIK policemen told them that the Albanian prisoners were preparing themselves to lynch twenty or so Serbs in the Priština prison. Thanks to the composed reaction primarily of the detainees themselves bloodshed was prevented.

VI LEGAL EXPLANATION BY THE JUDGES

It has been noticed that that the warrants of detention continue to include the description of the grounds for detention based on the LCP, but no facts or explanation are mentioned that corroborate the decision to deprive a person of freedom. Nor does the description of the sentence explain in an understandable way the elements of the criminal offence. In the case of DRAGAN NIKOLIĆ, indicted and initially sentenced to 12 and a half years of imprisonment for the murder of an Albanian in the village of Letnica, despite the fact that there were no witnesses of the murder, and despite the alibi presented by the defence, the court sentenced Nikolić because he was in a group of seven organized men all of whom together influenced the perpetration of the murder. However, in the explanation of the sentence it was not stated in detail how Nikolić had participated and been an accomplice in the crime. The Supreme Court of Kosovo quashed the first-instance sentence and remanded the matter for re-trial and decision. During the re-trial witnesses were heard to give testimony as to whether Nikolić had been in that village, i.e. whether he could have committed the murder. Furthermore, upon the completion of the proceedings Nikolić remained in detention on account of a possible flight because, as it is stated in the second-instance decision, there are no administrative obstacles of significance for him to leave Kosovo and Metohija. In the new proceedings the court acquitted Nikolić of all charges. He spent in detention 28 months altogether, without any grounds. In his closing remarks the international prosecutor considerably harmed his profession because, to the complete surprise of the defence and the judges, he referred to the accused Nikolić as a criminal, thus breaching the presumption of innocence proclaimed in all conventions, decrees and laws. As in question was the indictment for a grave criminal offence, the international prosecutor should have made a better assessment of the evidence, because due to his, as can now be noted, serious omission, Nikolić had unnecessarily spent months and months in prison without valid grounds. Namely, during the war Nikolić was a member of the reserve force of the Army of Yugoslavia. He was a dentist in his unit and, in view of his status, he should have been treated in accordance with the Geneva Convention which prescribes that a person with the status of a medical doctor during the was operations may be responsible for the committed criminal offences *only if he is a direct perpetrator.* As none of the witnesses who gave their testimony had seen who fired shots at the Albanian, one would have expected the prosecutor to give up the charge rather than indulge into a senseless proceedings and offend the dignity of the accused; moreover, there is also the offence of the dignity of the international public prosecutor in the appeal, who not only offends the defendant calling him again a murderer and breaching the presumption of innocence, but also the presiding judge of the trial chamber, the Austrian judge Renate Winter, calling her a discriminator. However, the court correctly evaluated all the evidence and statements of the defence and acquitted Nikolić.

VII THE PRESSURE BROUGHT TO BEAR ON THE COURT BY LOCAL ALBANIANS

A. GENERAL

As already pointed out several times there are serious ethnic tensions in Kosovo and Metohija, both between various ethnic communities and within the Albanian community itself, in particular within that community. Such a situation of course affects the administration of justice, and thus also influences human rights violations. Some cases of the intimidation of judges and witnesses will be mentioned here. These are the most characteristic ones, but there are countless similar examples.

B. INTIMIDATION OF THE JUDICIARY

In the case of BAJRUŠ BERIŠA, a former KLA member, who was charged with murder and acquitted, but sentenced for the criminal offence of armed robbery and punished with 6 years of imprisonment, there are elements speaking in favour of this subject. Namely, the defence counsel informed the observer mission that a few months before the trial the defendant threatened the president of the District Court in Peć and other judges, which is why the trial was delayed until the appointment of the international judge. The trial took place with tight security measures being taken and was held at the UNMIK Regional HQ in Peć. The description of the sentence states the reasons which support the assumption that the trial chamber probably brought the decision fearing possible retaliation; the witnesses who testified in favour of the defendant were minors, brother and sister, who made different statements before the investigative judge and at the main hearing.

C. INTIMIDATION OF WITNESSES

A glaring example of intimidation of witnesses is the case of twenty-year old NASER HISENI, charged with the murder of Slobodan Jovanović in Kosovska Vitina on 2 November 2000. The murder took place on the market in K. Vitina in the afternoon hours when the accused, in the presence of a large number of people, pulled out a pistol and in cold blood fired two shots killing S. Jovanović, who was carrying bags full of vegetables. Before the conflict in Kosovo the late Jovanović was a respectable tradesman in Vitina. During the investigation conducted by an Albanian investigative judge, while the accused was represented by an Albanian prosecutor, several witnesses gave testimony; all of them without exception stated that they had been present on the scene at the moment of the shooting, but no one of them, except one, dared accuse Hiseni of the crime because of fear. This witness made his statement but was obviously in fear of retaliation because, according to his testimony, the accused was known as being a criminal involved in prostitution and drug dealing, with strong connections in the Albanian underground. In his statement the witness claims that the accused organized a team tasked with putting pressure on witnesses not to testify against Hiseni. Also, that he himself is in fear of retaliation when he comes back to his village near Kačanik. He has known the accused from before and has some unsettled accounts with him from the past, namely the accused owed him a considerable amount of money for some time. To make the situation worse for the cause of justice, despite the charge with a grave criminal offence, the prosecutor failed *to demand in the indictment that detention be imposed nor did oppose the demand of the defence that the defendant be released,* so that Hiseni was not available to the court for months. In the meantime, he was arrested again and the trial began at the end of August. There is fear that the four Albanian members of the trial chamber will outvote the presiding international judge; but there remains the possibility of appointing a trial chamber pursuant to the Decree No. 2000/64. The international prosecutor, in spite of the very clear situation, is in an awkward position because of the refusal of Albanians to testify by telling the truth and there is fear that the criminal will go unpunished for the criminal offence he had committed.

VIII THE BEHAVIOUR OF THE COURT SECURITY SERVICE

As already stated elsewhere in this report, a special problem in the work of the Serb lawyers before the courts in Kosovo and Metohija, in addition to the generally low level of security, is the utterly inappropriate behaviour of members of the court security service which consists, besides a small number of UNMIK policemen, mostly of the members of the so-called Kosovo police service comprised of members of the Albanian ethnic community (hereinafter called KPS). According to the regulations in force, the members of the KPS are, hypothetically speaking, in a subordinate position in relation to the UNMIK policemen. This means that when the UNMIK policemen look after the security of Serb lawyers the members of the KPS do not have the right to search them. However, in most cases neither the former nor the latter complied with these rules, so that the lawyers were often subjected to humiliating and unnecessary mistreatment by the members of the KPS. Besides the described most extreme cases in Gnjilane when the lawyers and the family of the defendant were thrown out to the street without being escorted by members of police, and in Prizren when the lawyers on entering into the court building have to pass through a line of 30-40 KPS policemen uttering curses and insults, another event will also be mentioned. It concerns the case of DRAGAN NIKOLIĆ and it happened in Gnjilane to the Head of the Justice and Human Rights Department who, besides performing the function of the defence counsel also had the status of an official of the Coordination Centre for Kosovo and Metohija. The Albanian policemen threw out all his things from the briefcase and then rummaged through them; all this was happening in his absence, i.e. while he was talking with the judge in the latter's office. Namely, believing that nothing inappropriate would happen, he left his things to a lady fellow lawyer for safekeeping, but the KPS policemen forcibly took the briefcase and carried out in the above described search. After such cases of arrogant and unlawful behaviour of the KPS policemen, we approached UNMIK several times asking them to use their influence in order to put an end to such occurrences. However, the only result were unconvincing excuses and lukewarm assurances that these and similar unfortunate occurrences would not happen again. This was regrettably denied by subsequent cases and we are witness to the continued harassment by the KPS members.

IX WAR CRIMES AND ETHNICALLY MOTIVATED CRIMES

A. GENERAL

The greatest attention deserve without doubt the cases of the accusations of Serbs of having committed ethnically motivated crimes (murders, war crimes and genocide). The war wounds between

the Albanians and the Serbs have obviously not healed yet and the events which took place in the courts in Kosovo and Metohija in connection with the charges relating to the said criminal offences only testify to the attempt of the Albanians to seek perfidious revenge. This time in a "legal" way, within the institutions of the system. As it turned out soon, neither the law nor justice were respected, and precisely the cases described below lead the international community to look more seriously into the problem of the administration of justice in Kosovo and Metohija. In order to upgrade the level of respect for human rights and to eliminate the drastic examples of disrespect thereof, UNMIK decided to appoint international judges and prosecutors in the most difficult criminal cases. Unfortunately, before the first appointments were made there had been so many uncivilized acts that the rectification of the injustice done to individuals (let alone groups) still continues. Considering the numerous obstacles encountered in the practical administration of justice, it seems that this situation will continue for a long time to come, which delays as a consequence the inauguration of democracy and its values in Kosovo and Metohija. The mentioned examples are proof of an gloomy period for anyone considering himself at least to some extent a citizen of the world, and can serve as a warning for the forthcoming events.

B. (IM)PARTIALITY OF THE COURTS

RADOVAN APOSTOLOVIĆ was accused of war crimes against the civilian population and was tried before the mainly international trial chamber of the District Court in Kosovska Mitrovica. The lawyers, collaborators of the Justice Department, got involved in this case and immediately after their engagement Apostolović was released to defend himself while on bail, pending the pronouncement of the sentence after 19 months spent in detention. In this case the reconstruction of the crime was staged on the scene in the Albanian village of Suvi Do. The event was secured by strong forces of the UNMIK police; the attending Serb lawyers were threatened by the local Albanians who used abusive language. In such an atmosphere of ethnic intolerance demonstrated by the Albanians gathered around, it was merely by chance that no serious incident occurred.

In the later course of the proceedings, after a large number of witnesses gave their testimony, Apostolović was pronounced not guilty. His determination to prove his innocence before the court is also attested to by the fact that he did not wish to flee to central Serbia under any conditions although, as the court stated in the case of DRAGAN NIKOLIĆ as the reason for keeping him in detention, he could have left Kosovo without formalities. Most objections of the lawyers in this case concerned minute taking and the suggestive translation of Albanian translators. Thus, for example, on one occasion the Albanian translator wrongly translated that the witness said "15 metres" instead of "150 metres" because the witness had been precisely at the distance of 150 metres from the scene of the event that Apostolović was charged with, and it is indisputable that it is more difficult to perceive things from a greater distance.

In the case of BOŽUR BIŠEVAC AND MIROSLAV VUČKOVIĆ, accused of genocide, their defence counsel submitted a request for the exception of the trial chamber, including the international judge, the president of the District Court in Mitrovica and the judges of the Supreme Court of Kosovo because the domestic judges are members of the same ethnic group, an ethnic groups which the accused allegedly "intended to destroy partly or completely", therefore cannot be impartial in decision-making. The Supreme Court of Kosovo rejected this request as unfounded, but subsequently an international trial chamber and an international prosecutor were appointed whereas the proceedings against Biševac were suspended because of his escape from prison.

C. PARTIALITY OF THE COURTS

Several cases of unequal treatment of persons belonging to minorities were registered in the course of investigative detention. For example, an Albanian was arrested and detained by KFOR on account of causing general danger. The public prosecutor proposed that detention be extended, the investigative judge abolished detention and released the involved person. The LCP was breached in this case because, if there is no agreement between the prosecutor and the investigative judge regarding the imposition of detention the final decisions is taken by a council of judges (other than the trial chamber) , which did not happen in this case.

The case of ZIMER TAQI, who had first suffocated a Serb and then burned his body, points to the partiality of the courts in favour of the Albanian ethnic community. In this case the Albanian prosecutor abandoned prosecution because of a lack of evidence, as allegedly it was not possible to

identify the body of the victim on the basis of the autopsy. The trial chamber was composed of Albanian judges. The investigation by OSCE monitors has shown that this case was not treated with due attention on the part of the court authorities.

BESIM BERIŠA, who killed a Serb on 2 August 1999 with the help by a minor boy who could not be accused because of his young age, defended himself with an alibi claiming that he had been detained by the Italian KFOR at the time of the commission of the said crime, although this is irrelevant for the establishment of guilt before the court. He was recognized by two members of the family of the killed person, and he confessed to his inmate in the cell that he had committed the murder. KFOR informed the public prosecutor in writing that the accused had not been in detention on the said date. The prosecutor failed to propose witnesses who would confirm or deny this assertion and the court did not do anything either to throw more light on the circumstances of this case. So Beriša was released.

D. CASES OF TRIAL FOR WAR CRIMES AND ETHNICALLY MOTIVATED CRIMES

*** ŠABAN BEQIRI and DŽEMAL SEIDIU were accused of the murder of two Serbs in July 2000. The matter was prosecuted by the Albanian public prosecutor before the trial chamber of four Albanian judges and one international judge. The trial began on 25 July 2000. The widow of one of the victims witnessed the crime and she positively identified the accused Albanians of having been involved in the murder. In her statement given to KFOR she stated that Beqiri was wearing a yellow T-shirt and also attached a letter signed by Beqiri (in the capacity as Captain of the KLA) ordering Serbs to hand over all weapons in their possession under the threat of use of force. The daughter of the other victim gave testimony which coincided with the statement of the first witness. The defendants were released on 24 October 2000 without the circumstances in connection with the importance of the yellow T-shirt worn by Beqiri being examined on the part of the public prosecutor and the trial chamber. The authenticity of the letter which Beqiri had written the victims was not examined either.**

*** SAVA MATIĆ was held in detention from 27 December 1999 onwards. He was charged with having committed war crimes. In his case renewed proceedings were conducted as well. From eight examined witnesses in the investigation, three were unable to give proof against Matić. One Albanian said that Matić used to come to his village with policemen to harass people and that he had stolen 100 Deutsche marks from him; another claimed that Matić beat him and another two men, but the court did not invite these two to give their statement. Another Albanian said that Matić was in the village of Velika Kruša together with three other policemen on 27 March 1999 and that on that day 42 persons were allegedly killed. Four men survived the shooting, but were not summoned to give their testimony. Yet another Albanian said that he had heard that Matić was boasting of having killed 60 people. On 24 July 2000 the chief of the Central Criminal Investigation Section of the UNMIK police, who was entrusted with carrying out certain investigative activities by the investigative judge, stated in his communication that only one witness had recognized Matić during the identification of pictures, but he was not sure. The trial began on 22 January 2001before a trial chamber composed of two international judges and one Albanian judge whereas the prosecutor was Albanian. The original indictment charged Matić with having participated as a subordinated person in the massacre of 42 civilians in the village of Velika Kruša on 23 March 1999 as well as in the beating, physical and mental torture of the villagers of Donje Potočane. None of the three key witnesses, one of whom gave a statement rather different from that given during the investigation before the UNMIK police and KFOR, while a second one recognized the accused during the hearing all of a sudden, but did not see Matić killing anyone. By a majority of votes the trial chamber acquitted Matić of the charges of war crimes but sentenced him to two years of imprisonment for inflicting slight bodily injuries during the alleged attack on 23 April 1999 in a vineyard. During the pronouncement of the judgement the Albanian judge was not present, which represents a violation of the LCP. In the renewed proceedings for the infliction of minor bodily injuries, which is no case a serious criminal offence, Matić remained in detention until the completion of the proceedings in April 2002. He was released after being detained for 28 months. His lawyers demanded several times that he be release but without success. In the renewed proceedings he was tried for war crimes and was acquitted due to a lack of evidence.**

*** ZORAN STANOJEVIĆ was placed in detention on 14 August 1999 and on 9 May 2000 he was charged with the murder of an Albanian in Račak in January 1999. The trial took place in the District Court in Priština before a trial chamber comprised of two international judges and one local judge. The defendant was a policeman. The first trial on 25 July 2000 was postponed for an indefinite period of time**

due the failure of the injured parties and witnesses to appear. A second trial before a new trial chamber was held on 24 January 2001, but was postponed because of power failure and because of the request of the trial chamber that the statements of the witnesses and complete documentation be provided by the investigators of the Hague ICTY and there was another postponement for 6 February 2001, when for process reasons it was once again postponed indefinitely. This time because the public prosecutor informed the two alleged victims that their allegations had been deleted from the indictment. However, their legal representative announced that a private legal action will be taken on 20 February 2001. Both witnesses claimed that Stanojević was the leader of the police attack and that they were wounded by him. The witnesses provided X-rays, which is in contradiction with the statement given before the ICTY investigators. Namely, it was then established that these injuries had nothing to do with the offence of the defendant. The trial was resumed on 20 February 2001 when a large group of villagers from Račak was present. The defendant was found guilty of the criminal offence of murder and two attempted murders and sentenced to a prison term of 15 years. The judgement was pronounced on 18 June 2001. Stanojević claims that the judgement was pronounced under pressure.

