



EUROPEAN UNION
DELEGATION TO THE REPUBLIC OF SERBIA

Political Section

Belgrade, 9 June 2014
D(2014)

Subject: **Briefing for the meeting with [REDACTED] related to missing babies case**

Short info about the case: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Only Ombudsman was helpful and cooperative. [REDACTED]
[REDACTED]
[REDACTED]

ECtHR judgement: In March 2013, the European Court for Human Rights delivered a decision in case of Zorica Jovanovic v. Serbia, in favour of applicant – violation of Art. 8 of Convention (right to respect for private and family life), by which Serbia, among other things, was obliged within one year from the date on which the judgement becomes final "to take all appropriate measures to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as or sufficiently similar to the applicant's". This has not been established so far.

Other relevant facts:

July 2006 - following requests of hundreds of parents whose new-born babies had "gone missing" following their alleged deaths in hospital wards, mostly in the 1970s, 1980s and 1990s, the Serbian Parliament adopted a report prepared by its Investigating Committee. The report findings included serious shortcomings in the applicable legislation at the relevant time, as well as in the procedures before various State bodies and health authorities, thus justifying the parents' doubts as to what had really happened with their children.

April 2010 - President of the Serbian Parliament announced the establishment of a parliamentary working group with the task to assess the situation and propose any changes to the legislation. The group was established in May 2010.

July 2010 - Ombudsman issued the Report on "missing babies" with his recommendations. Ombudsman found that at the relevant time, there were no coherent procedures and/or statutory regulations as to what should happen in situations when a new-born child died in hospital; the prevailing medical opinion was that parents should be spared the mental pain

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of having to bury their new-born babies, which is why it was quite possible that certain couples were deliberately deprived of the opportunity to do so; autopsy reports were usually incomplete, inconclusive, and of highly dubious veracity. It was also noted that the Government response between 2006 and 2010 had itself been inadequate and the parents therefore remain entitled to know the truth as to what was the real fate of their children, which could only be arrived at through the adoption of a *lex specialis*.

December 2010 – the Working Group submitted its report to the Parliament. Following a detailed analysis of the current, already amended, legislation, it concluded that no changes were necessary except as regards the collection and usage of medical data, but that a new piece of legislation concerning this issue was already being prepared. The Working Group, among other things, specifically noted that Article 34 of the Constitution made it impossible to extend the prescription period for criminal prosecution in respect of crimes committed in the past or, to introduce new, more serious, criminal offences and/or harsher penalties which would be applicable thereto. The existing Criminal Code, however, already envisaged several criminal offences of relevance to the issue, and the new Medical Care Act set out a detailed procedure making it impossible for the parents to have their new-born unlawfully removed from hospital wards.

March 2014 – the association of "Parents of missing babies Serbia" on the meeting with the representatives of SPS caucus requested the adoption of *lex specialis*, insisting inclusion of the civil sector in drafting procedure.

Some relevant Serbian legislation:

Constitution – Art. 34 "No person shall be found guilty of any act which did not constitute a criminal offence under law, or any other legislation based on the law, at the time when it was committed, nor shall a penalty which was not prescribed for this act at that time be imposed.

The penalties shall be determined pursuant to the legislation in force at the time when the act was committed, except when subsequent legislation is more favourable for the perpetrator. Criminal offences and penalties shall be laid down by the law."

Criminal Code - Articles 191, 192, 388 and 389 define as a crime various forms of child abduction and human trafficking, including for the purposes of adoption.

Health Care Act - Articles 219-223 provide details as regards the determination of the time and cause of death of a new-born child whilst still in hospital. Specifically, the hospital shall inform the family as soon as possible and provide them with access to the body. The police shall be informed if no cause of death has been established, whilst the competent municipal authorities shall be informed in any event.

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