

**SERBIE ET MONTENEGRO**  
MISSION PERMANENTE  
AUPRES DES NATIONS UNIES  
A GENEVE

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No. 1362/1

Geneva, 17 November 2004

Dear Sir,

I am writing to you in connection with your communication dated 30 July 2004, requesting governments to provide information for your report for the 61<sup>st</sup> session of the Commission on Human Rights, which will focus on a study of child pornography on the Internet. With regard to the abovementioned please find enclosed the information made by the relevant authorities of Serbia and Montenegro.

Please accept, Mr. Petit, the assurances of my highest consideration.



*Milan Begovic*  
Milan Begovic  
Minister Plenipotentiary  
Deputy Permanent Representative

Mr. Juan Miguel Petit  
Special Rapporteur on the sale of children,  
child prostitution and child pornography  
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OHCHR REGISTRY

19 NOV 2004

Recipients : *SPB*

Serbia and Montenegro

**CONTRIBUTION TO THE REPORT OF THE SPECIAL RAPPORTEUR OF  
THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS ON THE SALE OF CHILDREN,  
CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

1. Information on existing legislation on child pornography on the Internet

Serbia and Montenegro adopted the Law on the Ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (*Official Gazette of the FRY - International Treaties* No. 7/02). Under Article 16 of the Constitutional Charter of the State Union of Serbia and Montenegro (*Official Gazette of S&M - International Treaties* No. 1/03), ratified international treaties and the generally accepted rules of international law have precedence over the legislation of Serbia and Montenegro and the legislations of its member-States. Similarly, under Article 7 of the Charter of Human and Minority Rights and Civil Liberties (*Official Gazette of S&M - International Treaties* No. 6/03) human and minority rights guaranteed by the generally accepted rules of international law, as well as by international treaties in force in the state union, are guaranteed by the Charter and applied directly.

- Definition of child pornography, producing, offering, distributing, transmitting, procuring and possessing child pornography through or in a computer system

The criminal legislation of Serbia does contain a definition of child pornography.

The Basic Criminal Code of the Republic of Serbia (*Official Gazette of the SFRY*, Nos. 44/76, 36/77, 34/84, 37/87, 74/87, 57/89, 3/90, 38/90, 45/90 and 54/90, *Official Gazette of the FRY*, No. 35/92, 16/93, 37/93, 24/94 and 61/01 and *Official Journal of the RS*, No. 39/03) prohibits the presentation of pornographic materials to minors. Under Article 252 of the said Law, a person who sells, shows or makes available to a person younger than 14 texts, pictures, audio-visual or other items of pornographic content or a pornographic show by way of public presentation or in another way will be fined or punished with up to 1 year in prison. The items of pornographic content will be impounded.

The Criminal Code of the Republic of Serbia (*Official Journal of the SRS*, Nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89 and 21/90 and *Official Journal of the RS*, Nos. 16/90, 49/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 39/03 and 67/03) prohibits the exploitation of minors for pornography. Under Article 111a (a new incrimination introduced in the Code in 2002), a person who makes a photographic, film or some other picture of a minor for the purpose of making items of pornographic content will be punished with 1 to 5 years in prison. A person who sells, distributes or presents such items and/or a person who lures a minor into taking part in a pornographic show will be imposed the same punishment. If the said offences are committed to the detriment of a person younger than 14, the perpetrator will be punished with at least 3 years in prison.

In order to protect the rights of minors in the media, the Law on Public Information (*Official Journal of the Republic of Serbia*, No. 43/03) provides for making sure that the content of the media and the manner of distribution do not harm the moral, intellectual, emotional or social development of the minor. The content of the media that may harm the development of the minor must be clearly and visibly marked as such beforehand and distributed in a manner least likely to be available to a minor (Article 41). It is prohibited to present publicly a printed matter with a pornographic content in a manner which makes it easily accessible to minors. A pornographic printed matter must not contain pornography on the front/cover or back pages

and must display a visible warning that it contains pornography and that it is not meant to be made available to minors (Article 42).