E. THE CASE OF STOJAN JOVANOVIĆ and BOGOLJUB MIŠIĆ

According to the UNMIK decree, if a public prosecutor fails to bring in an indictment against a suspect person in detention, within a period of 12 months, the suspected person will be released. However, these two persons were not released. Thus, for example, STOJAN JOVANOVIĆ and BOGOLJUB MIŠIĆ were arrested on 31 January 2000 and were kept in detention even after the expiry of the twelve-month period. The indictment was brought in on 6 February 2001. They were accused of allegedly committing war crimes against the civilian population in the territory of Orahovac and Velika Hoča. STOJAN JOVANOVIĆ and BOGOLJUB MIŠIĆ were placed in detention on 31 January 2000 under suspicion of having committed war crimes. In the period from 3 February to 12 December 2000, eleven witnesses were heard. Only one of them was able to identify Jovanović as having been involved in the attack on a group of Albanians in 1998. The deputy commander of the UNMIK Police Central Criminal Investigation Section which conducted investigation concluded that there was no evidence confirming that Stojan Jovanović was involved in this crime and that therefore the two accused should be immediately released. The international prosecutor gave up the investigation on 12 February 2001. However, Jovanović and Mišić were accused of participating in a gathering for the purpose of committing violence. Despite the fact that detention exceeded the period of 12 months, the prosecutor requested in the indictment that detention be imposed in order to enable a thorough preparation for the trial, including all necessary evidence. The proceedings were completed in November 2001 when a trial chamber composed mostly of international judges acquitted the accused, which means that the assertions of their defence were unambiguously taken as valid. An interesting fact concerning this case is that the main "injured" Albanian persistently avoided to respond to the summons, which delayed the proceedings and prolonged the period of imprisonment of the accused. When he finally appeared, his statement was confused, full of untruths and arbitrary allegations, which were appropriately assessed by the court. In this way, the doubts that the Albanian falsely accused Jovanović and Mišić proved correct, which happens frequently in Kosovo and Metohija. Jovanović and Mišić spent 20 months in detention altogether.

X THE STATUS OF APPEAL

In the case of the MOMČILOVIĆ brothers, sentenced to 12 months of imprisonment each for illegal possession of arms, international law of human rights was violated in a number of ways, including partiality the court. No investigation has been initiated up to this date in respect of criminal offences committed by witnesses for the prosecution, including conspiracy with a view to the abduction, attempted murder and perjury nor did UNMIK undertaken any investigation regarding the allegations about the inappropriate behaviour of the court employees.

ZVEZDAN SIMIĆ was sentenced to eight and half years of imprisonment for the murder of two Albanians. Both the public prosecutor and the defence counsels appealed the sentence, and the Supreme Court of Kosovo altered by its judgement the first-instance sentence and increased the prison term to 12 years. This causes serious concern having in mind that the main witnesses gave confused and speculative testimonies regarding the presence of Simić on the scene of the murder.

XI ACCUSATIONS OF GENOCIDE

THE CASE OF IGOR SIMIĆ

The trial to IGOR SIMIĆ for genocide, detained in August 1999 and indicted in June 2000, started on 5 December 2000 before the mostly Albanian trial chamber presided over by an international judge, whereas the case is prosecuted by an international prosecutor. Simić has been accused of genocide along within five other Serbs. They were accused of killing 26 Albanians in Mitrovica and of committing a number of criminal offences associated with property on 14 April 1999. However, the five Serbs escaped from the prison in Mitrovica and the proceedings against them were interrupted in accordance with the Decree No. 2000/1 prohibiting the trial in absentia in case of serious breaches of international humanitarian law. The trial was delayed several times for a variety of reasons: inadequate heating in the courtroom; equipment for simultaneous interpretation out of order; non-appearance of the UN staff; non-appearance of witnesses; and above all for security reasons. After the beginning of the trial, new witnesses came and gave testimonies against Simić, which caused additional delay. On 14 February 2001 the presiding judge informed the court that the translations of the investigative questionings are so poor that a new translation would have to be made, which resulted in yet another delay. Simić defended himself explaining his alibi, and despite the statements of witnesses no proofs were presented that would bring him in connection with the real murders. The evidence presented was insufficient for the indictment to be based on genocide, consequently, the prosecutor should have either changed the indictment or abandon it.

THE CASE OF BIŠEVAC / VUČKOVIĆ

BOŽUR BIŠEVAC and MIROSLAV VUČKOVIĆ were accused of genocide before the court in Mitrovica. The indictment claims that the defendants, together with unnamed individuals, entered two villages in the period from 22 March to May 1999 and threatened to kill the villagers in order to force them to flee the village and go to neighbouring villages or take to the woods. A good many houses were then allegedly looted and burned down. The trial to Vučković started on 19 October 2000 before a trial chamber consisting of four Albanians and one international judge. The matter was brought to the attention of the court by an Albanian. Vučković spent 14 months in the investigative prison whereas Biševac is on the run. The proceedings against him, as indeed against all persons who had left Kosovo and Metohija and who were under investigation or indicted, were suspended in accordance with the Decree No. 2000/1. Numerous witnesses called in by the public prosecutor to bear testimony but their testimonies are in disonance with their statements given before the investigative judge. A certain number of witnesses gave statements uncorroborated by proofs related to the murders and attempted murders with which Vučković is charged. For example, an Albanian said that he had not seen the murders happening but was sure that they had been committed by Vučković. The evidence showed, at the most, that he had been involved as the main person or as an assistant in getting an undetermined number of Albanians to leave their homes; however, it is insufficient to prove irrefutably the existence of the genocidal intention to destroy a group of Kosovo Albanians as such, wholly or partly (emphasis by OSCE monitors). After the acquittal for two criminal offences of murder from the indictment, there was no further evidence to charge Vučković with criminal offences leading to the destruction of Albanians. Despite these critical deficiencies, he was sentenced to a prison term of 14 years for genocide, but the Supreme Court of Kosovo quashed this sentence taking the legal position that there was no genocide and that, therefore, it can be examined in renewed proceedings whether the accused is guilty of war crimes. The renewed proceedings against Vučković charged with these crimes are under way.

THE CASE OF MILOŠ JOKIĆ and BOŽIDAR STOJANOVIĆ

MILOŠ JOKIĆ was arrested in Kosovska Mitrovica, together with Božidar Stojanović and Agim Alješi, a Roma, on 1 September 1999 and has continuously been in detention ever since. He was found guilty in the first instance and sentenced to 20 years of imprisonment by an Albanian trial chamber. However, the Supreme Court of Kosovo annulled the sentence passed by the first-instance court and remanded the matter for renewed proceedings and decision. The new trial took place a trial chamber consisting mostly of international judges. The proceedings took 6 months to complete. Dozens of witnesses were heard. Jokić was acquitted of the charges for war crimes and rape. At the time of arrest he was only 20 years old. He spent 32 months in detention. During the trial many witnesses "by hear-say" turned up.

They had neither seen Jokić before nor could they possibly bear testimony that he had committed the criminal offences from the indictment. A certain number of them testified falsely and without grounds. However, thanks to a careful analysis by the team of defence counsels these allegations were challenged and refuted. The largest number of objections of the defence counsels concerned the way in which the minutes were taken and the inadequacy of the translation, so the afore-mentioned remarks are applicable to this case as well. This is a school example of false testimony, however, no action was taken.

BOŽIDAR STOJANOVIĆ was sentenced by an Albanian trial chamber to a prison term of 16 years. In his case several witnesses testified falsely, but their testimonies were accepted by the court without any justification at all and this resulted in such a severe punishment of the defendant. At the well considered proposal of the defence, including proposed new evidence, the matter was referred for a new trial which is under way and the passing of a judgement is expected by the end of September.

XII REPRESENTATION OF THE INJURED PARTIES IN THE CRIMINAL PROCEEDINGS AGAINST THE ACCUSED ALBANIANS

It has been mentioned in various place in this report that there is a considerable number of both closed and pending cases in which the Serbs are the injured party and the Kosovo Albanians are the accused (or sentenced, depending on the status of the case). This, too, falls within the category of ethnically motivated crime. If the profile of the perpetrators of these crimes, the victims thereof, the circumstances under which the crimes were committed, and the number of cases, are taken into consideration, it is possible to draw a very simple but at the same time a harsh conclusion that the Albanians were not scrupulous in choosing the place, the time or the victim; the most important thing was that the targeted individual should be a Serb, man or woman alike. Children were killed while innocently playing; elderly people were killed at their threshold; farmers in their fields, in broad daylight, at night, at dawn. The accused and the convicted are both young and old Albanians, former or present members of Albanian extremist clans, cold-blooded and merciless in their evil intentions. They defend themselves in court mostly by silence, denial of everything, by giving false statements or by claiming mental incompetence. At the time of the ethnically pure administration of justice, these cases failed to attract the attention of the prosecutors whose attitude was either to abandon the indictments or to agree that the accused be released. However, with the arrival of international judges and prosecutors the number of sentenced and prosecuted cases considerably increased, which is encouraging and deserves to be commended. Once again the most serious cases will be mentioned below.

*** ŠEFĆET MALIĆI and ISMAIL JAHIU were sentenced to 15 years of imprisonment each for the murder of ALEKSANDAR DODIĆ, a 17 year old youth, in Vitina. This is one more example of the brutality and unselectiveness of crimes committed by Albanian extremists who murdered this boy and attempted to kill his sister and his schoolmate in broad daylight in Vitina. In May 2000, these children intended to go to the nearby basketball playground. While passing alongside a block of flats inhabited by Albanians, the late Aleksandar stopped for a moment to tie lace on his tennis shoes. When he raised the eyes he saw two Albanians who were following them in a car all the way and at that moment they started firing shots at them from with a pistol. Aleksandar's passed uninjured, his schoolmate was wounded in the thigh, while Aleksandar himself was hit in the region of the lungs. After some time KFOR soldiers and an emergency service ambulance turned up and the boy was rushed to the local health centre. However, probably due to the inconscientious first aid provided by Albanian doctors, the young man died. The doctors were not called to account for the consequences. The fact that the KFOR soldiers did not respond in an adequate manner and failed to protect the young Serb from hooliganism and voluntarism of local Albanians gives rise to concern.**

*** In the context of ethnically motivated crimes, and as a proof that Albanian extremists are not selective in choosing their victims, the time or the scene of crime, mention should be made of the case of IMER ŠFARCA, who was sentenced for the criminal offence of seriously endangering the safety of traffic with a fatal consequence. Namely, on 27 August 2000, while driving another person's car without a driving licence, the accused, deliberately and at great speed, ran into a group of Serb children playing on a meadow by the road in the village of Skulane near Lipljan. Four children were grievously injured in the accident, while the eight-year old Nikola Nikolić died immediately. Serb lawyers attended the trial representing the injured parties. They joined the international prosecutor who requested the most severe punishment in his closing remarks. Šfarca was sentenced to eight years in prison.**

XIII PROCEDURE FOR THE COMPENSATION OF DAMAGE SUSTAINED AS A CONSEQUENCE OF UNJUSTIFIED DEPRIVATION OF LIBERTY AND THE COMPENSATION OF INTANGIBLE DAMAGE SUFFERED BY THE INJURED PARTIES IN THE CRIMINAL PROCEEDINGS

In the past period, i.e. since a more active and better organized involvement of Serb lawyers in the defence of the accused Serbs, there were seven cases in which sentences of not guilty were passed on Serbs charged with war crimes and ethnically motivated crimes. Pursuant to Article 12 of the Law on Criminal Procedure, a person sentenced without justification for a criminal offence or deprived of liberty without foundation has the right to be rehabilitated, the right to a compensation by the State for the damage sustained as well as other rights spelled out by the Law. Chapter XXXII of the said Law prescribes the procedure for the compensation of damage. Consequently, these persons are entitled to a fair compensation for each day spent in detention unjustifiably. The compensation should be obtained in proceedings against the State, in this particular case against UNMIK as the Kosovo and Metohija government. As things stand now, it will hardly be possible for them to realize their rights because UNMIK offered them a symbolic compensation for each day spent in detention. These persons, for justified reasons refused to accept this offer, inadequate one must say, as it it is far from a fair compensation to which they are entitled according to existing European and world standards in this field. However, UNMIK (accidentally or otherwise) does not recognize these standards in the particular cases. If one adds to this the afore-mentioned absolute judicial immunity of UNMIK and KFOR before the domestic courts, i.e. the impossibility of taking legal action against them before a regular court, the said persons have no legal means to realize their right to a fair compensation which undoubtedly belongs to them considering the conditions of detention and the course of the way in which criminal proceedings were conducted. Furthermore, they are unable to apply to the European Court for Human Rights in Strasbourg because they have not exhausted all legal remedies for the realization of their right (in fact, even if they wanted to do so they cannot use them because of the self-proclaimed immunity of international institutions), one of the requirements for initiating proceedings before this Court.

A second group of questions in this field has to do with the compensation for non-material damage sustained by these persons who had the status of wronged parties in the criminal proceedings in which the Albanians were charged with ethnically motivated crimes against Serbs.

Article 200 of the Contracts and Torts Law in force stipulates that: "For suffered physical pain, suffered mental pain, diminishment of life activity, disfigurement, tarnished reputation or honour, violation of freedom or rights of personality, death of a close person, as well as for sustained fear, the court shall, if it finds that the circumstances of the case, and in particular the intensity of pains and fear and their duration justify it, adjudicate a fair financial compensation, regardless of the compensation of material damage, and in its absence". Further on, in Article 201 of the Law, it stipulated that, in case of death of a person, the may adjudicate to the members of his close family (the spouse, children and parents) a fair compensation for their mental pains. For example, a compensation on two counts belongs to SLOBODANKA KRSTIĆ and LJUBOMIRKA MIRČEVIĆ, injured parties in the case of the sentenced Guri and Krasniqi. Namely, the sentenced persons killed husbands of the two wronged women in the family house of the wronged Slobodanka Krstić in Prizren in July 1999. The two women themselves were inflicted grievous bodily injuries, i.e. were wounded with firearms. Consequently, they are entitled, on the one hand, to compensation of the damage for suffered physical pains caused by being wounded with firearms and, on the other, to a compensation for non-material other, to a compensation for non-material damage inflicted on them because of the death of their husbands. For now, there is the first-instance condemnatory sentence passed by a mainly international trial chamber with the participation of an international prosecutor, whereas the legal action in which this compensation should be obtained is still uncertain.

