



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD (PARTIAL)* OF THE 843rd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 6 November 2008, at 3 p.m.

Chairperson: Mr. GROSSMAN

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Serbia (continued) (CAT/C/SRB/2 and Corr.1;
CAT/C/SRB/Q/1 and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Serbia resumed their places at the Committee table.
2. Mr. CIPLIC (Serbia) said that, as reflected in the report, his Government had made great efforts to ensure the protection of its citizens' rights and freedoms and to comply with its obligations under the Convention. In 2006, a new Constitution had been adopted, laying the foundations for a new judicial system. An appropriate legal framework had also been established, and specific legislation relating to the organization of the judiciary had been enacted. The structure of the new judicial system was based on the French system. The principles underpinning the new system were the efficient and swift administration of justice and the need to protect against violations of rights.
3. Another matter of concern to his Government was the implementation of the Convention in the Autonomous Province of Kosovo and Metohija. Pursuant to Security Council resolution 1244 (1999), the Government was unable to monitor implementation of the instrument in that territory, even those parts inhabited by Serbs, since it was under the administration of the United Nations.
4. Mr. IGNJATOVIC (Serbia) said that his Government had ensured successful cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) in two basic ways - by amending legislation and by establishing the necessary authorities required. Almost all the documentation requested had now been submitted to the Tribunal. To date ICTY investigators had reviewed 26 files provided by Serbia containing sensitive and highly confidential information from the police, military and intelligence services. His Government had also complied with the Tribunal's requests to release key witnesses from their obligation to keep State secrets. Of the 46 cases opened by the Tribunal requiring Serbia's cooperation, only two were still pending. His Government had handed over many former government leaders and high-ranking members of the military and security forces to the Tribunal. The recent arrest and appearance before the Tribunal of the former President of Republika Srpska, Radovan Karadzic, should dispel any doubts that Serbia wished to protect him.
5. Various measures had been adopted to ensure the arrest and transfer of the two remaining persons indicted by the Tribunal - the former military leader, Ratko Mladic, and Goran Hadzic. Rewards of 1 million euros and 250,000 euros respectively were being offered for information on their whereabouts. Proceedings had also been brought against persons who had helped them to hide.
6. As to measures against members of paramilitary groups involved in the conflict in the former Yugoslavia, Serbia had jurisdiction over all crimes under international law committed in the territory of the former Yugoslavia, irrespective of the nationality of the perpetrators. To

date 123 such persons had been tried before the War Crimes Chamber of the Belgrade District Court. Most of them were members of paramilitary groups, such as the Scorpions and the Avengers, involved in crimes in Bosnia and Herzegovina, Croatia and Kosovo. Furthermore, despite the judgement of the International Court of Justice in the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) that Serbia was not directly responsible for the genocide in Srebrenica, Serbia had shown its determination to bring to trial not only members of paramilitary groups, but also members of the former armed forces who had been involved in any way in war crimes committed in various parts of Bosnia and Herzegovina and Croatia. A notable achievement was the fact that some 40 victims of war crimes from Bosnia and Herzegovina had agreed to give testimony directly before the War Crimes Chamber of the Belgrade District Court; others had done so by video link. With the cooperation of the Croatian and Bosnian judicial authorities some trials had also been held in local courts.

7. Under Serbian law, the maximum penalty for such crimes was a 20-year prison sentence, which, for example had been handed down for the murder of 14 Albanian civilians in the town of Podujevo, in Kosovo.

8. In the Sjeverin trial, three members of the paramilitary group the Avengers had been sentenced to 20 years' imprisonment for the murder of 16 ethnic Muslims in Bosnia, while a fourth member had been sentenced to 15 years.

9. Three members of the Scorpions had received prison sentences of 20, 15 and 13 years respectively for the murder of six Bosnians in Trnovo. Other persons of higher rank involved in those crimes had been duly handed over to the ICTY.

10. In the Ovcara case, the Supreme Court had overturned the original verdict finding 14 persons guilty of the murder of around 250 hostages at Ovcara in Vukovar in 1991. A new trial was under way.

11. The Serbian authorities had shown their willingness not only to provide compensation for the victims of such crimes, but also to ensure redress, for example by participating in the memorial service for the victims of Srebrenica held in 2005 and by issuing public apologies to the citizens of Bosnia and Herzegovina and Croatia in December 2004 and June 2007 respectively. They considered that they had done their utmost to normalize conditions and to guarantee better relations between the peoples of the former Yugoslavia.