The provisions of the Law on Broadcasting (*Official Journal of the Republic of Serbia* No. 42/02) apply to pornographic contents in radio and television programmes. Under Article 19 of the said Law, the showing of a programme that severely harms the physical, mental or moral development of a minor is prohibited. Special rules of the Broadcasting Agency regulate the presentation of programmes that may harm the development of minors in such a manner as to make them unavailable to minors, except when the time and technical method of broadcasting ensure that, as a rule, minors have no opportunity to watch or listen to them.

Within the reform of the judiciary, it is expected that a new Criminal Code of the Republic of Serbia will be adopted by the end of 2004, with general provisions regulating broadcasting child pornography via the electronic media.

Under Article 112, paragraph 8, of the Draft Criminal Code of the Republic of Serbia, a person younger than 14 is considered a child.

Article 185 regulates the presentation of pornographic material and the exploitation of children for pornography and reads:

- (1) He/she who sells, shows or makes available to a child texts, pictures, audio-visual or other items of pornographic content or a pornographic show by way of public presentation or in another manner shall be fined or punished with up to 6 months in prison.
- (2) He/she who uses a child for producing pictures, audio-visual or other items of pornographic content or for a pornographic show shall be punished with 6 months to 5 years in prison.
- (3) He/she who sells, shows, publicly exhibits or makes available in another manner pictures, audio-visual and other items of pornographic content made by the commission of the offence referred to in paragraph 2 of this Article shall be punished with up to 2 years in prison.
- (4) The items referred to in paragraph 1 - 3 of this Article shall be confiscated."

- The age of consent to sexual activity

The legal age of consent to sexual activity is 16. Under the provisions of the Family Law, this age makes it possible for a minor, irrespective of the sex, to solemnize marriage with the permission of the court.

Article 49 of the Marriage and Family Law of the Republic of Serbia (*Official Journal of the SRG*, Nos. 22/80 and 11/88 and *Official Journal of the RS*, Nos. 22/92, 25/93, 35/94 and 29/01) provides for the minimum marriage age as 18. Exceptionally, the court may allow a minor older than 16 to solemnize marriage at his/her request if it establishes that he/she has acquired the physical and mental maturity needed to carry out marital rights and duties. Before taking a decision, the court will obtain the opinions of the guardian and health institution, hear the minor intending to solemnize marriage and examine other circumstances relevant for taking the decision.

If a person of legal age lives in an extra-matrimonial community with a minor turned 14, he/she commits a criminal offence under Article 115 of the Criminal Code of the Republic of Serbia and will be punished with 3 months to 3 years in prison. The same punishment will be imposed on parents, adoptive parents or guardians if they allow a person turned 14 to live in an extra-matrimonial community with another person or if they induce the minor to do so. If a parent, an adoptive parent or a guardian commits the aforementioned offence for a material gain, he/she will be imposed a more severe punishment (1 to 5 years in

prison). If the offence has been committed against a minor older than 16 and marriage has been solemnized in the meantime, the prosecution of it will not be instituted and if instituted will be discontinued.

The difference between boys and girls is made only with respect to the criminal offence of seduction which can be committed only against a girl older than 14. The criminal offence of seduction is committed by he who induces an underage female person older than 14 to a carnal act by a false promise of marriage. Such person will be punished with 3 months to 3 years in prison and will be prosecuted upon a private complaint (Article 109 of the Criminal Code of the Republic of Serbia).

Any sexual act committed against a minor younger than 14, irrespective of whether he/she consented to it or not, will be sanctioned (Article 106 of the Criminal Code of the Republic of Serbia).

2. Information on the implementation of child pornography legislation on the Internet.

- Relevant jurisprudence

The legislation of Serbia does not contain a definition of child pornography or a definition of child pornography on the Internet. Accordingly, no relevant jurisprudence has developed and no Internet sites promoting human trafficking and the sexual exploitation of children have been registered.