The reasons for this are the following: According to the law in force, a wronged Serb should apply to the locally competent municipal court and take legal action indicating the sentenced Albanian as the accused. It is hard to imagine a situation in which a wronged Serb sues an Albanian sentenced for committing an ethnic crime before a purely Albanian trial chamber. One would find oneself in a vicious circle in which the Albanian trial chamber ought to pass a judgement in favour of a Serb and to the detriment of an Albanian. This would be totally correct from the legal point of view because the sentence of the criminal trial chamber establishing the guilt of the accused party to the lawsuit for the compensation of damage is binding on the civil court in respect of the established guilt. To this should be added the justified distrust of Serbs towards the system of justice in Kosovo and Metohija which did them

a lot of harm in recent time. However, sight should not be lost of the permanent pressure of extremists on the court and the judges who, for fear of revenge, would probably rule to the detriment of the Serb plaintiff. One cannot be sure that the trial chambers formed in this way have the capacity for this kind of proceedings. If one takes into account that international judges are appointed only for criminal cases tried before the district courts, one gets another grey zone in the successful pursuit of justice. It can be seen from the above described that the number of such cases is not negligible at all. It is therefore felt that UNMIK should set up international trial chambers according to the principle similar to that for the trial chambers in criminal matters (for example, ethnic tension between the prosecutor and the accused).

Finally, mention should be made of the two most recent cases of the defence in which the Serb lawyers recruited by the Justice and Human Rights Department took part, i.e. the sentences acquitting SAŠA GRKOVIĆ, accused of the war crime against the civilian population and STEVA ŽIGIĆ, accused of the criminal offence of murder, passed on 4 September 2002.

INTERNATIONAL CONVENT ON CIVIL AND POLITICAL RIGHTS

Article 1

Paragraph 1

Montenegro is a democratic social and ecological state. Montenegro is a republic. Montenegro is a member of the Union of Serbia and Montenegro.

Montenegro is sovereign in those functions that it has not conferred on the jurisdiction of the Union of Serbia and Montenegro. Sovereignty belongs to citizens. Citizens exercise power directly and through elected representatives. Citizens of Montenegro are free to decide about the political status of the state, its national constitution and its political, economic and cultural development. Freedom to decide on the most important issues concerning the future of the state is granted by the Constitution of Montenegro.

The Constitution of Montenegro (Article 2, paragraph 5) prescribes that only the citizens in a referendum shall decide any change of constitutional status, form of government or borders. These constitutional provisions have been elaborated in the Law on Referendum of the Republic of Montenegro that was adopted in February 2001. This law was drafted in cooperation with OSCE experts from their Office for Democratic Institutions and Human Rights (ODHIR) who made suggestions and recommendations to ensure that the law would be in accordance with international standards, most of which were incorporated into the law.

The Law on Referendum remained the subject of heated political debate both in Montenegrin parliament and among political parties and political leaders because the referendum on the independence of Montenegro is expected to be organized in compliance with this law. Debate focused on two key questions: 1) Whether a qualified majority is needed for a successful referendum – the February 2001 law stipulates that fifty plus one per cent of the registered voters must cast ballots and more than half of the total number of voters who cast ballots must vote for one option in order for the referendum to be declared successful. 2) Who has right to vote? -- i.e., whether right to vote should be given to the citizens who do not live in Montenegro and who, therefore, do not meet the residency requirements to vote in elections..

These debates led to an initiative to amend the law of February 2001. On one side there were suggestions to completely delete any requirement related to a qualified majority (this suggestion was given from the opposition Liberal party, strongly pro-independent oriented) and on the other side an insistence that a larger margin is needed for a referendum to succeed - 75% of all registered voters or 50% of all enrolled in register list (this was suggestion of those political parties which were against referendum on the independence of Montenegro – opposition coalition "For Yugoslavia") . Again, OSCE experts were involved and they produced an "Assessment of the Present Law on Referendum" which recommends that any future law define a qualified majority (one of the proposals was 55% of all registered voters) and that, in accordance with international standards, Montenegrins who are not registered residents should not vote in any future referendum. After several rounds of discussions in the Parliament, a decision was taken to postpone action on the adoption of a new law and now, after the signing of the Belgrade Agreement, the question of a referendum on independence of Montenegro has been put on hold for at least three years.

The Constitution of the Republic of Montenegro (Article 5) prescribes that the government in Montenegro shall be organized in accordance with the principle of the division of power into legislative (vested in the Parliament), executive (vested in the Government) and judicial (vested in the courts of law) spheres.

The same article stipulates that the President of the Republic will represent Montenegro, and that the Constitutional Court protects the constitutional order.

Paragraph 2

With its territory of 13 812 km^2 and 718 km of inland and 218 km of sea borders, Montenegro represents a specific natural and developed environment which reflects numerous diversities generated as a result of its geological foundation, tectonics, natural forces and human activities. Montenegro's natural resources include its waters (the sea, lakes and rivers); land; mineral resources

(coal, peat, sand); forests; biodiversity (flora and fauna); the beauty of its landscape; its protected areas of nature (natural reserves, national parks, natural monuments and natural parks); and its protected plant and animal species.

Montenegro is committed to the concept of sustainable development, which will not affect the improvement, and protection of nature, and its development policy is based on this concept.

The trend of increasing exploitation of natural resources such as forests, fertile ground, fishery fund, wild animal and plant species, has been continued in the past ten years.

The pressure on natural values in coastal areas has been increased as well, especially by illegal constructions and maltreatment of wastewaters, which reach the sea without cleaning.

During the process of speed industrialization, much attention was not paid to the protection of the environment and some capital projects that could have negative impact on the environment have been announced, such as constructing hydroelectric plant on Tara River (protected as a world reservoir of biosphere), Moraca River, Skadar Lake (protected Ramsar area). As a consequence, occurrences such as erosion of ground, eradication of plant and animal species in certain areas (forests, rivers, lakes) in the future can hinder comprehensive development of Montenegro, which in turn means that the present level of poverty will be maintained.

Paragraph 3

State Union of Serbia and Montenegro (earlier Federal Republic of Yugoslavia) is a signatory to a large number of the most important universal and regional international treaties in the field of human rights, particularly those that directly or indirectly deal with the rights and freedoms of national minorities. Yugoslavia ratified the International Covenant on Civil and Political Rights (1966) on 30 January 1971 and FRY, as its successor, acceded to it on 12 March 2001.

Pursuant to Articles 48 and 50 of the ICCPR, the Republic of Montenegro, being one of the state partners of State Union of Serbia and Montenegro (earlier Federal Republic of Yugoslavia) must comply with the obligations stipulated in this document. In Montenegro, Article 16 of the FRY Constitution defines the status of international law in general terms. As regards the special rights of members of national and ethnic minorities the Constitution stipulates that these rights "may not be exercised if they are in contravention of the Constitution, principles of international law and the principle of the territorial integrity of Montenegro" (Article 75). In addition, Article 44, paragraph 2 of the Constitution of the Republic of Montenegro stipulates "Citizens shall have the right to address international institutions for the purpose of protection of their freedoms and rights guaranteed under the Constitution".

The territory of Montenegro is integral and inalienable and no one has right to threaten this territorial integrity by any act.

The Constitution and the laws of the Republic of Montenegro do not define the terms "nations" and "national and ethnic groups" so that the right of a nation to self-determination cannot be clearly observed or defined.

The relatively small territory of Montenegro has a small population that is so nationally and ethnically mixed that any partition of Montenegrin territory according to national or ethnic lines would be almost impossible. According to the last (1991) census, Montenegro had a total population of 614 579. Of this number, 380 467 (61,9%) were Montenegrins; 89 614 (14,6%) Moslems; 57 453 (9,3%) Serbs; 40 415 (6,6%) Albanians; 26 159 (4,3%) Yugoslavs 6244 (1,1%) Croats; and 3 282 (0,6%) Roma . Territorial dispersion of members of national and ethnic groups is uneven: the largest number of Moslems/Bosniaks live in northern Montenegro, and in two municipalities, Plav (58%) and Rozaje (87%), they make majority; most of the Albanians live in the municipalities of Ulcinj (17 469 – more than 80%), Podgorica (12 777 – about 7%), Plav (4 032 – about 10%) and Bar (4 619); and the Croatian population is mostly concentrated in Boka Kotorska (in the municipalities Tivat, Kotor and Herceg Novi).

Article 2

Paragraph 1

The obligation to adhere to the principle of non discrimination is prescribed by Article 15 of the Constitution of the Republic of Montenegro which stipulates that: "All citizens are free and equal regardless of any particularity and/or other personal attributes." This article also makes explicit the commitment and constitutional guarantee for all Montenegrins to the broadest, protection from discrimination. This commitment has been further developed in national legislation. The Criminal Code of the Republic of Montenegro stipulates that the violation of equality (Article 43) is a criminal offence. It prescribes as liable to punishment any action by which any individual and any citizen is deprived, restricted, privileged or favored in relation to the rights stipulated by the Constitution, the laws, other regulations or general acts or ratified international treaties on the basis of difference in national or ethnic origin, race, religion, political conviction or other convictions, sex, language, education or social position. The sanction prescribed ranges from three months to five years imprisonment.

The nondiscrimination provisions also apply to foreigners who reside in the territory of the Republic of Montenegro. For example, the issue of medical care is regulated by the Resolution on Terms for Using Health Care and Other Rights Related to Health Insurance for the Foreigners who Reside in the Territory of the Republic who Cannot Use Health Care Services on any Other Basis (Official Gazette Rom No. 2/91). Article 2 of the resolution states that a foreigners who reside in the Republic for the purpose of education or professional training, as well as any close family living with them, if they have no other medical care, shall exercise their right to health care and other rights related to health insurance at the same level as citizens of the Republic of Montenegro.

Paragraph 2

The procedures on the basis of which the citizens' rights are exercised and protected (civil, administrative, criminal and enforcement proceedings) fall within the competence of the state union with Republic of Serbia and should be an integral part of an appropriate report.

These proceedings have also stipulated legal remedies, which the citizens can use in pursuing their rights.

Paragraph 3

Corresponding legal tools for protecting the citizens' rights have been prescribed by federal procedural laws. In compliance with these provisions, citizens' rights have been protected from any violation committed by the persons who have legal authority and act on behalf of the state, who might abuse their authority, by specific provisions of the Criminal Code of the Republic of Montenegro which list the following criminal acts: group of criminal offenses against official duties (section XIX, Article 216 to 229: Abuse of official competence, Fraud, Fraud in service, Assistance, Bribe taking, Bribe giving, Illegal mediation, Law violation by a judge, Negligence in service, Disclosure of official secret, Illegal appropriation of goods after search or enforcement of a judgment, Forgery of official documents, Unlawful money collection and payment, Unlawful dismissal of a detainee), as well as the criminal offenses against corruption (article 229b to 229j i.e. Criminal offenses: corruption in government administration, negligent spending of the budgetary funds, corruption in public procurements, corruption in the privatization process, corruption in the judiciary, abuse of the position of defense attorney or agent, corruption in health service, corruption in education, restriction of the media freedom and fixing sports results.

Under suspicion that they committed some of the mentioned criminal acts, 1153 persons were submitted to the prosecutor in period between January 1, 2000 til March 10, 2003, for the following:

- *abuse of office* - 74 persons,

  The coourt ended procedure against 42 persons, 24 of whom were convicted, and 18 persons were set free.
- *embezzlement* - 147 persons, out of whom: 2 persons for embezzlement in office, 8 persons for service, 19 persons for accepting bribery, 14 persons for giving bribe, 2 persons for illegal mediation
- *violation of law by judges* - 79 persons
- *ill performance of duty* - 98 persons

No criminal charges were brought in the given period for the following criminal acts: violation of equality, revealing state secrets, stealing of things while conducting search, illegal payment, unlawful liberation of persons deprived of liberty, as well as for the criminal act of corruption introduced in Criminal Code in July 2002.

In period this report was made the work on proposal of the Law on Ombudsman i.e. Protector of human rights and freedoms was concluded. The Government of the Republic of Montenegro has adopted the proposal of this Law and put it on public debate. We expect that this Law will be enacted by the end of this year.

Article 3

The legislation in force in the Republic of Montenegro, starting from the Constitution through laws to regulations, proclaims equitable treatment of the sexes. Thus, at the formal level, the equality of the sexes is well regulated in all fields of life. There is no special law on gender equality, but the issue is incorporated into almost all pieces of legislation.

With respect to education at all levels and to employment policy, every school and each employment position is equally open to both women and men who meet the prescribed requirements. However, employers most often choose men over women, particularly young women who are often rejected because the employer assumes they will become pregnant and leave the job to raise a family.

Thus, the law, which upholds equality and the practice, which favor men over women, are very different. Why? The answer is to a significant degree related to the traditional structure of Montenegrin society which is very patriarchal: children are brought up in an environment in which customs and habits inhibit women from in engaging into anything other than raising children and taking care of the home. Even today, in some regions of the country, parents do not allow girls to continue going to school after they turn 11 or 12. The insufficient education of women and society as a whole limits the scope of the rights that women can enjoy.

Also, although it is less common now, the tradition still dictates that sister willingly renounces her inheritance in favor of her brother, although appropriate legal conditions do exist, since men and women are equal when it comes to inheriting the property of the ancestors.

At the Fourth World Conference of Women in Beijing (1995) a Platform on Action was adopted which set out a comprehensive program for strengthening the position of women in all aspects of public and private life and giving them an equal share in social, economic, cultural and political decision-making. Since that time, many countries adopted national action plans based on the Beijing Platform. However, as the FRY was preoccupied by war throughout the 1990s, neither FRY nor Montenegro developed a national action plan to promote the rights of women and only a few NGOs have thus far initiated action in this area.

In newly formed government (chosen after the elections of October 2002), two ministerial posts were given to women (which means 10% of the ministerial posts). The number of women holding posts of ministerial secretaries and deputy ministers is higher, comprising 20% of the overall number. However, with respect to the most responsible positions in Parliament, there are seven women MPs and there are no women in positions who serve as presidents of working bodies in the Government or the Parliament. Prior to the last parliamentary elections, the Speaker of the Parliament of RoM was a woman, and a woman was president of the Parliament's newly formed Committee for Gender Equality, established in July 2001. At present, Montenegro has three women mayors (Budva, Nikšić and Bar) out of total 21 municipalities.

Despite the unsatisfactory representation of women in the power structures, the attitude of government bodies and political parties to the gender issue has become more positive in recent years. Moreover, while the situation of women in society has not significantly changed, one increasingly hears discussions of the position of women, and of their rights in all fields of life and work, particularly their participation in decision-making structures. These issues have become more prominent in the media and, while it takes time to change attitudes, one should expect some progress in the coming years.

As a result of the last decade of hardships, little research has been done and consequently accurate current data does not exist concerning the position and representation of women in Montenegro. As yet, none of the government agencies has seriously addressed this problem. The Statistics Bulletin for 2001 of the Republican Bureau of Statistics has been able to offer only the following data:

- According to the census of 1991, out of total population of 591 269, women comprised 50.6% (299 329); out of the working age population of 145 741, 38.6% (91 539) were women; out of the 74 531 persons who received salary, 35 397 (47,5%) were women; and out of the 279 458 dependant persons 172 393 (61,7%) were women.
- Concerning the gender structure of employees, the most recent data available is from 31 December 1993: at that time, there were a total number of 129 005 employees of which 52 001 were women; of these 6 074 held graduate degrees, 4 335 were college graduates, 17 766 were secondary school graduates, and 1 495 finished elementary school; of the women employed, 868 were highly skilled workers, 10 895 skilled workers, 1 980 semi-skilled and 8 588 unskilled workers.
- During the 1999/2000 school year, there were 77 726 full-time pupils in elementary school of which 37 762 were girls; out of 30 756 students in secondary schools, 15 662 were girls.

