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Date: 12.07.2012.

Republic of Srpska Government
Ministry of Justice of Republic of Srpska
Attn /Minister

Subject: Recommendation,

- Amendments to the Criminal Law

Dear Sirs,

Any violence against a child is a trauma with severe and permanent consequences on development and growing up of a child.

The most severe form of violence against a child is sexual violence and abuse, as the worst kind of demonstration of power, by which the perpetrator uses his power, emotional, economic, authority and similar and abuses a child in order to satisfy his sexual needs.

By various forms of violence against children, especially sexual abuse and exploitation, the fundamental right of each child, the right to life and development is not only violated, but is also seriously threatened.

Children today can hardly recognize this form of violence that is happening to them, and even when they recognize it they do not speak about it because they are afraid and ashamed. They live with pain and fear, hurt and humiliated and completely alone. This is exactly why they rarely report the abuser which suggests that statistical indicators do not reflect reality, and that "dark figures" are much higher.

Bearing in mind

- all weight of these acts and particularly their effects on development and growing up of a child and trauma that will remain for a lifetime,
- obligations taken under the Convention on the Rights of the Child, which obliges Member States to take all appropriate legislative, administrative, social and educational measures for

protection of the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or some other person who has the care of the child¹.

– the survey that was conducted by the Institution of Ombudsman for Children on sexual violence against children for the period 2008-2011, which, among other things, indicates the necessity of amendments to the Criminal Law,

– that amendments to the Criminal Law are envisaged by the work program of the National Assembly in the current year,

the system must find adequate mechanisms of help and support to a child victim and make penal policy adequate to the gravity of the offense and to serve the purpose of deterrence.

Given the above, the Ombudsman for Children in accordance with Article 9. of the Law on Ombudsman for Children,

proposes amendments to the Criminal Law which will:

1. Tighten sanctions against the perpetrators of these acts

Sanctions established by the law must recognize all aspects of these, for children most serious forms of abuse and must be adequate to the gravity of the offense.

No punishment is enough for perpetrator because he ruined child's life for lifetime, but if minimal sentences are imposed than that is repeated violence against the child, therefore it is necessary to tighten sanctions against the perpetrators of these acts, and additionally against those who are entrusted with care of child, primarily define by the law higher minimum sentence for all acts of sexual violence against children.

Such punishment should be, to the extent possible, adequate to gravity of committed offense and should act preventively.

2. Increase the minimum age for voluntary consent to sexual intercourse

What is particularly important for these acts is the issue of age for voluntary consent to sexual intercourse. A considerable number of European countries opted for an age limit of 16 years as the possibility of personal choice and voluntary consent to sexual intercourse.

According to the applicable Criminal Law, there is no criminal responsibility for perpetrator when a child who turns 14 years of age says that he/she was in a relationship voluntary.

¹ Convention on the Rights of the Child, Article 19.

A 14 year old child, according to experts who care primarily about the health of a child is still in the developmental phase, especially emotional, and during this period is additionally sensitive and vulnerable and is not able to understand the seriousness and all the consequences of his decisions. All of that is one more reason that a child needs additional protection from those who manipulate or abuse and exploit him/her, which indicates to the need that the existing age limit of 14 years for voluntary consent to sexual intercourse is increased.

3. Identify by the law additional measures against perpetrators of these acts after serving their sentences

- in addition to prison sentences for perpetrators of these acts determine the measures of treatment-psychosocial treatment,
- ban on performing any activity and engagement of any kind by which they are associated with children.

4. Statute of limitations for criminal acts committed against a child to count from time a child becomes of legal age, which would create conditions that a child by becoming of legal age, when he/she realizes full weight and consequences of the committed act, and when he/she frees of fear and influence of others, makes a decision on his own whether to initiate proceedings against the person who has humiliated and used him when he was a child.

5. Establish a register - base of perpetrators of all criminal acts against a child, as a measure that can contribute to better protection of children from persons who already committed these criminal acts.

The main objective of records is protection of children and of their safety through the reduction of reoffending among the perpetrators of these criminal acts. This requires increased surveillance of these people, especially if one bears in mind that in the opinion of experts, the perpetrators of these criminal act are hardest to rehabilitate and that time period between the two committed offenses can be very long.

I expect that, in accordance with Article 9. of the Law on Ombudsman for Children, the Institution is informed within 15 days on the measures taken.

Sincerely,

Ombudsman for Children
Nada Grahovac LLM