12. Mr. VUJIC (Serbia), referring to Serbia's obligations as a successor State with regard to complaints considered by the Committee under article 22 of the Convention involving the Federal Republic of Yugoslavia and the State Union of Serbia and Montenegro, said that pursuant to decisions of the Supreme Court of Serbia and provisions of the new Criminal Code that would enter into effect in January 2009, a review of such cases would be possible provided that all domestic remedies were exhausted and relevant decisions were issued by the European Court of Human Rights or other international human rights bodies.

13. Providing information on recent developments in that connection, he said that in February 2006 the Supreme Court had ordered that compensation should be awarded in the case of Ristic v. Yugoslavia (Serbia and Montenegro). In the case of Dimitrov v. Serbia and

Montenegro, the Ministry of Justice had issued information to the effect that the statute of limitations would not apply, the date taken into consideration being May 2005. In December 2007, a settlement of approximately 100,000 dinars had been ordered in the case of Dimitrijevic v. Serbia and Montenegro. It was expected that in the case of Nikolic v. Serbia and Montenegro, the Supreme Court would adopt a position similar to that in the case of Ristic v. Yugoslavia (Serbia and Montenegro).

14. His Government was adopting a series of measures to improve the overall efficiency and swiftness of the justice system. At its judicial training centre attention was being focused on the application of international human rights treaties such as the Convention against Torture and the European Convention on Human Rights. Since the length of trials had been identified as a particular problem, specific training was being provided for judges on article 6 of the European Convention so as to avert possible claims of violations of the article in the future. The new Criminal Code would strengthen the role of public prosecutors by granting them greater powers of investigation.

15. Mr. DEKLIC (Serbia) said that the definition of torture contained in the Convention was not reflected in Serbian criminal legislation currently in force. A working group was reviewing the matter as part of the ongoing reform of the Criminal Code, and it was expected that Serbian criminal legislation would be brought into line with all relevant international standards by the end of 2009.

16. He confirmed that there was currently no statute of limitations for war crimes, genocide or crimes against humanity.

17. Mr. JOKA (Serbia) said that, in accordance with current criminal legislation, persons deprived of their liberty were entitled to request a medical examination by a doctor of their choice.

18. Mr. DEKLIC (Serbia) said that prisoners were provided with medical care free of charge. Time spent in hospital, including for maternity and childbirth, was counted as part of the prison sentence. Larger prisons had qualified medical staff and proper health-care facilities on the premises; smaller prisons provided basic medical care and enlisted the services of qualified staff from local health-care institutions. In both cases, emergency care was provided promptly.

19. Women served their sentences in Požarevac prison in central Serbia. Part of the building was reserved for medical and pregnancy-related services. A convicted woman could keep her child until he or she was one year old, after which the parents decided whether to entrust the child's care to the father or to another relative. Medical services were provided to inmates free of charge.

20. Ms. PODANIN (Serbia) said that a number of laws on medical care had been enacted at the end of 2005. One law dealt with the Serbian Chamber of Medical Experts, which was responsible, inter alia, for issuing and revoking licences for the provision of medical services. Patients or family members could file complaints with the Chamber's courts of first or second instance if they considered that doctors' findings regarding a patient's medical state were

incomplete or inadequate. Doctors who were found guilty of improper professional conduct could lose their licence. Complaints could also be filed with the board of directors of the relevant medical establishment.

21. Mr. JOKA (Serbia) said that any convicted person could file a complaint under article 114 of the Criminal Code with the prison governor regarding an alleged violation of his or her rights. A decision on the complaint must be taken within 15 days. If the complainant was not satisfied with the decision, he or she could appeal to the head of the Department for the Enforcement of Prison Sentences, who was also required to take a decision within 15 days. All such complaints were confidential.

22. Article 165 of the Criminal Code entitled convicted persons to seek judicial protection against a final conviction entailing a prison sentence before the Administrative Division of the Supreme Court.

23. In 2007, a total of 322 complaints had been lodged by convicted persons and 72 appeals had been filed against decisions by prison governors. In 15 cases the complaint had been accepted and the first-instance decision quashed. Appeals for judicial protection had been filed in 24 cases. A convicted person who considered that he or she was the victim of a criminal act could approach a prosecutor directly. If the prosecutor found no ground to initiate proceedings, the person concerned could file a private complaint.