In the Law on the Election of Councilors and MPs, a so-called "quota of women" was not envisaged. However, at the beginning of 2001, just before the early parliamentary elections and on the initiative of an NGO, four political parties -- DPS, SDP, LSCG and DUA -- signed an agreement pledging to try to ensure that women comprised 30% of their candidates lists. Even before this agreement was signed, some political parties had written a "quota for women" into their party agendas. The result of this initiative was to an almost 100% increase the number of women in the Parliament, from about 5% in the previous Parliament to 10% in the new one.

Women are somewhat better represented in the judiciary, particularly so at the lower level (about 60% in the municipal courts). In the higher courts (Podgorica and Bijelom Polje) there is 42% of women judges, and in Supreme court about 26%.

There are about 30 NGOs in Montenegro that work on issues relevant to women -- on economic or political empowerment, assistance to women in case of violence, stimulating entrepreneurship, etc. One of these NGOs publishes the magazine "Iva" magazine; another publishes the "Bulletin".

The Government allocates certain funds for projects from the civil sector, in compliance with the Law on NGOs. A certain number of project s proposed by women's NGOs were funded is this way.

Since the establishment of the Working Group for Gender Equality (WGGE) of the Stability Pact for South-Eastern Europe in 1999, two representatives from the women's NGO sector in Montenegro and a governmental Coordinator for Gender Equality have participated in its work. The appointment of the government's Coordinator for Gender Equality, Montenegro's participation in the activities of the WGGE, the government's project proposals for establishing a governmental gender equality mechanism, and the establishing of a Parliamentary Committee for Gender Equality, illustrate the serious commitment of the Government of Montenegro to adopt and implement international standards in this field.

Montenegro has implemented several projects with the support of the WGGE of the Stability Pact. Two of them -- "Women's Rights – Human rights" and "Women in Politics – Women Can Do It!" were initiated by Montenegrin NGOs. The first of these, which has been completed, resulted in the motion to change the Law on Election of Councilors and MPs by introducing an obligatory 20% (the initial proposal had been for 30%) share of women in the Parliament at all levels of decision-making in legislative, executive and judicial power. The second project, which has been extended as "Women Can Do It II" focuses on special training for women from the political parties in Montenegro, regardless of their different political affiliations, national or religious background, family or educational background. In implementing this project, women from NGOs and trade unions also took part. This project is important because, if there is to be an to increase in the quality and size

of the representation of women in the public political arena, women need to be educated on how to get involved into public life.

A third project is one that was initiated by the Government is a project to establish a Mechanism for Gender Equality on the basis of general commitment to respecting human rights, particularly those which imply more appropriate treatment of women in family and in society. A delay in receiving funding, the parliamentary elections and the formation of the new Government have meant that the implementation of this mechanism has not yet taken place but it is soon to be set up. In general, the tasks foreseen for the mechanism during the first year of its operation are as follows:

- establish a gender–related statistical data base and conduct research into the position of women in all fields of life;
- establish a data base on best international practices in the process of implementing gender equality;
- coordinate major governmental, parliamentary and non-governmental activities for elimination of all kinds of discrimination of women and girls, violence against women and eradication of phenomenon that violate women's human rights;
- initiate amendments and motions for new legislation to improve the position of women in the family, the economy and political life;
- launch a campaign to raise the general level of awareness about issues related to gender equality, publishing material in media to inform the public about the implementation of all women's human rights and the need to organize volunteer counseling and legal assistance for urgent cases.

In addition to the above, Montenegro has participated in a Stability Pact project for "Protection of Victims of Sex Trafficking in Montenegro" which involved not only the Government but also NGOs and international organizations under the coordination of the OSCE, and the Government adopted the National Action Plan for Combating Sex Trafficking.

Another regional project completed under the auspices of Stability Pact was the project on "The Role of Women from South-Eastern Europe in Prevention and Resolution of Conflict and in Conducting Dialogue After the Conflicts".

Finally, one should mention the initiative to create a women's NGO network in Montenegro and, while it has not yet fully developed, both NGOs and Government have recognized the need for such a network.

Article 4

Paragraph 1

The term "public emergency" in article 4 of the Covenant on Civil and Political Rights corresponds to the terms "a state of emergency", "a state of immediate danger of war" and "a state of war".

The Charter on the State Union of Serbia and Montenegro prescribes that the Council of Ministers, with prior consent from the Parliaments of both Member States, is responsible for declaring a "state of emergency", "state of immediate danger of war" and "state of war".

Accoprding the Montenegrin Constitution the Montenegrin Assembly may not be dissolved during "a state of emergency", "a state of immediate danger of war" and "a state of war". During a state of war the term of office of the Montenegrin Assembly (that normally lasts 4 years) is extended for as long as peace is not established (Article. 78, paragraph 2, the Constitution of Montenegro). The mandate of the President of the Republic of Montenegro is also extended for as long as peace is not established (Article. 86, paragraph 2, the Constitution of Montenegro).

The Constitution of Montenegro does not have any provisions concerning the obligation of citizens to defend the country.

Paragraph 2

After “a state of emergency”, “a state of immediate danger of war” and “a state of war” are declared, certain freedoms and rights of citizens of Montenegro may be restricted. The Charter on human and minority rights and civil freedoms define in which cases certain human and minority rights could be restricted.

However, the declaration of “a state of emergency”, “a state of immediate danger of war” and “a state of war” may not abolish or restrict the rights and freedoms contained in articles 15, 20, 24, 25, 27 and 34 of the Montenegrin Constitution. In accordance with this rule, abolition and restrictions may not relate to: equality of citizens; inviolability of the physical and psychological integrity of a person, his privacy and personal rights; his personal dignity and security, respect of the human personality and dignity in criminal and any other proceedings, prohibition of violence against persons deprived of liberty, and prohibition of torture, humiliation and forced confessions as well as the carrying out of medical and other experiments without his consent; respect of the principle of legality, i.e,. the rule that no one may be punished for an act which did not constitute a penal offence under law or by-laws at the time it was committed, nor may a punishment be imposed which was not envisaged for the offence question, as well as that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty by a valid decision of the court of law; the right to rehabilitation and compensation of damage and the right to defense; the rule ne bis in idem, i.e., that no person shall be tried twice for the same criminal offense; guarantee of freedom of belief and conscience, thought and public expression of opinion, freedom of confession, public or private profession of religion and freedom to express national affiliation, culture and the freedom to use one's own language and alphabet.

Paragraph 3

The Federal Assembly has declared "a state of war" on March 26, 1999 as a result on NATO’s intervention in FR Yugoslavia.

Soon afterwards, the Montenegrin Assembly passed a Resolution which stated that this decision shall not be valid on the territory of the Republic of Montenegro. The decision of the Montenegrin Assembly, which may seem to have clashed with the provisions of the Federal Constitution, was a result of a different assessment of causes and character of NATO’s intervention by the Montenegrin Parliament on the one hand and federal bodies on the other. As a result, the declaration of “a state of war” by the Federal Assembly was not applied in the territory of Montenegro.

Article 5

Paragraphs 1 and 2

The Republic of Montenegro, as a member of FR Yugoslavia (now State Union of Serbia and Montenegro), ratified the International Covenant on Civil and Political Rights.

In accordance with Article 16, paragraph 2 of the Federal Constitution, that “international agreements which were confirmed and published in accordance with the Constitution and standards of the international Law comprise part of the internal legal order”, the provisions of this Covenant represent the internal law of Montenegro and are not in opposition to relevant legislation.

Article 6

Paragraph 1

Human life is inviolable under Article 21, paragraph 1 of the Federal Constitution. The right to life is strongly affected by health policies and by policies for environmental protection, both of which are regulated by Republican law. Health is discussed in detail under Article 12, paragraph 2b of the International Covenant on Economic, Social and Cultural rights.

A new approach to the environment and to natural resources in Montenegro began in September 1991 when Parliament adopted the Declaration on the Ecological State of Montenegro and constitutionally defined Montenegro as an ecological state. By this Declaration Montenegro vowed to protect its identity by harmonizing its economic and social development with the principles of

sustainable development. The importance and originality of this idea were confirmed at the International Conference on the Environment held under the auspices of the United Nations in Rio de Janeiro in 1992, where this Declaration was included in final document of the Conference – Agenda 21.

In article 1 of the Montenegrin Constitution, the basic characteristic of Montenegro is that it is "a democratic, social and ecological state". The ecological character of the state is also given in Preamble to the Constitution -- "that nature is the source of health, spirituality and culture of the human kind, whereas the state is the guardian of sanctity and purity of nature" -- and expresses Montenegro's collective determination to preserve nature and to include the state in this process.

According to the article 19 of the Montenegrin Constitution: "everyone shall have the right to a healthy environment and shall be entitled to timely and complete information about the state of the environment. Everyone has the duty to preserve and promote the environment", the right of citizens to a healthy environment is guaranteed.

With the enactment of the Law on the Environment in 1996. Montenegro developed a comprehensive policy on the environment, defining the goals, basic principles, measures and mechanisms and programs for the protection of environment, a system for assessing and monitoring environmental impact**,** an information system, a system for determining responsibility for environmental pollution including compensations and fines for environmental pollution

Basing itself on the principle that "the polluter pays ", the Law requires polluters to pay "eco-compensation" in proportion to the quantity of emitted polluting substances, as well as fines for violation of prescribed codes of conduct. There are eco-compensations on investments (1% on the value of investments which require assessment paper, 2% on the value of investments in the area of national parks) as well as compensations for pollution of the environment.

The Republic of Montenegro took in around 1.905.000,00 DEM from eco-compensations last year.

From the perspective of prevention, the Law stipulates the obligation to adopt detailed plans for the protection of the environment, such as the Ecological program at the level of Republic and programs at the local level. This resulted in the adoption of the project ''Directions of development of Montenegro as an ecological state'' in 2001, which sets out Montenegro's long-term development strategy in this area.

For the purpose of monitoring of the quality and quantity of changes in the environment, the Law requires the Government to keep a Register of polluters.

Another important preventive measure for the protection of environment is the timely assessment of the potential impact of industrial and other development on the environment and environmental risk analysis is now mandatory.

The Law also establishes a duty to set up information system as well as the obligation to respect of the right of citizens to timely and complete information on the state of the environment. In cases where corporate bodies cause pollution by deliberate actions or by mistake, they are required by law to inform the Ecological inspection unit and develop corrective measures.. The competencies of the Ecological inspection unit as well as the sanctions imposed on entities and corporate bodies under this Law are discussed in the report on the Covenant on Economic, Social and Cultural Rights (under article 12 paragraph 2b).

The Law also deals with the issue of taking necessary measures for prevention of pollution of the environment in cases of emergency and where the polluter is unidentified.

Other important Laws in the area of protection of environment are:

1. Law on air protection (Official Gazette of the Republic of Montenegro 14/80)
2. Rule book on permissible concentration of harmful substances in the air (Official Gazette of the Republic of Montenegro 4/82, 9/82)
3. Law on the environmental protection (Official Gazette of FRY 36/77).

E) Paragraph 2

The most significant reform in the criminal law in Montenegro was the passing of the Law on Addenda and Amendments to the Criminal Code of the Republic of Montenegro, adopted by the

Montenegrin Assembly on July 26 2002, which abolishes capital punishment. Criminal acts that were punishable by death are now punishable by imprisonment for up to 40 years, in the following cases:

- only for most serious crimes laid down by Law

Capital punishment may not be pronounced on a person that was under 21 years of age at the time of the commission of the criminal offence.

The basis for abolishing capital punishment is found in the Montenegrin Constitution, article 21, which guarantees the right to life.

In connection with capital punishment, we point out the following:

- the last execution of capital punishment occurred more than 20 years ago;
- there were three cases of in which a sentence of capital punishment was pronounced, and all three were for serious criminal offences of robbery and stealth in article 148, paragraph 2 of Criminal Code (two persons), and one for murder, article 30, paragraph 2, point 1 of Criminal Code;
- all sentences were pronounced by the High Court in Podgorica, except that in one of the cases a review of the proceedings was allowed following an appeal of the convicted person;
- valid court decisions that pronounce capital punishment shall be replaced with imprisonment for up to 40 years in accordance with the existing Criminal Code.

From the moment that the new Law entered into force, two capital punishment verdicts were changed to 20 years imprisonment for cases involving serious robbery.

Paragraph 3

FR Yugoslavia ratified the Convention on the Prevention and Punishment of the Crime of Genocide in 1950. Under Yugoslav Criminal Code (article 141) the crime of genocide is punishable by 5 to 20 years imprisonment.

The Criminal Code of Montenegro does not consider the crime of genocide, and in such a case the provisions of Criminal Code of FR Yugoslavia would be applied.

F) Paragraph 4

By adopting the Law on Addenda and Amendments to Criminal Code of the Republic of Montenegro enacted by the Montenegrin Assembly on July 26 2002, capital punishment was abolished.

Article 7

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Prohibition of torture and inhuman behavior is dealt with in a serious way in the legal system of Montenegro, in particular in the Constitution of Montenegro, in provisions of articles: 15, 16, 17, 20, 21, 22, 23 and 24.

Article 15 of the Montenegrin Constitution states that all citizens are free and equal regardless of any particularity and/or personal attributes, that freedom and rights are inviolable and that any abuse of freedom and rights is unconstitutional and punishable. Article 17 states that each citizen has the right to an appeal or to resort to any other legal remedies against decisions affecting his rights or interest based on the law.

The Constitution guarantees the dignity and safety of persons. Human life is inviolable (article 21), and therefore new Criminal Code abolishes capital punishment and replaces it with imprisonment for up to 40 years.

Article 22 states that every person is entitled to personal freedom and that unlawful deprivation of liberty is punishable.

Article 24 guarantees respect for the dignity of the human person in all criminal and any other proceedings in case of deprivation or restriction of liberty and during the enforcement of a penalty. Any violence against a person deprived of liberty or whose liberty has been restricted, as well as any forcible extortion of a confession or statement, is prohibited and punishable.

The Criminal Code of the Republic of Montenegro (CC) sanctions infringements of these rights. This includes the criminal act of coercion (article 44 CC) -- "a person that uses force or serious threat to coerce other person to do something, not to do something or be subject to something, shall be

punished by fine or imprisonment for up to one year"; or the criminal act of unlawful deprivation of liberty (article 45 CC) -- "person who unlawfully deprives other person of liberty or restricts another person's freedom of movement shall be punished by imprisonment for up to one year, and if this offence was committed through an abuse of office or powers, the perpetrator shall be punished by prison sentence for up to five years". "If deprivation of liberty lasted more than 30 days, or if the detained person was treated cruelly or his health was seriously damaged or if he suffered other severe consequences, the perpetrator shall be punished by 1 to 8 years imprisonment, and if the detained person dies, the perpetrator shall be punished by 1 to 12 years imprisonment".

Furthermore, "a person who uses force, threat or any other unlawful means in the line of duty with the intention of extorting a confession or some other statement from the accused person, witness, forensic experts or other persons", is committing the criminal offence of extortion of deposition (article 47 CC), and the perpetrator shall be punished by imprisonment of between three months and five years; and if the extortion of deposition or statement is followed by severe violence or if the defendant in criminal proceedings has suffered severe consequences as a result of extortion of a deposition or statement, the perpetrator shall be punished by 1 to 10 years imprisonment.

The crime of abuse of office (article 48 CC) is described as follows: "a person who abuses, insults or violates the human dignity of other person in the line of duty, shall be punished by imprisonment for between three months and three years".

