

TREATY BODY MONITOR

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Key facts¹

Ratification	Reservations	Party to Optional Protocol?	Other core treaties ratified
2001	No	Yes	ICCPR, CEDAW, CERD, CESCRC, CRC

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

Information submitted to the Committee

State report

Serbia submitted its initial² report to the Committee against Torture (the Committee) on 3 May 2006.³ Serbia last appeared before the Committee in November 1998 as part of the Federal Republic of Yugoslavia.⁴ The report was due in September 1996, although negotiations had already taken place modifying the deadline and the period to be covered.

This ‘initial’ report focuses mainly on Serbia, but also includes a short section on Montenegro and a two-page annex on Kosovo and Metohija.⁵ The three sections were prepared by authorities from the State Union of Serbia and Montenegro and from the individual Republics. Part I gives a brief introduction to the complicated political situation and demographics in Serbia. Part II explains the background to the report, and then explains the status of the implementation of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention). Part III follows the same format for Montenegro, only with much less detail; the two-page annex refers to the events in Kosovo and Metohija and acknowledges that unfortunately the realities ‘perfectly fit into the definition of the term “torture” as contained in Article 1.’

The report focuses on improvements in human rights which have been brought about as a result of sustained efforts by the new Government. Serbia’s ultimate goal of accession to the European Union (EU) is stated. Efforts to bring Serbia up to date with other EU countries politically, socially and economically, are apparent, as is the stress on Serbia’s commitment to human rights throughout this struggle. The report is very theoretical, and in many cases lacks concrete evidence on the protection and promotion of human rights that legislation has supposedly provided, an issue the Committee picked up on in its list of issues.

List of issues

After having studied the report, the Committee provided its list of issues to the State.⁶ The Committee makes many requests for examples of actual cases and for statistics disaggregated by age, sex and nationality, since the report sets out many principles and laws, but on some issues does not provide case-specific information. Information on cases of torture in Kosovo for which Serbian authorities were responsible is a notable example of this, since the report is thin on examples in this key area. The Committee also asks for clarification of several legal guarantees and practices, regarding the protection from and prevention of torture. The information requested by the Committee is in reference to the last five years, demonstrating the need to examine the current situation in Serbia, despite the fact it is not covered in the timeframe of the report.

The State’s written response was submitted in April 2008 and was very thorough, providing detailed information on many cases. A large amount of information is provided on the State’s cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) and on the workings of the War Crimes Chamber of the Belgrade District Court as well as statistics on prosecutions. However, some answers are still

² Though the report is technically the 2nd report submitted by Serbia, the Committee considered it as its initial report. This was due to the change of Government in October 2000 which led to Serbia’s re-accession to international acts on human rights. In the light of this, an agreement was reached with the UN that Serbia could submit an ‘initial’ report covering 1992 to the first six months of 2003.

³ CAT/C/SRB/2, available at www2.ohchr.org/english/bodies/cat/cats41.htm.

⁴ See www2.ohchr.org/english/bodies/cat/cats21.htm#21st.

⁵ The period covered begins when the area was known as the Federal Republic of Yugoslavia. This territory became known as the State Union of Serbia and Montenegro in February 2003. These two states became independent in June 2006 but since the report was submitted before this date, it covers Montenegro and Serbia, as well as the Autonomous Province of Kosovo and Metohija, which at the time of writing was under the authority of Serbia.

⁶ CAT/C/SRB/Q/1, available at www2.ohchr.org/english/bodies/cat/cats41.htm.

lacking in statistics. Serbia's response to the request for information on cases of torture as a result of the exercise of Serbian jurisdiction on Kosovo simply states, 'We cannot provide an opinion on the violation of human rights on the part of the organs of the Republic or Serbia' since Serbian jurisdiction has not been exercised there since the United Nations Temporary Mission took over in 1999. Further information is provided on the training given to police and law enforcement officials but not on prison wardens, medical personnel and other staff involved with detainees, as was requested by the Committee.