3. Information on initiatives to prevent and combat child pornography on the Internet and other forms of sexual exploitation of children via Internet, such as sex tourism and trafficking

- Institutional and policy measures in the field of child protection

a) The Court

The protection of children through uncovering and reporting criminal offences, conducting legal proceedings and punishing perpetrators is regulated by the Code on Criminal Procedure (*Official Gazette of the FRY*, Nos. 28/00, 73/00 and 71/01), under Article 46 of which the State Prosecutor has the right and duty to prosecute perpetrators of criminal offences. For minors and persons deprived of legal capacity, an application or a private application are lodged by their legal representatives (Article 55). A minor older than 16 may lodge an application or a private complaint himself/herself. Likewise, if the aggrieved party is a minor or a person deprived of legal capacity, his/her legal representative is authorized to make all statements and take all actions granted to the party under the Code. An aggrieved party older than 16 may make statements and take actions relative to the proceedings himself/herself (Article 65, paragraph 2).

b) The Council on the Rights of the Child

In 2002 the Government of the Republic of Serbia established the Council on the Rights of the Child, composed of prominent experts in this field. The Council plays a very important role in proposing measures to the Government to be taken to protect children, particularly against violence. Considering the current situation in this field and in view of the obligations of the country under international treaties, the Council on the Rights of the Child undertakes activities aimed at drafting a national strategy for the protection of children against all forms of mistreatment, negligence and abuse and at having it adopted by the Government. The strategy is supposed to define the short-, medium- and long-term policy of the country with respect to child protection, i.e. to devise a framework within which programmes will be worked out, services developed and enactments and other measures adopted to protect the rights of the child against any violence. At the recommendation of the Council on the Rights of the Child the Government of the Republic of Serbia adopted a Plan of Action for Children in 2004. One of its important strategic activities is the protection of children against violence.

Also, the Ministry for Social Policy has provided, within its separate Programme, called the *Social Innovation Fund* (resources made available through donations), funds to finance anti-domestic violence and domestic violence victim protection projects in 15 cities and towns in the Republic of Serbia that are realized by local government and non-governmental organizations.

c) The National Team to Combat Human Trafficking

In May 2001, the Yugoslav Team to Combat Human Trafficking, which in 2003 became the National (Republican) Team to Prevent and Control Human Trafficking (primarily in women and children), was established with the assistance and support of the OSCE Mission. The Team is composed of representatives of all relevant government institutions, domestic and international non-governmental organizations dealing with these problems. It has been charged with the task of devising a national strategy for the prevention, control and the punishment of perpetrators of the criminal offence of human trafficking and the provision of assistance to the victims and of developing appropriate international cooperation in preventing trafficking in women and children. The most prominent NGOs participating in the effort are *ASTRA*, *Beosupport* and the Victimology Society of Serbia, while the government sector is represented by the Ministry of Education, Ministry of Labour, Employment and Social Policy, Centre for Social Service and welfare institutions, such as parentless children institutions.

Serbia and Montenegro

**ADDENDUM TO THE CONTRIBUTION TO THE REPORT OF THE SPECIAL RAPPORTEUR OF  
THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS ON THE SALE OF CHILDREN,  
CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

The Criminal Code of the Republic of Montenegro (*Official Gazette of the Republic of Montenegro*, No. 70/04) provides for the criminal offence of the presentation of pornographic material. Its Article 211 reads:

"(1) He/she who sells, shows or makes available to a child by public display or in another way texts, pictures, audio-visual or other items of pornographic content or presents him/her a pornographic show shall be fined or punished with up to 6 months in prison.

(2) He/she who exploits a child for the production of pictures, audio-visual or other items of pornographic content shall be fined or punished with 6 months to five years in prison.

(3) He/she who sells, shows, publicly displays or makes available electronically or in another way pictures, audio-visual or other items of pornographic content created by the commission of an offence under paragraph 2 of this Article shall be punished with up to 2 years in prison.

(4) Items referred to in paragraphs 1 to 3 of this Article shall be confiscated.

No case under this Article has been reported and tried recently.

Under Article 206 of the Criminal Code of the Republic of Montenegro sexual activity with a child is considered coercion to carnal act. A person younger than 14 is considered a child.