Article 25 of the Constitution of Montenegro states that "a person who was wrongfully deprived of liberty or wrongfully convicted is entitled to compensation". According to the Ministry of Justice data, in 2001 more than 570.000 DEM was paid from the budget of Montenegro to citizens that were wrongfully deprived of liberty by the police or an investigating judge.

In last year there have been nine reported cases of torture and energetic measures were taken against police officers who behaved in a way inappropriate for a member of police force. In the period from 7 January 2001 to 9 January 2002, disciplinary measures were taken against 258 police officers, as a result of which 12 officers were removed from service, and other officers were fined 30 to 50 percent of their salary for a period of one to three months. Some officers were suspended from the service until their cases were settled.

When compared with previous periods, the number of repressive measures against the citizens (blockades, raids, search and identification request) was significantly reduced and such extreme measures were used only when there were security problems.

Further reform of the police is expected when the new Law on Police and the Code of Ethical Conduct, are enacted, since they will be consistent with international human rights standards. Particular attention will be paid to regulating and restricting police powers, especially the use of force and firearms, surveillance, search, arrest, deprivation of liberty, treatment of persons deprived of liberty, the duration of police detention, and the appointment of defense counsel to persons deprived of liberty when they are first questioned by the police.

Article 8

Paragraph 1 - 3

No one shall be held in slavery; slavery and trafficking in human beings are prohibited in all their forms.

In 1993, a few cases of trafficking in human beings on the territory of the Republic of Montenegro were recorded. Later, especially in second half of 1999, the number of cases involving this type of crime increased.

Thus far, in Montenegro's legal system, occurrences of acts similar to trafficking have been sanctioned by the Federal Criminal Code as a criminal offence of illegally crossing the state border (article 249 of CC of FRY), the criminal offence of luring into and mediating in prostitution (article 251 of CC FRY), the criminal offence of reducing other persons to slavery and the transport of persons in such conditions of slavery (article 155, paragraph 3 in connection with paragraph 1 of CC of FRY) and the criminal offence of luring into and enabling a person to engage in debauchery (art 93

CC of the Republic of Montenegro), which did not include relevant elements of trafficking in human beings as defined in International Law.

Trafficking in human beings was defined as criminal offence for the first time in article 201a of the Law on Addenda and Amendments to Criminal Code of the Republic of Montenegro (Official Gazette of the Republic of Montenegro, No. 30/2002), and, under this article, all perpetrators of these criminal offences are punished by imprisonment for between 1 and 10 years.

The occurrence of this type of criminal act was a result of the Kosovo crisis and the establishment of a large number of refugee camps in the Republic of Albania, where young girls were abducted and then sold for prostitution in countries of Western Europe, so that transport of these girls to Italy was partially carried out across the territory of the Republic of Montenegro.

Following the decision of the Government of Montenegro, a National Coordinator for this area was appointed, and in coordination with OSCE, international and non-governmental organizations (such as the Montenegrin Women's Lobby and Women's Safe House) a Program for protection of victims of trafficking in Montenegro was created.

An expert team within Montenegrin Ministry of Interior (formed at the beginning of 2001) coordinates activities in the area of preventing and exposing trafficking in human beings and it monitors, controls and guides the activities of police teams.

The Ministry of Interior of Montenegro cooperates with neighboring countries, i.e., with their security services, in preventing organized crime.

In the period from 1 January.2001 till 16 December 2002, 21 criminal charges were brought against 49 persons for the criminal offence of trafficking in human beings and mediation in prostitution, where 34 persons were victims of trafficking.

In year 2000, 1,371 illegal immigrants were registered in Montenegro, 1,250 of whom male and 121 female; in 2001, 1,082 illegal immigrants were registered, 994 of whom male and 88 female; and in 2002, 397 illegal immigrants, 362 male and 35 female.

In year 2000, 951 illegal immigrants were deported from the territory of Montenegro; in 2001, 933 persons were deported, 862 male and 71 female, and in 2002, 332 persons were deported, 301 men and 31 women.

The number of smuggled persons who tried to cross the border of Montenegro in 2000 is 366, 351 male and 15 female; in 2001, 331 persons, 280 of whom were male and 51 female; and in 2002, 191 persons, 175 male and 16 female.

In one case of illegal transport,, a ship carrying 105 Roma from Kosovo sank, and it is believed that all persons lost their lives, although only 27 bodies were found on Montenegro's coast. A Court proceeding in this case is under way.

In course of activities aimed at disclosing and stopping trafficking of women and the illegal transport of persons, a number of other criminal offences were discovered, such as the criminal offense of forgery of travel documents and criminal offenses concerning drugs.

Forced and compulsory labor

Based on ratified ILO Convention No. 29 on forced or compulsory labor, Montenegro prohibits forced labor under Article 52, paragraph 2 of Montenegro's Constitution. Forced labor in the sense of this Convention includes any work or service exacted from any person under the menace of any penalty and for which the said person has offered himself voluntarily.

However, forced labor in the sense of present regulations in relevant areas such as: duties of purely military nature in compulsory military service, the work of persons convicted in a court of law, provided that the carried work or service is carried out under supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations, any work in cases of emergency or calamity such as fire, flood, hunger, earthquake, epidemic diseases, cattle diseases and in general any circumstance that would endanger the survival of the whole or part of the population-- requires the same regime of protection as voluntary labor.

Illegal exaction of forced or compulsory labor in Montenegro is sanctioned in accordance with the regulations in relevant areas and these sanctions are extremely severe.

Article 9

Paragraphs 1 – 3

The question of personal freedom and personal security, deprivation of liberty and its legitimacy, defense and right to appeal are regulated by the Constitution of Montenegro and FRY, as well as by Code on Criminal Procedure and Law on Internal Affairs.

Article 22 of the Montenegrin Constitution guarantees the right to personal freedom to every person. A person deprived of liberty must promptly be informed, in his own language, of the reasons of deprivation of liberty.

Article 23 of the Constitution deals with detention and therefore "a person reasonably suspected of having committed a criminal offence may be detained and held in custody on the basis of the competent court of law decision, only when it is indispensable for the conduct of criminal procedure ".

Although the Constitution of Montenegro and the Constitution of FRY clearly recognize only the term "detention", by further legal regulations the differentiation of the terms: "holding in custody", "deprivation of liberty" and "detention" was made.

Article 152, paragraph 1 of Code on Criminal Procedure states that bodies responsible for internal affairs may detain a person found at a crime scene until the investigating judge arrives, but no longer than 6 hours. Articles 195 and 196 of Code on Criminal Procedure, proscribes the conditions for ordering detention by bodies responsible for internal affairs, as well as the period of its duration, noting that this only happens in extraordinary cases clearly specified in the Law.

Article 196, paragraph 3 of the Code on Criminal Procedure states that:" a detention ordered by a body responsible for internal affairs may not last longer than 3 days, with possibility of lodging an appeal, which must be decided on by the competent court of law within 24 hours from the moment the person received a written order. The court council must make a decision within 48 hours".

The question of deprivation of liberty is regulated by article 15 of the Code on Criminal Procedure and it may last up to 24 hours, in certain cases up to 12 hours, and the question of right to appeal is regulated by article 16 of the mentioned Code. In cases like this the detained person (that is, person deprived of liberty) is not entitled to a defense counsel until he is brought before the court.

Paragraph 4

The right to appeal is regulated by the Constitution of Montenegro and the Federal Constitution.

The Constitution of Montenegro, article 25 states "Everyone shall have the right to engage a defense counsel before the court or before some other body authorized to conduct proceedings ".

Right to appeal is regulated by the Code on Criminal Procedure in articles 190 to 200. Article 192, paragraph 4, states that a detained person (in investigation) may lodge an appeal with the court council within 24 hours from the moment he received the decision, and paragraph 6 of the same article states that the court council has to decide on this appeal within 48 hours. Article 193 of the Code on Criminal Procedure proscribes a right to defense counsel, who may on behalf of the detained person lodge an appeal within 24 hours. In the process of depriving a person of liberty, article 190 of the Code on Criminal Procedures proscribes an emergency procedure, as well as the termination of detention as soon as the reasons that caused it cease.

The Criminal Code of Montenegro in article 189 proscribes that "the unlawful deprivation of liberty is a criminal offence ", which reduces the possibility of abuse while conducting arrest or detention.

G) Paragraph 5

H) **The Code on Criminal Procedure regulates the right to compensation for damage. Article 545, par 1: "The right to compensation for damage may be claimed by:**

1) a person who was detained and not charged, or if the criminal proceeding against the said person was abolished by a verdict or a decision stating that person is free of any charge or that the charge against that person was rejected;

2) a person who was deprived of liberty, who demands on repeated proceedings the protection of legality or extraordinary revision of the verdict because he was sentenced to detention for a time period shorter then the period he spent in custody, or because the pronounced verdict did not imply the deprivation of liberty, or he was found guilty and then freed of charge.
3) a person who was deprived of liberty as a result of a mistake or unlawful act of the body in charge..."

The Code on Criminal Procedures regulates that the Ministry of justice is in charge for payment of the compensation for damage. If citizen is not satisfied with compensation offered for the time spent in custody, he can exercise his right in the proceedings before the court. In 1999, 92 persons wanted to exercise this right, in 2000 – 68 persons, in 2001 – 67 persons and till November 2002 – 76 persons, all of them on the basis of an agreement with the state, while data showing how many persons claimed compensation for damage through courts of law are not updated.

Duration of detention is not still in satisfactory way regulated, and is justified with the difficulties in collecting the evidences. Data on duration of detention show that it is inadequate (it lasts too long), which points to violation of article 190 of the Code on Criminal Procedure («emergency procedure »). Furthermore, the practice shows that perpetrators of minor offences are unjustly held in custody, since these are usually persons from lower layers of society who cannot afford a defense counsel (for example - a person was held in custody for three months because he stole a box of cigarettes.).

While the Constitutional and legal regulations in Montenegro wholly incorporate article 9 of the ICCPR, certain inconsistencies in the constitutional and legal regulations exist, in particular between the Code on Criminal Procedure and the Constitution because they were enacted at different times (Code on Criminal Procedure was passed in 1977, and the Constitution in 1992), as well as of the fact that the new Law on Criminal procedure of FRY, passed on 28 December 2001, is not applied in the territory of Montenegro.

Montenegro intends to promptly adopt a new Law on Criminal Procedure, which should rectify all inconsistencies and enable more efficient procedure for persons deprived of liberty, in sense that a person shall be brought before the court as soon as possible ("immediately") and only in exceptional circumstances, with full legality of detention. Also, detention of minors who break the law for the first time should be conducted with extreme measure of precaution, since ordering detention does not contribute to socialization of the perpetrator but, on the contrary, enables him to gain new experience in the criminal area.

Article 10

Paragraph 1/plus

Each person deprived of liberty shall be treated humanly and with respect for human dignity and human personality.

Accused persons shall be segregated from convicted persons only in exceptional circumstances and are subject to separate treatment appropriate to their status of non-convicted persons.

The accused minors shall be kept separately from adults and their cases shall be decided on as soon as possible.

Above listed provision of the article 10 of the Convent is incorporated in the Constitution of the Republic of Montenegro. Article 22 of the Montenegrin Constitution states that every person is entitled to personal freedom so that unlawful deprivation of liberty is punishable, and article 24 guarantees the respect of human personality and dignity in criminal and any other procedure in case of detention, and any violence against a detainee or extortion of confession or statements from persons held in custody is punishable and strictly prohibited.

The provision of article 25 of the Montenegrin Constitution stipulates that no one may be punished for an act which did not constitute a penal offence under law or by-law at the time it was committed, nor may a punishment be imposed which was not envisaged for the offence in question.

No person can be considered guilty for a criminal offence until a court decides so. A person that wrongfully deprived of liberty or wrongfully convicted is entitled to compensation by the state. Criminal Code of Montenegro in article 189 proscribes that «unlawful deprivation of liberty » is a criminal offense, which reduces the possibility of abuse while arresting and detaining persons.

I)

J) Paragraph 2

The system of criminal sanctions is defined by Criminal Code of FRY, and the system of execution of criminal sanctions is defined by Law on Execution of Criminal Sanctions of the Republic of Montenegro (Official Gazette of the Republic of Montenegro, No. 25/94).

Based on powers given in this Law, article 2, paragraph 2, the Government of Montenegro has defined the internal organization and way of work of the Institute for the execution of criminal sanctions which is an independent state body and independent user of the Budget (provision published in the Official Gazette of Montenegro, No. 31/94, 18/95 i 26/00). The institute consists of two penal correctional institutions: one is located in Spuz, near Podgorica (Jail-Podgorica), the other in Bijelo Polje (Jail-Bijelo Polje).

Minors and persons sentenced to more than three months of prison are serving their sentence in the Penal-correctional institution

Persons sentenced to detention, persons sentenced to prison in criminal procedures and persons sentenced to prison for up to three months, serve their sentence in the Penal-correctional institution.

The listed categories of inmates are separated in prisons. Women are separated from men. Female guards are in charge of security of female prisoners.

Compulsory psychological treatment, confinement in health institution and obligatory treatment of alcoholics and drug addicts, as well as psychiatric observation and heath prevention of convicted and detained persons, are all conducted in specialized hospital.

This hospital is being built at the moment, and security measures of a medical character are performed in Special Psychiatric Hospital “Dobrota” in Kotor, which is not adequately equipped for this delicate task.

Execution of correctional measurers over minors is in the competence of bodies responsible for social care.

Based on article 21 of the Law on Execution of Criminal Sanctions, Ministry of Justice is in charge of control of the legitimacy of the execution of prison sentence.

There are many problems that derive from the evident problem of overload capacities, such as adequate accommodation of prisoners, especially juveniles. It is not possible to separate juveniles from adults, because jail capacities are overloaded, although it is a legal obligation. Joint accommodation of juveniles in the same room is disabled by the fact that they jointly commited criminal act and they have to be separated for the purpose of investigation (to prevent their agreement). Therefore, it is practice for juveniles to be placed in rooms with the adults, taking into account that they are not together with multiple (criminal) repeaters. They also have to be in rooms with small number of persons (5-6) and with persons that are arrested for miner criminal acts (for ex. criminal act against traffic safety)

The same problem can be found during period of serving time in jail, in Penal institution Podgorica, because facilities condition and number of persons convicted to juvenile jail do not provide possibility for their separate accommodation, taking into consideration the fact that number of persons convicted to juvenile jail doesn’t go beyond 5-6 persons per year. It is, also, taken into account that they are not placed in the same room with multiple repeaters and committers of severe criminal acts, and according to the possibilities, their treatment program is adjusted to their age. The emphasis is put on continuation of education and vocational training.

Reform of jail system is being carried out in cooperation with OSCE, Council of Europe, European Agency for Reconstruction and other organizations. Main goals of the projects are: improvement of protection of rights of the convicted persons, improvement of accommodating facilities of convicted persons and education of jail personnel.

K) Article 11

The legislation does not envisage any penalty (imprisonment) for inability to fulfill a contractual obligation. Failure to fulfill a contractual obligation is in the scope of Civil Law.

Article 12

Rights given in article 12 of the Covenant are incorporated in the Constitution of FRY, the Constitution of Montenegro, Law on domicile and residence of citizens ("Off. Gazette of Montenegro " No. 27/94), Law on Travel Documents of Yugoslav Citizens ("Off. Gaz. of FRY" No. 33/96), Law on movement and residence of foreigners ("Off. Gaz. of FRY " No. 56/80), Law on crossing the state border and other legal and sub-legal acts.

L) Paragraph 1

Everyone lawfully present within the territory of a state has the right to liberty of movement and freedom of choice of residence.