NGO information

Two individual non-governmental organisations (NGOs),⁷ one coalition of NGOs,⁸ and the Office of the Ombudsman of Serbia, submitted **written reports** to the Committee.⁹ The coalition suggests that there are gaps between domestic legislation and international obligations. For example, attempted acts of torture are not incriminated in national law, which differs from Article 4 of the Convention. Many of the reports raised many common concerns over problems with the penitentiary system in Serbia.¹⁰ Among the problems mentioned were: the lack of training of prison staff, poor standards of medical documentation,¹¹ and the insufficiency of internal and external control mechanisms. Another issue raised by the coalition group is the unsatisfactory outcome of a case involving refugees from Croatia, and Bosnia and Herzegovina after the military action 'Oluja' in 1995.¹² The coalition group stresses the need for effective action to combat trafficking, including prosecution of the perpetrators. The coalition group also suggests that despite existing laws, domestic violence is rarely prosecuted and there are inadequate prevention measures and a lack of staff training. The coalition group and Mental Disability Rights International (MDRI) bring to light information on the mistreatment of people with physical and mental disabilities. The need to develop a comprehensive programme to care for disabled people in the community is presented as the only way to solve the immense problems in this area.

At the beginning of the session, Mr Milos Jancović, Deputy Ombudsman for persons deprived of liberty, gave an **oral presentation** on the role of the Office of the Ombudsman in protecting human rights. He outlined the main issues with which his Office is concerned in the prison system, namely lack of space, healthcare, and control mechanisms. The Committee appeared interested in this role and suggested the Office might take more of a responsibility to protect and promote the rights of persons with disabilities. MDRI also briefed the Committee on the poor treatment of persons with physical and mental disabilities in Serbia, expanding on and updating the information provided in its written report. The Committee were very engaged with this issue; almost every Committee member expressed his or her sincere regret and shock at the situation and asked further questions in order to be able to press the State for specific responses to the abuses described.

Themes and issues

The delegation of Serbia was led by Mr Svetozar Čiplić, Minister for Human and Minority Rights of the Republic of Serbia. He was supported by a large, high-level delegation consisting of representatives of the

⁷ Centre for Human Rights Niš, Mental Disability Rights International (MDRI)

⁸ ASTRA anti trafficking action, Belgrade; Belgrade Centre for Human Rights, Belgrade; Centre for Human Rights-Nis; Committee for Human Rights, Leskovac; Helsinki committee for human rights, Belgrade; Humanitarian Law Centre, Belgrade; and the International Aid Network, Belgrade.

⁹ The NGO reports are available at www2.ohchr.org/english/bodies/cat/cats41.htm.

¹⁰ Centre for Human Rights Niš, the coalition group, the Helsinki Committee for Human Rights in Serbia and the Office of the Ombudsman

¹¹ The risk of cover-ups in cases of abuse was noted. For example, it is often claimed that injuries are just 'light bodily injuries' but medical reports do not sufficiently back up these claims.

¹² Refugees were arrested without charge by Serbian authorities and forced to fight for the Serbian forces. Subsequent attempts to seek compensation for these victims have been unsuccessful in light of a Supreme Court decision in February 2004 ruling that only the direct perpetrator, not the State, can be held accountable for such criminal acts.

Ministry for Human and Minority Rights, Ministry of Justice, the Judicial Training Centre, Ministry of Labour and Social Policy, Ministry of the Interior, Ministry of Foreign Affairs, Ministry of Health, Office of the National Council for Cooperation with the International Tribunal for the Former Yugoslavia, and the Permanent Mission in Geneva. The delegation consisted of a Minister, an assistant minister, an Ambassador, a State Secretary, directors, advisors and other high-ranking representatives from Government bodies.¹³

