

# Trafficking in Human Beings

## Serbian legislation

### 2008

The prohibition of trafficking in Human Beings is contained in numerous provisions.

With regard to the prohibition of trafficking in Human Beings, Serbia is bound both by the ICCPR and many other **international treaties**.

- Convention on the Suppression of Trade in Adult Women (*Sl. list FNRJ*, 41/50),
- Convention for the Suppression on the Trafficking in Persons and of the Exploitation of the Prostitution of Others (*Sl. list FNRJ*, 2/51),
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (*Sl. list FNRJ (Dodatak)*, 7/58),
- Convention on the Elimination of All Forms of Discrimination against Women (*Sl. list SFRJ (Međunarodni ugovori)*, 11/81),
- Convention against Transnational Organized Crime and additional protocols (*Sl. list SRJ (Međunarodni ugovori)*, 6/01),
- the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (*Sl. list SRJ (Međunarodni ugovori)*, 7/02),
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (*Sl. list SRJ (Međunarodni ugovori)*, 13/02).

### National legislation:

**The Constitution of Republic of Serbia** (OG RS, No. 83/06) explicitly prohibits slavery, keeping persons in conditions akin to slavery and all forms of trafficking in persons: “No person may be kept in slavery or servitude. All forms of human trafficking are prohibited.” (Art. 26 (1 and 2)).

This explicit ban on human trafficking by the highest state legislation is a significant step forward in the protection of fundamental human rights and freedoms.

**The Criminal Code** (OG RS, No. 85/2005, 88/2005, 107/2005) **incriminates human trafficking**: “(1) Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person’s labour, forced labour, commission of offences, prostitution, mendacity, pornography, removal of organs or body parts or service in armed conflicts, shall be punished by imprisonment of two to twelve years. (2) When the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat or any of the other mentioned methods of perpetration. (3) If the offence specified in paragraph 1 of this Article is committed

against a minor, the offender shall be punished by imprisonment of minimum three years. (4) If the offence specified in paragraphs 1 and 3 of this Article resulted in grave bodily injury of a person, the offender shall be punished by imprisonment of three to fifteen years. (5) If the offence specified in paragraphs 1 and 3 of this Article resulted in death of one or more persons, the offender shall be punished by imprisonment of minimum ten years. (6) Whoever habitually engages in offences specified in paragraphs 1 and 3 of this Article or if the offence is committed by an organised group, shall be punished by imprisonment of minimum five years. ” **(Art. 388)** Also, **trafficking in children for adoption purposes** is incriminated: “(1) Whoever abducts a child under fourteen years of age for the purpose of adoption contrary to laws in force or whoever adopts such a child or mediates in such adoption or whoever for that purpose buys, sells or hands over another person under fourteen years of age or transports such a person, provides accommodation or conceals such a person, shall be punished by imprisonment of one to five years. (2) Whoever habitually engages in activities specified in paragraph 1 of this Article or if the offence is committed by an organised group, shall be punished by imprisonment of minimum three years. ”**(Art. 389)**.

The provision prohibiting trafficking in humans does not state that the victim’s consent to exploitation shall be considered irrelevant in the event of a crime committed in any of the above listed ways. In that sense, the Code deviates from the standard set in Article 3 (b) of the First Protocol. Contrary to prior legislation, the valid provision banning trafficking in persons does not prescribe the qualified form of the crime if committed against several persons, by abduction or in a particularly brutal or degrading manner. Decreasing the sentence from minimum 5 to minimum 3 years of imprisonment for trafficking of a minor constitutes the most serious flaw of the current Criminal Code. This shortcoming is all the more serious in view of the fact that witness protection measures may be requested only if the accused is charged with a crime warranting a minimum 10-year prison sentence or, exceptionally, a crime punishable by four-year imprisonment **(Art. 117, Criminal Procedural Code)**.

The criminal offence of trafficking in children for adoption purposes **(Art. 389)** stipulates that the perpetrator shall be punished if a victim is under the age of 14. As Article 1 of the Convention on the Rights of the Child and Article 3 (d) of Protocol No. 1 prescribe that every person under the age of 18 is to be considered a child, this provision of the Criminal Code is in contravention of international standards and fails to provide protection for children between 14 and 18 years of age.

The penalty for mediation in prostitution ranging between 3 months to 5 years imprisonment is now decreased to range from a fine to maximum 3-year imprisonment (Art. 184). Reduction of the minimum sentences is totally in contravention of initiatives to exonerate persons forced to prostitution (one of the more frequent forms of exploiting human trafficking victims) and to calls for criminal prosecution of and strict convictions for those who mediate in or force others to prostitution.

The similar situation exists in the case of the crime of enslaving **(Art. 390)**, where the minimum sentence of minimum 3-year imprisonment was reduced to between one to 10 years of imprisonment. Considering the flourishing of modern forms of slavery, it remains unclear why the Serbian policy makers took the edge off the law by decreasing the sentences. In addition, this provision stipulates transport of enslaved persons “from one country to another” as a precondition for a criminal offence. Transport of enslaved persons should be prescribed as a crime notwithstanding whether the enslaved are being transferred across borders or internally.

Domestic legislation does not incriminate the purchase of services provided by human trafficking victims. In that respect, Recommendation 1545 (2002) of the CoE Parliamentary Assembly on an anti-trafficking campaign insists on punishing those who knowingly purchased sexual services from a woman who is the victim of trafficking in human beings.

The National Assembly of Republic of Serbia in October 2008 passed the Aliens Act which states in Art. 28 that a victim of transborder human trafficking shall be approved temporary residence without needing to provide specific evidence (required of other aliens seeking temporary residence in Para 1 of the Article), if such approval is in the interest of criminal proceedings instituted over human trafficking. The Act does not specify whether the victims shall enjoy these benefits if criminal proceedings have not been instituted or if the victim does not wish to or is unable to participate in them. This provision provides less protection than the 2004 Instructions, adopted on the basis of the prior Act on Movement and Residence of Aliens.

Para 5 of Article 28 of the Aliens Act prescribes that the alien in para 5 of the Article shall be provided with adequate accommodation, nutrition and basic living conditions if necessary. The provision is deficient inasmuch as Para 5 does not mention aliens or any other persons. It can be interpreted so as to mean that accommodation and nutrition will be provided to a foreign victim of human trafficking, mentioned in Para 4, not Para 5 of the Article. A literal interpretation of the provision would, however, preclude the fulfilment of the state's obligations to provide accommodation, food and basic living conditions.

Serbia's legislation, including the new Aliens Act, does not comprise provisions regulating the safe return of a victim of transborder human trafficking to his/her country of origin nor specifying who would be charged with the task.

After two and a half years of work on a plan for combating human trafficking, the Government in 2006 adopted the Strategy for Combating Human Trafficking in the Republic of Serbia (OG RS 111/06). The Strategy was not operationalised by a national action plan by the end of the 2008.