Article 28 of the Constitution of Montenegro guarantees citizens the freedom of movement and residence and this right may be restricted only for purpose of conducting criminal proceedings, for prevention of contagious diseases and defense of FRY

The Law on domicile and residence of citizens proscribes that a citizen who resides outside of his domicile (a place where a citizen has settled with the intention to live permanently) for more than 30 days, is obliged to report and cancel his place of residence within 24 hours from the moment of arrival, that is, before departure. The exceptions to the listed obligations are given in article 6 of the same Law. The procedure for report and cancellation of domicile or residence is described in provisions of articles 4-9 of this Law.

Inspection control in relation to application of this Law and other regulations on domicile and residence, i.e., reporting on change of address, is conducted by the Ministry of Interior of Montenegro, which keeps records on this data.

The Ministry of Interior defines the Rules on type and content of the form for reporting the domicile and residence of citizens, on changes of address and departure for a foreign country and the on method for keeping records on this data.

Violation of these legal provisions is sanctioned by fine, for both entities and corporate bodies.

The procedure upon appeal i.e., the right to appeal, is regulated by Law on General legal procedure ("Official Gazette of FRY" No. 33/97), according to which the citizens have the right to lodge an appeal and initiate administrative proceedings before the Supreme Court of Montenegro.

M) Paragraph 2

Everyone shall be free to leave any country, including his own.

Law on travel documents of Yugoslav citizens regulates the conditions for issuance of travel documents, types of travel documents, authority to issue travel documents and visas, as well as the procedures for their issuance.

In accordance with this Law, a request to issue a travel document or visa shall be rejected if:

- a person requesting the issuance of travel document or visa is subject to criminal proceedings – following the request of the competent court of law for as long as the criminal proceedings last;
- the person requesting the issuance of the travel document has been sentenced to more than three months of prison - until he serves his sentence;
- if it is indispensable to prevent spreading of contagious disease;
- if it is indispensable for the defense of FRY.

The right to appeal and the procedure for the appeal are regulated by the Law on General Legal Procedure according to which the citizens have the right to lodge an appeal and initiate administrative proceedings before the Federal Court.

In the period between 1992 and 30 November 2002, 370,124 requests for the issuance of travel documents were submitted to relevant authorities, 369,365 of which were granted (99,79%) and 547 (0,15%) rejected and 212 (0,06%) revoked.

The grounds for rejection in period between 1992 and 1996 lay in article 43 paragraph 1, point 1 of the Law on travel documents of FRY citizens (24 requests); article 43, paragraph 1, point 2 (8 requests); article 43, paragraph 1, point 6 (5 requests) and article 12, paragraph 1 (13 requests). From 1997 until November 30, 2002, the grounds for rejection of requests lay in article 46, paragraph 1, point 1 of the Law (264 requests), article 46, paragraph 1, point 2 (80 requests); article 46, paragraph 1, point 4 (22 requests) and article 46, paragraph 1, point 5 (113 requests).

Paragraph 3

The above-mentioned rights shall not be subject to any restrictions except those that are provided by the Law, which are indispensable to protect national security, public order, public health or morals or rights and freedoms of other persons, and consistent with other rights recognized in the Convent.

Paragraph 4

No one shall be deprived of the right to enter his own country.

Article 13

The movement and stay of foreigners is regulated by Law on movement and stay of foreigners. Namely, the provision of article 2 of this Law proscribes that during his stay in Yugoslavia, a foreigner is obliged to respect regulations and decisions of the state bodies based on the Federal Constitution, as well as laws and obligations stemming from the international agreements. A permission to enter FRY may be denied to a foreigner, his movement or stay in certain area may be restricted or prohibited, his residence permit may be revoked or his permanent residence in certain areas may be prohibited in order to protect public order or the interest of a defense of the country, or as a result of reasons stemming from the international agreements. The Law regulates provisional stay of foreigners (art. 31-37), their permanent residence (art. 38-43), the right to asylum (art. 44-49) and refugees (art. 50-60).

A foreigner against whom an expulsion order or order to leave the territory of FRY has been pronounced is obliged to leave the country within the time period determined by the competent body.

If a foreigner fails to leave the territory of FRY within the required period and has a valid passport, he shall be escorted to a state border and forced to leave the territory of FRY. A foreigner who fails to leave within the required period and who does not have a valid passport shall be escorted to the diplomatic or consular office of his State in order to obtain a passport. Should diplomatic or consular office of a given State refuse to issue a passport, an foreigner shall be escorted to the State border and handed over to the competent authority of the neighboring country if he is a national of that country, or to the competent authority of another State which agrees to receive him. Before expelling a foreigner, it is necessary to obtain the permission from the competent federal body in Internal Affairs at least two days prior to the expulsion date.

A foreigner who enters FRY illegally or stays within its territory without the permission of a competent body, and whose identity cannot be established and who does not have the provisional permission to stay, or who has not been granted the status of refugee or an asylum, is handed over to the a shelter for foreigners founded by Federal Ministry of Interior (following the request of competent republic body).

This Law also to proscribe the method for the issuance of travel and other documents to foreigners, the method for granting provisional stay, permanent residence, the recognition of a refugee status etc.

This state official, together with the state official in charge of foreign affairs, has the authority to proscribe the method for issuance of travel documents and visas to foreigners in diplomatic and consular offices, the method for issuance of personal identity cards to their members as well as the method for keeping records and reporting.

In case the above listed provisions are not applied, the Law foresees fines for both entities and corporate bodies.

Before this Law, the Guide on enforcement of the Law on movement and stay of foreigners as well as on the enforcement of the Law on crossing the state border and movement in border area are also in force.

In period between 1992 and 2002 the Ministry of Internal Affairs has revoked 6.595 stay permits to foreign citizens:

- 3.760 – because of unreported stay;
- 2.078 – because of illegal crossing of the state border;
- 332 – because of illegal work;
- 248 – for disrespect of the FRY regulations;
- 154 – because of commission of an criminal offence;
- 16 – because of vagrancy;
- 5 – for suspicion that the person was involved in prostitution and
- 2 – for violating public peace and order.

Article 14

The rights envisaged in article 14 of the Convent are guaranteed by the Constitution of Montenegro, the Code on Criminal Procedure, the Criminal Code of Montenegro and partially by the Family Law of Montenegro.

N) Paragraph 1

Article 15 of the Montenegrin Constitution states that: «All citizens are free and equal regardless of their particularities or personal attributes. All citizens are equal before the law.»

Article 17 of the Montenegrin Constitution states : «Everyone is entitled to an equal protection of his freedoms and rights in accordance with the procedure proscribed by law (paragraph 1).»

The Criminal Code of Montenegro stipulates that a person who deprives a citizen of his rights or restricts his rights stipulated by the Constitution, laws and other regulations and ratified international agreements, bears criminal responsibility for "the violation of equality" and shall be punished by three months to five years imprisonment.

The judiciary is autonomous and independent (article 100 of the Constitution).

For purpose of more efficient work and protection of the right of citizens to fair and impartial trial, a new Law on Courts of the Republic of Montenegro was enacted, and it came into force in February 2002. This Law implements the principles of independence and autonomy of judiciary (article 3), availability of courts and equality of parties (article 5), and non-biased work and the right to randomly selected judge (articles 7 and 8), which is in compliance with modern European standards.

The procedure for selection of judges speaks in favor of independence of judiciary, since they are selected by the Montenegrin Parliament, following a proposal of the Judicial Council. Along with general conditions for the selection of judges (graduated from Law faculty, passed bar examination), a judge is required to have had a specified number of years of service depending on the court he is selected for (articles 31-42 of the Law on judges). The function of a judge is permanent, it is not controlled by the executive authority, and the higher court decides on appeals on pronounced decisions. A judge bears disciplinary responsibility if he performs his duties incompetently or if he commits an offence which renders him unworthy of judicial service (article 43 of the Law). The termination of a judge's function or his relief of duty is regulated by articles 53-69 of the Law. Decisions on this matter ares brought by the Montenegrin Assembly following a proposal of Judiciary council.

In accordance with the provision in article 102 of the Constitution concerning public trial, the Law on courts proscribes the principle that all trials before the court shall be public except in cases proscribed by Law.

The exclusion of the general public from a trial (during the entire process or a part of it) is proscribed by the Code on Criminal Procedure (article 288), if it is indispensable for keeping secrecy, public order, for the protection of morals, the protection of interests of a minor, as well as in matrimonial and family proceedings when dealing with the interest of the children and custody over them (article 307 of the Family Law of Montenegro). The general public is always excluded from the trial of a minor (article 482, paragraph 1 of the Code on Criminal Procedure of FRY) but the verdict is pronounced in public session. The Council decides whether and for what period of time shall the general public be excluded when the judge pronounces the reasons for the verdict (article 352, paragraph 4 of the Code on Criminal Procedure).

O) Paragraph 2

The presumption of innocence, which is of a fundamental importance in protection of human rights, is incorporated in article 25, paragraph 3 of the Constitution of Montenegro: «Everyone shall have the right to be presumed innocent for a criminal offence until proved guilty by a valid decision of the court.» This provision is also incorporated in article 3 of the Code on Criminal Procedure, which means that the defendant is not obliged to prove his innocence, but the prosecutor is obliged to prove the existence of his guilt.

P) Paragraph 3

On first hearing, the defendant must be informed of the offence for which he is charged as well as the causes of the charge against him (article 4 of the Code on Criminal Procedure).

Parties, witnesses and other persons involved in the proceedings have the right to use their own language during the investigation or other court proceedings or main hearing. If the main hearing is not conducted in the language of the person in question, an interpretation of his statement and statements of other persons, as well as the translation of written evidence, shall be provided (article 7, paragraph 2 of the Code on Criminal Procedure). Paragraph 4 of the same article expressly states that the translation/interpretation is performed by a court interpreter. The expenses of translation/interpretation are paid from the Budget.

The defendant has the right to defend himself or engage a defense counsel of his own choosing (article 11, paragraph 1 of the Code on Criminal Procedure).

If the defendant does not engage a defense counsel, the court shall appoint one in order to ensure his defense is in accordance with this Law (paragraph 2).

The defendant must be given adequate time to prepare his defense (article 3).

The Code on Criminal Procedure in articles 67-75 defines the concept of formal defense in a criminal procedure. The defendant may have a defense council during the entire procedure (article 67, paragraph 1). It is important to note that before the first hearing, the defendant must be informed that he has the right to engage a defense counsel and that the defense counsel may be present at his hearing (paragraph 2 of the article 67).

Article 70 of the Code on Criminal Procedure defines mandatory defense and paragraph 1 reads: “If the defendant is mute, deaf or incapable of defending himself successfully, or if the criminal proceedings is conducted against a criminal offence that is punishable by death, the defendant must have a defense counsel starting from the first hearing.” (N.B. The new Criminal Code of the Republic of Montenegro has abolished the capital punishment, and the existing Code on Criminal Procedure dates from 1977).

If the defendant does not engage a defense council himself, the court shall appoint one for him (paragraph 4). When there are no conditions for mandatory defense and the proceedings concern a criminal offence punishable by more than 3 years of imprisonment, a defense counsel can be appointed for the defendant upon his request, if the defendant is not able to pay the expenses of the defense (article 71).

A defendant being tried in absentia must have a defense counsel as soon as the decision on trial in absentia is brought (article 70, paragraph 3).

The court is obliged to conduct the proceedings without undue delay and to prevent any abuse of rights of persons involved in the procedure (article 14 of the Code on Criminal Procedure). The courts have the obligation to make effort to speed up the procedure. Shortening and speeding up the

procedure must not impede the quality of investigative or other processes in the proceedings. However, in practice, rules in this paragraph are being violated, such as in the case of extended investigation or prolonged detention, which was discussed in article 9 of this Convent. With the aim of reducing the number of unduly delayed procedures, each month, the Ministry of Justice submits to the President of the Supreme Court a list of cases where court decisions have not yet been on the basis of information obtained from Institute for the Execution of Criminal Sanctions.

A new Code of Criminal Procedure was passed this year on the federal level, but it is not applied in Montenegro. It regulates the question of duration of detention in a way different from the Law now in force. As emphasized earlier, the reform of judiciary will reflect on adoption of amendments to the Criminal-Procedure Code which is expected soon, with the aim to wholly embrace the basic principles of the Covenant.

The court and state bodies involved in criminal proceedings are obliged to establish the facts important for making valid decisions in a truthful and comprehensive manner (article 15, paragraph 1 of the Code on Criminal Procedure).They have the obligation to examine and establish both the facts that charge the defendant and the facts that are in his favor (paragraph 2 of the same article). This article proscribes the principle of truth, the basic principle of a criminal proceeding superior to all other principles.

The hearing of witnesses of defense and prosecution is regulated by the Code on Criminal Procedure in articles 225 - 237. Article 327 of this Code states that the prosecutor, the defendant, the defense counsel, the victim, the authorized attorney, legal representative, and forensic expert may directly pose questions to witnesses and forensic experts (paragraph 1).

The interrogation of the defendant is regulated by article 218-224 of the Code on Criminal Procedure. After being informed of his right to use his own language and engage a defense counsel, the defendant shall be informed of his right not to present his defense or answer to questions posed to him.

Interrogation should be conducted in a way that fully respects the personality of the defendant. No force, threat or other similar means may be used against the defendant in order to extort a statement or confession (article 218, paragraphs 7 and 8). Questions addressed to the defendant should be clear, articulated and precise so that he can fully understand them. In process of interrogation, it may not be assumed that the defendant confessed something he did not confess, and the defendant may not be asked questions that already imply the answer. The defendant may not be deceived in order to extort a statement or confession (article 219 of the Code on Criminal Procedure). Medical interventions on the defendant are not allowed, nor is the consumption of substances which would affect his will while giving his statement (article 259 paragraph 3 of the Law on Criminal Procedure). The use of illegal substances with the aim of extort a statement or a confession is a criminal offence under article 190 of the Federal Criminal Code, and is punishable by imprisonment of between 3 months and 5 years.

Paragraph 4

The treatment of minors is proscribed in the Code on Criminal Procedure articles 452 to 492, as a special procedure which takes into consideration their psychological and physical profile, and gives the Court and public prosecutor extraordinary powers to treat minors differently from adults.. In addition, custodial bodies have special powers intended to ensure more efficient protection of the interests of minors and their successful rehabilitation.

A minor is tried by a special chamber for juveniles made up of judges for juveniles and judge-jurors who are professors, teachers or experts on young people (art 463 of the Code on Criminal Procedure). Under the new Law on Courts of the Republic of Montenegro, a judge-juror is a person who, apart from the conditions stipulated by law, has professional experience in working with minors (article 70 of the Law on Courts).

Any proceedings initiated against a minor who was under 14 years of age at the time he committed a criminal offence are suspended (article 453 of the Law on Criminal Procedure). A minor who turned 14, but not 16 (junior minor) at the time a criminal offence was committed may only be punished by correctional measures. Correctional measures may be pronounced on a minor who was 16 at the time of commission of the criminal offence, but was not 18 (senior minor), and in special

cases he may be sentenced to juvenile prison (article 73, paragraphs 1 and 2 of the Federal Criminal Code).

A minor may not be tried in absentia. When a minor is interrogated, bodies involved in that procedure have the obligation to act cautiously bearing in mind his mental development, sensitivity and personal characteristics, so that the conduct of criminal proceedings would not have negative effect on his development (article 454 paragraphs 2 and 3). Article 455 extends the mandatory defense of a minor in relation to mandatory defense of adults, as well as the application of this article to younger adults.

A minor is always tried behind the closed doors, as explained earlier in this report.