The head of delegation gave a short opening presentation on how Serbia has started to bring its legislation in line with international standards. He spoke of the new Constitution of 2006, which specifies that no-one may be subject to torture, and outlines the mandate of the Office of the Ombudsman to protect and promote human rights. He also mentioned that in 2006 the new *Law on Criminal Procedure* was adopted, and is due to come into force in 2009. A committee to monitor the implementation of the Convention as well as internal police control mechanisms have also been recently established. Mr Čiplić outlined Serbia's stance on the Autonomous Province of Kosovo and Metohija: Serbia still regards this area as part its own territory but suggested that the Committee ask the United Nations Interim Administration in Kosovo (UNMIK) to provide information on how the Covenant is implemented there, since Serbia has not had effective control over the region for nine years.

The delegation responded positively to the questions put to it by the Committee and demonstrated a willingness to engage in a constructive dialogue. Detailed answers were prepared but, due to time restraints, only one third of the answers were directly discussed in the session. The delegation promised to supply the remainder in written form. Mr Abdoulaye Gaye, co-rapporteur on Serbia, commended the efforts that the delegation had made to provide information to the Committee. The one exception to the delegation's cooperation was over Kosovo and Metohija, on which it was unwilling to provide information.

Pursuit of justice regarding those responsible for war crimes

The delegation responded to questions on cooperation with the ICTY in great detail. It stated there are no outstanding requests for submission of information to the ICTY and that out of the 46 indicted persons requested to be handed over, only two remain at large. Serbia is actively pursuing these two individuals; warrants have been issued for €1million and €200 000 for Ratko Mladić and Goran Hadžić respectively. Proceedings have also taken place against persons charged with war crimes within the Office of the War Crimes Prosecutor of the Republic of Serbia and the War Crimes Chamber of the Belgrade District Court, established in 2003.¹⁴ The delegation confirmed that paramilitary members involved in the war in the former territory of Yugoslavia may be prosecuted regardless of their nationality. It added that the Republic of Serbia is ready to contribute to establish the full truth about war crimes and give full compensation to the victims.

¹³ Mr Marko Karadžić, State Secretary, Ministry for Human and Minority Rights (deputy-head of delegation); Mr Slobodan Vukčević, Ambassador, Permanent Representative of the Republic of Serbia to the UN Office and other International Organisations in Geneva; Ms Zorana Čamber, Chief of the Cabinet, Ministry for Human and Minority Rights; Ms Sanja Jašarević-Kužić, Assistant Minister, Ministry for Human and Minority Rights; Mr Vladimir Deklić, Advisor for the harmonisation with the EU legislation, Ministry of Justice; Mr Nenad Vujić, Director of the Judicial Training Center; Mr Damir Joka, Head of Division for treatment and alternative sanctions, Directorate for the enforcement of institutional sanctions, Ministry of Justice; Mr Dragan Vulević, Head of Division for supervision and administrative issues, Ministry of Labour and Social Policy; Mr Nebojša Pantelić, President of the Commission for following the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment, Ministry of the Interior; Ms Marina Ivanović, Counsellor, Directorate for Human Rights and Environmental Issues, Ministry of Foreign Affairs; Ms Gordana Podanin, Advisor, Ministry of Health; Ms Dušan Ignjatović, Director of the Office of the National Council for Cooperation with the International Tribunal for the prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991; Ms Marija Stajić, Third Secretary, Permanent Mission of the Republic of Serbia to UN office and other international organisations at Geneva.

The list of members of Serbia's delegation is available at www2.ohchr.org/english/bodies/cat/cats41.htm.

¹⁴ So far, 123 persons have been processed before those bodies.

In the concluding observations, the Committee notes the extensive information provided on this subject but announces regret over the uncertainty of the future of cases after the ICTY is scheduled to close in 2010. The Committee recommends that these cases be addressed in spite of the closure of the ICTY and that effective protection be provided for witnesses involved in the proceedings.

Treatment of people with physical and mental disabilities

Many Committee members drew from the MDRI report, questioning the delegation on the treatment of physically and mentally disabled people in the 16 institutions across the country. Questions were posed regarding understaffing in institutions, the lack of training of staff, the need to develop treatment according to diagnosis and a comprehensive community support system. The Committee expressed its concern at the apparent lack of laws regulating these institutions. In response, a representative from the Ministry of Labour questioned the validity of the MDRI report, suggesting it contains many ‘false’ and ‘unacceptable’ facts. According to this member of the delegation, the Government is aware of the problems in this sector and has begun to address them.¹⁵

With regard to the institutionalisation of mentally disabled persons without their consent, the delegation confirmed that this is possible if their illness is assessed as life-threatening. An expert opinion is required the following day to decide if the patient will remain institutionalised. The psychiatric institution must then inform the courts within 48 hours and provide the patient with reasons why they are being kept and details on the nature of their illness.

In its concluding observations, the Committee recommends the State should continue the process of de-institutionalisation of persons with disability, strengthen training for staff, and investigate reports of mistreatment.

Implementation of the Convention in Kosovo and Metohija

Although Serbia still claims that the province of Kosovo and Metohija should come under Serbian jurisdiction, in reality this has not been the case since 1999, when the area became administered by the UN. The delegation claimed therefore that although the Convention *should* be implemented there, it has not been able to play any part in achieving this. It thus suggested that UNMIK should supply relevant information. The Committee accepted this as a problem but asked for clarification on whether there are areas in Kosovo and Metohija where Serbian people reside and where Serbia therefore takes an interest. There was not sufficient time in the session for the delegation to come back to this issue.

In the concluding observations the Committee accepts Serbia’s inability to report on the implementation of the Convention in this area.

Treatment of detainees

The delegation refuted comments by NGOs and Committee members suggesting that detainee rights are not fully respected in penal institutions. A representative from the Ministry of Justice claimed that convicts have the right to free medical protection, and that women prisoners are housed in a separate prison, part of which is dedicated to specialised medical services. The delegation also confirmed that detainees are entitled to be informed of their rights such as the right to legal counsel. With regard to concerns about the record-keeping of medical staff, the delegation assured the Committee that doctor’s reports are reliable. Doctors are issued with

¹⁵ On 20 November 2008, the Ministry of Labour and Social Policy submitted a draft bill to the Government, which proposed adopting measures to improve conditions in these problematic institutions. Three short-term measures were immediately adopted to improve the situation of children in these institutions and seven long-term measures were adopted which aim to develop an alternative community care system, provide expert training for staff and improve living standards in state institutions.

a permit to perform independent medical inspections which can be revoked in case of abuse and the reports provided may be questioned in court if necessary. Mr Fernando Mariño also asked about the control mechanisms regarding solitary confinement of prisoners as well as the length of pre-trial custody. The delegation assured the Committee that a detainee can only be placed in isolation with the consent of the court and that pre-trial detention is limited to a maximum of one month, which may be extended for a further two months if related to civil or criminal acts.

In its concluding observations, the Committee recommends that police ensure that a detainee's right to access a lawyer of his or her own choice is respected in practice. The Committee is also concerned at the lack of independence of medical personnel in prisons, and advises that Serbia rectify this as well as ensure that training specifically aimed at preventing torture is regularly conducted for all law enforcement personnel.

Prison conditions

The Government has recognised the poor conditions in prisons and has reportedly been seeking ways to improve them. However, according to the Deputy Ombudsman, prisons now have a lower due to efforts to improve living conditions.¹⁶ The Committee suggested that the State may need to look towards alternative measures in the judicial system to combat prison overcrowding. There was not sufficient time for the delegation to respond to these issues but the Committee suggests in its concluding observations that prison reform be swiftly implemented, by seeking technical assistance from the UN and other relevant organisations if necessary.