When necessary, the interrogation of a minor shall be conducted with the assistance of teachers or other competent experts, and with judge's permission, parents of a minor or custodians may be present (article 472, paragraph 2). However, the practice allows for avoiding certain proceedings in the procedure, such as avoiding confrontation of witnesses, reconstruction of the event, testimonies of forensic experts in the presence of the defendant etc, all the things that may have negative influence on minor's personality.

Minors enjoy all rights and guarantees in article 14 of the Convent, the same as all other persons, and those rights and guarantees are expanded in favor of minors in order to enable their re-socialization and return to the society.

It is important to mention pilot projects concerning alternative sanctions against minors, which serve as substitute for imprisonment, and will be implemented in new Law on offences which is currently being drafted.

Q) Paragraph 5

The right of the defendant to an appeal is guaranteed by the Constitution of Montenegro in article 17 paragraph 2: “Everyone has the right to an appeal or resort to any other legal remedy against a decision which infringes a right or legally founded interest.”

The right to appeal and the procedure following appeal are regulated by the Code on Criminal Procedure in articles 359 to 399. The court of second instance may make the following decisions following the appeal:

- reject the appeal as untimely or unlawful
- reject an appeal as groundless and confirm the judgment of the court of first instance
- cancel this verdict and forward the case to the court of first instance
- change the verdict of the court of first instance

The right to an appeal was already discussed in article 9, paragraph 4.

R) Paragraph 6

The right to compensation is regulated by Code on Criminal Procedure in articles 541 to 550, which was discussed in article 9, paragraph 5 of the Convent.

S) Paragraph 7

The principle “ne bis in idem” is incorporated in the Constitution of the Republic of Montenegro in article 27: “No one shall be tried or punished twice for the same criminal offence.”

Article 15

Paragraph 1

The Constitution of Montenegro, article 25, paragraph 1 proscribes that no one may be punished for an act that did not constitute a penal offence under law or by-law at the time it was committed, nor may a punishment be imposed which was not envisaged for the offence in question.

Based on article 26 of the Constitution, criminal and other penal offences are established and punished by law or by-law valid at the time a criminal offence was committed, unless new law or by-law are more lenient for the perpetrator.

T) Paragraph 2

No criminal proceedings were taken against acts and omissions that were considered as criminal offences at the time they were committed under general legal principles recognized by the international law, but were not proscribed as criminal offences by national law.

Article 16

A natural person becomes a subject under law by birth, and legal personality is acquired when a person turn 18. Men and women are equal as subjects under law.

Article 17

U)

V) Paragraph 1

No one shall be subject to arbitrary or unlawful interference into his privacy, family, home or mail/correspondence, nor unlawful attacks on his honor and reputation.

The Constitution of Montenegro incorporates the rights given in this article and it guarantees inviolability of psychical and psychological integrity of the individual, his privacy and personal rights, as well as his personal dignity and safety (article 20).

The provision of article 29 of the Montenegrin Constitution stipulates that person's home is inviolable and that an authorized official/person in an official capacity, may enter and search person's home against the will of the tenant only on the basis of court decision and in the presence of witnesses. In extraordinary cases, an authorized official may enter and search person's home or premises without the court decision and without witnesses, if so requested for immediate apprehension of the perpetrator of a criminal act or for purpose of saving lives or property.

The privacy of mail and other means of communication is inviolable (article 30 of the Montenegrin Constitution). This rule may be put in abeyance only if it is indispensable for purpose of criminal proceedings of for the defense of FRY.

Provision of the article 31 of the Montenegrin Constitution guarantees the protection of secrecy of personal data and prohibits the use of personal data for the purposes other than those for which they are compiled, since everyone has the right to access to personal data concerning his own person as well as the right of judicial protection in case of their abuse.

The abuse of listed rights is sanctioned by the provisions of the Criminal Code of Montenegro. Those are criminal offences against honor and reputation (art. 76-libel, 77-insult, 78-exposure of personal and family circumstances and 79- disrespect by insinuation of responsibility for a criminal offence) and criminal offences against personal dignity and morals (art. 86-rape, 87-coercion to sexual intercourse and unnatural debauchery, 88- coercion to sexual intercourse or unnatural debauchery over a helpless person, 89- coercion to sexual intercourse or unnatural debauchery of a minor, 90- coercion to sexual intercourse or unnatural debauchery by abuse of office, 91- unnatural debauchery) .

In the period between 1992 and 30 September 2002, 323 sexual offences were registered, 169 of which were rape (33 of which were an attempt of rape), and 154 other.

W) Paragraph 2

Protection of privacy, honor and dignity is proscribed by provisions of the Criminal Code (criminal offences: abuse of office, article 48; violation of inviolability of home, article 50; illegal search, article 51; libel, article 76; insult, article 77; exposure of personal and family circumstances, article 78; disrespect with insinuation of responsibility for a criminal offence, article 79).

Article 18

Paragraphs 1, 2, 3 and 4

The right to freedom of confession, as one of the basic human rights, is regulated by the international conventions, the Constitution of Montenegro and the Law on celebration of religious holidays.

Article 34, paragraph 2 of the Montenegrin Constitution guarantees the freedom of thought and public expression of opinion, freedom of belief, public or private profession of religion as well freedom to express national affiliation, culture as well as to use one's own language and alphabet. No person shall be obliged to declare his opinion, confession or national affiliation.

If we compare the provisions of article 34 of the Montenegrin Constitution to Universal Declaration of Human Rights, as well as to the international human rights conventions, it is obvious that the Montenegrin Constitution from 1992 fully respects international standards and conventions protecting human rights and freedoms.

Since Montenegro needed a law to concretize the instruments for realization of religious rights and freedoms that would be in compliance with the Montenegrin Constitution, new Law on legal position of religious communities was supposed to be enacted. This law was not enacted due to the unsolved state and legal status of Montenegro, which is required to determine whether these rights are regulated on federal or republic level.

Until a new Law is passed, the Constitution of Montenegro serves as the broadest base that regulates the position and rights of religious communities, and the state bodies strictly respect these rights.

Article 11 of the Montenegrin Constitution stipulates that the Orthodox Church, Islamic religious community, the Roman Catholic Church and other faiths are separate from the state. All the faiths are equal and free to perform their religious rites and affairs. All religious communities independently arrange their interior organization and religious affairs within the legal order of Montenegro. The state offers material assistance to religious communities.

The official representative of the Orthodox Church in Montenegro is a Montenegrin-Littoral Metropolitanate, of the Islamic religious community - Mesihat of the Islamic religious community in Montenegro and of Roman Catholic Church - Seat of Archbishop of Bar and Seat of Bishop of Kotor.

Montenegro is multiethnic and multi-confessional state. The largest number of population is Orthodox (around 70%), then Muslim (around 23%), Catholic (around 5%) and others.

Apart from traditional religions, Christian Adventist Church, Christ's Pentecostal Church, community of Jehovah's witnesses, Christian Evangelistic Church etc., are also active in Montenegro.

The constitutional dispute over whether the foundation of a new religious community - Montenegrin Orthodox Church - is in compliance with the Constitution, is currently before the Constitutional Court of Montenegro.

Religious communities are free to organize religious education and religious schools according to their own needs and without any restrictions. Schooling system of religious communities is outside of the education system of state schools.

Religious affairs may be conducted in churches and official premises of religious communities, as well as in the yards and graveyards within those premises.

A believer placed in medical, social or penal institution may profess his religion in compliance with house orders, or, if he wants to, a priest may visit him in order to perform a religious ceremony.

The conscientious objection will be described in more detail after new Law on legal position of religious communities is enacted.

In the framework of their activities, religious communities may print and distribute religious press. With regard to press, general regulations on information and publishing are applied.

The freedom to profess religion and conviction in Montenegro may only be restricted in accordance with law and with restrictions necessary in a democratic society in the interest of public safety, protection of public peace, health or morals and protection of rights and freedoms of others.

Article 19

Paragraphs 1, 2, and 3

The Assembly of the Republic of Montenegro passed a set of media laws at a session held on September 16, 2002 (Law on media, Law on broadcasting and Law on public broadcasting services "Radio of Montenegro" and "Television of Montenegro"). These Laws were drafted in close cooperation with the Council of Europe and European Agency for Reconstruction. The process of drafting these laws can set an example of cooperation between governmental and non-governmental sector, international organizations and media community as a whole. These laws created a comprehensive legal framework for regulating the media sphere in the Republic of Montenegro in accordance with the international standards and in particular article 19 of the International Covenant on civil and political rights and article 10 of the European convention for protection of human rights and basic freedoms.

Among other things, new media laws state that the integrity of minors must be protected, and media may not publish the news containing information on involvement of minors in criminal acts, as victims or as the accused. Also, the media must take care of moral, intellectual and emotional development of children. New media laws prohibit advertising of sale of human organs or human tissue and medicines that may be bought only with doctor's prescription. The law also prohibits advertising of alcohol, drugs and cigarettes.

It is also prohibited publishing information and opinions that incite discrimination, hatred and violence over a person or group of persons because of their affiliation to certain race, religion, nation, ethnic group, sex, or sexual orientation.

However, Criminal Code of Montenegro still contains the provision of imprisonment for defamation. In order to fully implement European standards in the media in Montenegro, it is indispensable that this criminal offence be deleted from the Criminal Code and treated like a form of civil-legal responsibility.

The Government of the Republic of Montenegro, in cooperation with non-governmental sector and international organizations, is also preparing Draft Law on free access to information, which will provide maximum openness and transparency in the work of state bodies and give citizens the possibility of obtaining information on all issues of public interest.

The Government of Montenegro expects further assistance of the Council of Europe and European Agency for Reconstruction in this process, as well as from other organizations, in particular theEuropean Media Institute, USAID - IREX etc. We also expect the necessary expert assistance to constitute an independent regulatory body for the area of broadcasting and a council for public broadcasting services at the republic and local levels, as well as for the rapid constitution and work of an independent company for broadcasting in the Republic of Montenegro. The process of implementation of media laws will last till the end of year 2003, consistent with deadlines established in new set of laws.

No electronic media in Montenegro was ever denied a license to work. Printed media are founded freely, without any arbitration on the side of the authorities. Foreign journalists may work freely in the Republic of Montenegro, and foreign press is freely distributed.

The implementation of new media regulations implies the acceptance of the European Convention for protection of human rights and basic freedoms, as well as European Convention on cross-border cooperation.

Article 20

In period from the year 2000 till this day, no cases of war propaganda in media were recorded

Article 21

The right of peaceful assembly is recognized.

This right may only be subject to restrictions imposed by law, in the interest of national security or public safety, public order, the protection of public health or morals or protection of freedoms and rights of others.

The rights given in article 21 are incorporated in the Constitution of Montenegro in provisions of articles 39 to 42: namely, the freedom of peaceful and other assembly without the requirement of permit, subject to registration with the competent authorities is guaranteed. This right may be provisionally restricted by a decision of competent authority in order to prevent a threat to public health and morals or for the protection of human lives and property.

Law on public gatherings ("Official Gazette of Montenegro" No. 57/92) proscribes that public gatherings are assemblies and other peaceful gatherings of citizens in public places for purpose public expression of common opinion, ideas and interests, as well as gatherings for purpose of performing cultural, entertainment, sports and similar program.

In accordance with this Law, a person who convened public gathering has the obligation to notify the competent authorities of the event, not later than three days before it takes place. Notification is submitted to Ministry of Interior – the organizational unit in the territory where the gathering is to be held.

The municipal authorities define the appropriate areas, i.e., premises for holding public gatherings. Maintenance of order at a public gathering is the responsibility of the person who convened it (the convener). The convener of a public gathering has the obligation to disperse a gathering if unrest endangers the safety and property of participants, public peace and order or safety of traffic.. If the convener cannot terminate the gathering, or refuses to do so, the bodies of interior affairs shall do so based on an oral decision. The ody of interior affairs shall bring a written decision to disperse a gathering within 12 hours after the oral decision was brought and deliver it to the person who convened public gathering.

The body of interior affairs (article 7) shall prohibit or disperse a public gathering if it is aimed at the violent overthrow of the constitutional order, violation of the territorial integrity of Montenegro and FRY, violation of human rights and freedoms of persons and citizens guaranteed by the Constitution, or incitement of national, racial or religious intolerance. A public gathering may be provisionally prohibited if necessary for the safety of people and their property and protection of public morals and following the request of Ministry of Health, for the prevention of a threat to the health of people.

The body of interior affairs brings a decision to prohibit public gathering. This body has the obligation to notify the convener on its decision 48 hours at the latest before the scheduled time of the gathering. The convener may file a complaint against this decision to the body of internal affairs, which has the obligation to forward the complaint along with necessary documents to Ministry of Interior. The Ministry has to make decision on the complaint and deliver it to the convener within 24 hours. In case it does not do so within the required period, the public gathering may be held.

In period from 1 January1998 till 30 June 2002 a total of 12,054 public gatherings were held in the Republic of Montenegro.

List of public gatherings by years

Type of public gathering	1998.	1999.	2000.	2001.	First 6 months of 2002.	TOTAL
Political	795	185	347	659	243	2.256
Religious	98	74	62	131	48	413

Cultural	**339**	**200**	**59**	**100**	**125**	**823**
Sports	**1.078**	**1.436**	**1.703**	**1.450**	**896**	**6.563**
Other	**373**	**145**	**597**	**393**	**491**	**1.999**
Total	**2.683**	**2.040**	**2.795**	**2.733**	**1.803**	**12.054**
List of participants at public gatherings						
	1.396.138	**850.700**	**1.061.617**	**1.398.255**	**813.700**	**5.520.410**

An example of the prohibition to hold a gathering was a case in January 2002 when the Association of showmen of Montenegro and the Independent Association of Youth of Montenegro on one side, and the Coalition "Together for Yugoslavia" on the other side, both asked to organize celebrations of so-called Orthodox New Year on the central square in Podgorica (13/14 January 2002). Although the gathering was scheduled within the given time limit, the Security Center of Podgorica prohibited the holding of the gatherings for security reasons, because it felt that holding these gatherings at the same place at the same time would represent a high security risk.

The Ministry of Interior rejected complaints by the Coalition and the Association assessing that the mentioned gatherings would represent high security risk events that could have unforeseeable and undesirable consequences for the safety of citizens in Montenegro. This decision referred only to the prohibition to hold the gatherings on the central square, and not for the celebration of the Orthodox New Year.

The Coalition for Yugoslavia held their gathering in other area, in front of St. George's Church in Podgorica, while the Association decided to give up the organization of the celebration.

Article 22

G) Paragraph 1

The Constitution of Montenegro guarantees the freedom of political, trade union and other association and activities.

Trade Unions are a result of the freedom of association guaranteed by article 40 of the Constitution of Montenegro, and it is established in order to protect rights and promote professional and economic interests of its members. Members of trade unions are employees and the trade union is therefore their interest organization which they join willingly. Trade unions have legal personalities and they have a Statute, their bodies and their property. The establishment of trade unions is not subject to approval, but there is a requirement that a trade union register with the competent body.

Freedom of association and the protection of rights to organize and collective bargaining are established by regulations on labor, with respect for relevant ILO Conventions (Convention No. 87 on freedom of association and protection of the right to organize, and Convention No. 98 on right to organize and collective bargaining).

The employer has the obligation to enable the workers' representative to participate in the procedure for establishment of the rights and duties of employees which are based on law and collective agreement.

The representative of trade union participates in: programming, realization of rights of redundant employees as well as the preparation of a decision on termination of employment on that basis, in disciplinary procedures, in the procedure for conclusion, change and suspension of collective agreement, organization of strike etc.