Control mechanisms of the penitentiary system

The Committee responded to NGOs concerns over insufficient control mechanisms by asking the delegation for more information on the monitoring process. The delegation claimed that an effective complaints system in prisons is guaranteed under the Criminal Law. The delegation outlined the procedure through which an individual can complain to the head of the prison, and provided statistics detailing the complaints made in 2007.¹⁷ The representative of the Ministry of Justice spoke of the control mechanisms of prisons themselves. The delegate also claimed that parliamentary control has been established over prisons by the National Assembly who created a commission of five independent members, as well as by the establishment of the Office of the Ombudsman, part of whose mandate is to control and supervise the prison system.

However, in the concluding observations, the Committee expresses concern that a system of inspection of the conditions of imprisonment by independent experts does not yet exist, and recommends that it be established. It also expresses concern over the lack of an independent and external oversight mechanism for alleged unlawful acts committed by the police. The Committee advises that the State make sure that investigations into allegations of torture are carried out thoroughly, effectively and impartially, whilst ensuring that the accused personnel are suspended during the process.

Other issues

The delegation claimed that, despite the absence of a **definition of torture** in line with Article 1 of the Convention, similar provisions including Article 37 of the Criminal Code allow for the prosecution of acts of torture. The working group which is currently addressing amendments to the Criminal Code wants to accept the international standard on this. The delegation hopes this change will come about by the end of 2009.

¹⁶ Areas which previously housed 40 prisoners have now been separated to allow for more privacy, meaning that the same space can now only house 20 prisoners.

¹⁷ In 2007, 322 complaints were made. 72 cases were appealed, and 15 were accepted by the Court of Judicial Protection and sent back for reinvestigation.

With regard to **statutory limitations**,¹⁸ the Committee expressed regret at the Supreme Court ruling of 2005 which applied this principle to the crime of torture. The State promised this inconsistency will be remedied by the end of 2009.

The Committee appeared very interested in **the role of the office of the Ombudsman**. Although the Committee recognised the broad mandate the Ombudsman has been given, including the power to initiate procedures before the Constitutional Court, it was keen that the Ombudsman's role be strengthened and expanded.¹⁹ In its concluding observations, the Committee suggests that all relevant authorities should be obliged to follow up on the Ombudsman's recommendations and that the State should consider increasing the Ombudsman's role in protecting children from violence.

Regarding **domestic violence**, the Committee noted the legislative changes made but asked about the existence of awareness-raising programmes and specific court cases. There was not sufficient time in the session for the delegation to comment. The concluding observations express concern over the low penalties given to perpetrators of domestic violence, the slowness of the proceedings, and the lack of adequate protection or prevention measures. The Committee suggests broader awareness-raising campaigns as well as training on domestic violence.

Other issues of concern raised by the Committee were: the independence of the judiciary, the lack of a sufficient programme to provide redress and compensation to victims of torture, the need to intensify reintegration of trafficking victims and carry out related awareness-raising activities, the need to develop a better data collection, and the need to ensure the *de facto* implementation of the new *Law on Asylum* which outlines the principle of non-refoulement.

Conclusions and next steps

In its concluding observations, the Committee welcomes certain changes including the new Constitution of 2006 which outlaws torture, the establishment of the War Crimes Chamber in 2003, the new *Law on Criminal Procedure* which will enter into force in 2009, the establishment of the Office of the Ombudsman and the ratification of the Optional Protocol to the Convention in 2006. The Committee asks the State to provide follow-up information on the recommendations given and encourages it to make the information provided to the Committee and the concluding observations widely accessible to the public.

The deadline for the submission of the 2nd periodic report is 21 November 2012.

Last revised and updated: 3 December 2008.

¹⁸ A Statute of limitation is applied to torture in Serbia, meaning that after a maximum of five years, legal proceedings against the crime of torture cannot be carried out.

¹⁹ The Committee suggested to the Deputy Ombudsman in the pre-session meeting that he may be able to play an important role in improving the situation of disabled people in institutions in Serbia.

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