The workers' representative shall enjoy effective protection against any act prejudicial to them, if he acts in conformity with laws and collective agreements. In Convention No. 135 on protection and facilities to be afforded to worker's representatives, the ILO protects trade union representatives the same way as representatives of employees, because they both protect individual and collective interests of employees. Therefore, a trade union representative is only protected when performing trade union activities.

However, competent state authorities have the obligation to secure the vital interests of the society in order to prevent serious consequences of strike and other gatherings in certain circumstances, as well as the consequences of some forms of economic and political discontent that

could endanger the lives and health of people and their safety and safety of their property. Therefore, the Constitution prohibits the right to strike and other forms of gathering to persons employed in public administration, professional members of army and the police, with the consequence of termination of employment if they organize a strike or take part in a strike or some other form of protest.

Article 44 of the Constitution of Montenegro – citizens' and international organizations - "Citizens shall have the right to participate in regional and international non-governmental organizations. Citizens shall have the right to address international institutions for purpose of protection of their freedoms and rights guaranteed under the Constitution. "

Association of citizens - the procedure to establish an association of citizens – registration, activities, and termination of activities are regulated by Law on non-governmental organizations (non-governmental associations and non-governmental foundations), published in the Official Gazette of Montenegro No. 27/99. The provisions of this law are not applied to political organizations, religious communities, trade union organizations, business associations and organizations, foundations established by the State, as well as NGOs established by a special law.

The procedure to establish non-governmental association and foundation is quite simple. At least five persons with domicile, residence or seat in the Republic may establish a non-governmental association, and at least one person may establish foundation without the condition of having domicile, residence or seat in the Republic. In case several persons are establishing a foundation, they realize their rights together, unless the Founding Act foresees otherwise.

Non-governmental organizations -- NGOs (the common term for non-governmental associations and foundations) are established by a Founding Act which, under law, has to contain certain data (personal name or the name of the founder, the name of the organization, address and seat, aims, activities of the organization, the duration of the organization and personal name and the address of a person entitled to represent the organization etc).

All active non-governmental organizations have to be registered in the Register held by the Ministry of Justice of Montenegro.

The procedure for entry into Register is the following: it is done on the basis of the application of an NGO accompanied by a Founding Act and the statute of the organization. Ministry of Justice has the obligation to enter a non-governmental organization into the register within 10 days from the time the application was submitted. If the Ministry fails to do so in the envisaged time limit, it shall be considered that the entry was made on the first day after the deadline expired.

The law stipulates that the Ministry of Justice may not register a non-governmental organization that does not meet the conditions needed for the entry into register. In such case, the Ministry brings a decision to reject the request for entry into register (with an explanation). A non-governmental organization may initiate an administrative dispute before the Supreme Court of Montenegro against this decision. An administrative dispute is launched by a complaint filed within 30 days from the day a decision on rejection of the request is received (this issue is not regulated by this Law, but by Law on administrative disputes – Official Gazette of FRY No. 46/96).

Decisions on entry into the Register and deletion from the Register are published in Official Gazette of Montenegro.

The Law on non-governmental organizations does not regulate specifically the matter of control over the work of non-governmental organizations. Namely, the Law stipulates that a non-governmental organization ceases to exist if it is deleted from the Register, and there are three cases which require deletion from the Register: if a non-governmental organization is established for a limited period of time – when that period expires; if the competent body of a non-governmental organization made a decision to terminate its work; and if the work of a non-governmental organization is prohibited. Ministry of Justice deletes organizations from the Register. The Law also stipulates penalties against a non-governmental organization that does not act in accordance with the provisions of this Law.

Non-governmental organizations (non-governmental associations and non-governmental foundations) have legal personality and they are non-profit organizations established by domestic and international natural persons or corporate bodies in order to achieve individual or common interests or in order to realize and confirm public interest (non-governmental associations), that is, in order to join

funds and property to realize charitable or other activity which is of public interest (non-governmental foundation). Associations of citizens that promote human rights are non-governmental associations and are subject to all the above rules.

Political organizations – at least 50 citizens of full age who are eligible voters and have domicile on the territory of the Republic of Montenegro may form a political party (term defined by law).

The procedure for establishment and registration of a political party is similar to the procedure required for establishment of non-governmental organizations. Namely, a political party is established on a founding assembly where a decision on founding, statute and program of the political party are brought. A political party must be registered before it commences its activities. A political party is entered into Register following an application for entry into Register. The competent body that enters a political party into the Register is the Ministry of Justice.

The Law on association of citizen proscribes a special form of control, that is, the Ministry of Justice has the obligation to initiate a proceedings before the Constitutional Court of Montenegro if it assesses that the statute -- i.e., the program of the party -- are not in accordance with laws and Constitution of Montenegro. The decision of the Constitutional Court is mandatory.

Financial control of political parties is regulated by the Law on financing of political parties (Official Gazette of Montenegro No. 44/97). This Law states that financial business of political parties is subject to control of the body competent for financial affairs of corporate bodies (Direction for Public Incomes of the Republic of Montenegro). In case this body notices any irregularities in the way political parties use budget funds, it has the obligation to inform the Ministry of Finance of such occurrence, and under the Law, the Ministry of Finance may deprive a political party of their right to use those funds. The Law regulates that political parties may obtain funds from membership fees, donations, incomes from their own property and entrepreneurship, credits, presents, legacy, inheritance, budget and other sources defined by Law.

Paragraph 2

Article 41 of the Montenegrin Constitution (prohibition) reads "Political organizations in state authorities will be prohibited. Professional members of the police may not be members of political parties. Judges, justices of the Constitutional Court and the public prosecutor may not be members of the bodies of political parties."

Article 42 of the Montenegrin Constitution (prohibition) reads "Activities of political, trade union and other organizations aimed at the violent overthrow of the constitutional order, violation of the territorial integrity of Montenegro and FRY, violation of guaranteed freedoms and rights of man and citizen or inciting or fomenting national, religious and other hatred or intolerance shall be prohibited."

Paragraph 3

Federal Republic of Yugoslavia ratified 66 ILO Conventions, 65 of which are in force.

The Republic of Montenegro, as one of the two member republics of FRY (now State Union of Serbia and Montenegro), is subject to obligations given in these Conventions.

Article 23

Valid legislation allows men and women that are 18 or over to marry at their own choice of partner and on their own will. Regulations envisage common law marriage, although those who want may marry in the church, since the law does not prohibit it.

Article 24

Paragraph 1

Both parents have equal rights and obligations to take care of their children and, in case of divorce, special attention is paid to ensuring conditions for further life and development of children. This is particularly reflected in the procedure to determine the competencies and possibilities of each parent to provide the above mentioned conditions, as well as in the decision concerning which parent will be granted custody over children until they turn 18. Both parents have the obligation to participate in supporting the child in accordance with their financial possibilities.

Illegitimate children have the same rights as legitimate ones.

Children under 14 may not be prosecuted, and children aged 14 to 16 - junior minors and of 16 to 18 - senior minors - are subject to special procedure before juvenile court in case they commit a criminal offence. Minors may receive correctional measures (disciplinary measures, measures of enhanced supervision or placement in a correctional institution) or they may be sentenced to imprisonment in an institution for minors in case they commit the most serious criminal offences.

Labor related legislation envisages special protection at work for women and children, and forced labor is prohibited.

Relevant legislation envisages paid maternity leave for expectant mothers, that is, women who gave birth, as well as financial assistance for newly born child.

Paragraph 2

Ministry of Interior controls the keeping of a register of citizens and a register of births.

Based on old Law on citizenship of the Socialist Republic of Montenegro (Official Gazette No. 26/75) a Rulebook on application for entry into the register of citizens of Socialist Republic of Montenegro and citizens of other Republics born on territory of Montenegro was formulated, which included keeping the register, issuance of certification on citizenship and a forms for certification on citizenship.

New Law on Montenegrin citizenship (Official Gazette of Montenegro No. 41/99), in provision of article 24 envisages that the Ministry of Interior and Ministry in charge of administration defines regulations for keeping records, attainment and cessation of Montenegrin citizenship, as well as for conclusion and preservation of the former register. These processes are under way.

Paragraph 3

There are no legal obstacles for members of different nationalities to wed if they wish to.

Article 25

Paragraphs 1a, 1b, 1c

Non-discrimination on the basis of sex in public affairs is realized with respect to the exercise of executive and judicial powers.

The following charts confirm this for court judges and the prosecution.

Courts

Name	Number of judges	Men	Women	M %	W %
Supreme Court of the Republic of Montenegro	**23**	**17**	**6**	**74**	**26**
Higher courts in Podgorica i Bijelo Polje	**38**	**22**	**16**	**58**	**42**
Commercial courts	**26**	**13**	**13**	**50**	**50**
Municipal courts	**149**	**85**	**64**	**57**	**43**
Total judges	**242**	**150**	**92**	**62**	**38**

Prosecution

	Number	Men	Women	M %	W %
State Prosecutor with deputies	**7**	**3**	**4**	**43**	**57**
Higher court prosecutors in Podgorica and Bijelo Polje	**17**	**8**	**9**	**47**	**53**
	Number	**Men**	**Women**	**M%**	**Ž %**
Municipal court prosecutors with deputies	**49**	**25**	**24**	**51**	**49**
Total	**73**	**36**	**37**	**49**	**51**

Article 26

It is emphasized one again that all citizens are equal before the law (article 15, of the Constitution of the Republic of Montenegro), and that is unconstitutional and punishable to instigate or encourage national, racial, religious or other inequality. The same applies to instigation or fomenting of national, racial, religious or other hatred and intolerance.

Article 52 of the Constitution of the Republic of Montenegro lays down the right to work as an inalienable human right. The freedom to work, i.e. the right to employment under equal conditions and the protection of workers against all forms of discrimination, is provided for by the Montenegrin labour legislation.

In accordance with ILO Convention No 111 (Discrimination, Employment and Occupation Convention 1958. which Yugoslavia has ratified) and the International Convention on the Elimination of All Forms of Racial Discrimination, there are no differences, exceptions, exclusions or more favorable treatment in the legislation and administrative practice of the Republic of Montenegro on the basis of national, racial, religious or other origin, political opinion, gender, social background, material status or any other ground.

Article 27

Members of national and ethnic groups are permanent residents of the Republic of Montenegro. The Constitution and laws of the Republic of Montenegro do not define which peoples, that is, national or ethnic groups live in the territory of Montenegro.

In period during which this Report was drafted, the Charter on human and minority rights and civil freedoms was adopted, first by the parliaments of Montenegro and Serbia, and later by the Parliament of the Federal Republic of Yugoslavia. The Charter consists of 57 articles, and is an integral part of the Constitutional Charter of state union of Serbia and Montenegro. It was made in cooperation with international experts. Human and minority rights guaranteed by this Charter are determined**,** secured and protected by constitutions, laws and policy of member states.

Charter on human and minority rights and civil freedoms guarantees that human dignity is inviolable, and that everyone has the obligation to protect it. Apart from general provisions, the Charter contains two separate sections: the first one treats human rights and basic freedoms and the second one treats the rights of members of national and ethnic minorities. Human and minority rights, provided in the general rules of international law, as well as in international treaties which are in force in the State Union, are guaranteed by this Charter and are directly applied. Protection of rights of members of ethnic minorities is provided in accordance with international protection of human and minorities' rights, and this Charter guarantees freedom of expression of national affiliation. Also,

equality before the law as well as equal protection is guaranteed. Forced assimilation of members of national and ethnic minorities is forbidden and member states and State Union are obliged to protect members of national minorities from every action aimed at such assimilation.

Montenegro is a multinational and multi-confessional state in true sense of the word, which is clearly shown in latest census from 1991.

Nationality	**Number**	**Percentage**	**Nationality**	**Total**	**Percentage**
Montenegrins	38.0467	61,86%	Czechs	78	0,01%
Croatians	6.244	1,02%	Greeks	29	0,01%
Macedonians	1.072	0,17%	Italians	58	0,01%
Muslims	89.614	14,57%	Jews	20	
Slovenians	369	0,06%	Hungarians	205	0,04%
Serbs	57.453	9,34%	Germans	124	0,02%
Albanians	40.415	6,57%	Polish	63	0,01%
Austrians	22 -		Roma	3.282	0,53%
Bulgarians	46	0,01%	Romanians	33	0,01%
Russians	118	0,02%	Ukrainians	24	
Ruthenians	26	0,01%	Vallachians	3	
Slovaks	65	0,01%	Others	1.001	0,16%
Turks	28	0,01%	Indecisive Yugoslavs	943 26.159	0,15% 4,25%

Data taken from Statistic annual of the Republic of Montenegro, 2000.

The Constitution of Montenegro guarantees to the members of national and ethnic groups the protection of national, ethnic, cultural, linguistic and religious identity, consistent with international protection of human and civic rights (article 67 of the Constitution of Montenegro).

Members of national and ethnic groups have the constitutional right to education and information in their mother tongue, and the right to use their mother tongue in proceedings before the state authorities.

Also, the Law on election of municipal deputies and MP's contains provision on positive discrimination in benefit of Albanian population, in those municipalities in which Albanians are majority. The Law regulates this municipalities as a separate electoral units, the electoral census is lower and it is proscribed in advance that Albanians can delegate 4 (four) members in Montenegrin Parliament. (Until September last year the Law proscribed five posts for the representatives of Albanian national minority, but after the intervention of Coalition "Together for Yugoslavia" and the "Liberal Alliance" the Law has been changed and the number of posts lower to 4 (four).

Apart from these rights and freedoms guaranteed by the Constitution of Montenegro, linguistic particularity and difference of members of national and ethnic groups (Albanians) is

realized through the schooling system (education in Albanian), information (radio, TV shows, press), bilingual inscriptions in areas where national minorities comprise the majority of population etc.

Having in mind the fact that the survival of national and ethnic groups and their linguistic, cultural, spiritual, religious and every other diversity represents a positive feature of every mature society, a Ministry for the protection of rights of national and ethnic groups was founded, "The Center for the protection and promotion of culture of members of national and ethnic groups.". The main task of this institution is to cherish and improve the specific culture of the members of national and ethnic groups. Due to lack of material means (lack of adequate premises, technical equipment, qualified staff), this institution has not yet launched its activities.

With financial assistance of the state, members of national and ethnic groups have the right to establish educational, cultural and religious associations.

- The realization of specific rights for members of national and ethnic groups will be set out in greater detail in the Law on national minorities which is currently being drafted. However, after the signing of Belgrade Agreement activities, in this direction ceased since the new Constitutional Charter and separate Charter on human and minority rights and civic freedoms provide new and more precise solutions for the status of national minorities which need to be taken into consideration when drafting the new Law on national minorities.

- The Constitution of the Republic of Montenegro guarantees citizens the freedom of belief, public and private profession of religion. It also states that no person shall be obliged to declare his confession or national affiliation (article 34 of the Montenegrin Constitution).

- Different confessions have the right to independently arrange internal organization and religious affairs in accordance with law. The state has the obligation to provide material assistance to religious communities.

- Religious communities have the right to independently organize and arrange religious education and schools, having in mind that the religious education system is outside the state school education system. Religious communities may print and distribute their material in accordance with general regulations on information and publishing.

-Persons placed in medical, social or penal institution may profess their religion in compliance with house orders, or, if a person wants to, a priest can visit him in order to perform a religious rite, as already discussed.

- The issue of religious freedoms and religious communities will be set out in more detail by new Law on legal position of religious communities.

- Rights to linguistic, cultural and religious particularity guaranteed by laws and Constitution of Montenegro may not be realized in opposition to the Constitution, principles of the international law or principle of territorial integrity of Montenegro.

When it comes to practical appliance of legislation, not a single complaint on violation of cultural, linguistic or religious rights was ever submitted to the Ministry for protection of rights of national and ethnic groups.