24. Mr. VUJIC (Serbia) said that detainees could approach the investigating judge in charge of their case in order to obtain protective measures. The matter was then normally referred to the president of the court division that had jurisdiction in the case. Judges who tried cases involving juveniles were required to attend a training course and obtain a certificate of expertise. According to the Supreme Court, non-possession of such a certificate constituted a procedural irregularity. Juveniles were rarely given custodial sentences but when they were, the juvenile court judge of first instance was required to visit the detention centre twice a year and submit regular reports. Educational facilities were provided in juvenile detention centres.

25. Mr. JOKA (Serbia) said that the Ministry of Health supervised health care in prisons and a 45-member supervisory body was responsible for monitoring other aspects of the enforcement of sentences. Members of that body could speak to inmates in confidence and without the presence of prison staff. If they suspected that an inmate had been the victim of a criminal offence, they reported the matter to the relevant prosecutor. The report was communicated to the prison governor and the Ministry of Justice. The governor was required to take the recommended action and report thereon to the Ministry. Article 298 of the Code of Criminal Procedure provided for parliamentary supervision of prison facilities. The five independent members of the relevant committee of the National Assembly were conversant with legal matters but were not employed by the prison administration. The Department for the Enforcement of Prison Sentences provided it with the information it needed for its work. The committee submitted a report to the National Assembly and the Ministry of Justice at least once a year.

26. The Office of the Citizens' Protector (Ombudsman) had been established in 2007 and was responsible, inter alia, for monitoring prison authorities and taking steps to correct any shortcomings.

27. Mr. DEKLIC (Serbia) said that the rights of persons deprived of their liberty were guaranteed by articles 28-35 of the Constitution and were set out in detail in the Code of Criminal Procedure. They must, for instance, be informed of their right to remain silent and to be assisted by counsel of their own choosing or to have counsel assigned to them if they were unable to afford legal assistance. They must also be allowed adequate time and facilities to prepare their defence. Article 5 of the Code of Criminal Procedure stipulated that an arrested person must be informed promptly and in detail, in a language he or she understood, of the charges against him or her. An arrested person could also ask to be moved to a different place of detention and, in the case of non-Serbs, could contact diplomatic or consular representatives of the State of which he or she was a citizen or a representative of an international organization. Article 89 of the Criminal Code stipulated that an arrested person could not be questioned in the absence of counsel unless he or she waived that right. Statements obtained in violation of those provisions were inadmissible in court.

28. Arrested persons must be brought before a court within 48 hours or else released. The court's written decision stating the grounds for detention must be delivered to the detainee within 12 hours and the court must decide on any appeal against that decision within 48 hours. The court of first instance could not sentence an arrested person to more than one month's detention during the investigation. However, a higher court could extend the period of detention to three months. In the case of serious criminal offences punishable by a prison sentence of five years or more, a court panel could decide, in the light of a proposal by the investigating judge or the prosecutor, to extend detention for a further three months. All such decisions were appealable, including ultimately to the Supreme Court.

29. Mr. JOKA (Serbia) said that article 242 of the law on the enforcement of sentences stated that if a prisoner breached prison rules, the relevant court should immediately be informed so that proceedings could be instituted. A prisoner could be placed in solitary confinement only pursuant to a court decision, which could be taken in the case of a serious offence, where the safety of other prisoners was jeopardized or where the prisoner was at risk from other prisoners. The maximum period of solitary confinement was 15 days. A medical examination was required prior to confinement and at least once a day during the period of confinement. Termination was mandatory if the prison doctor considered that further confinement would endanger the prisoner's health. The prison governor could also order the early termination of solitary confinement if he or she considered that it had already achieved its purpose.

30. Disciplinary measures had been imposed in 4,503 cases in 2007; in 1,097 of those cases (less than 25 per cent) solitary confinement had been ordered. The confinement period had been less than 5 days in 313 cases, between 6 and 10 days in 352 cases, and between 11 and 15 days in 432 cases. Solitary confinement had not been enforced in 285 cases for medical reasons, and enforcement of disciplinary measures had been suspended in 138 cases because the purpose of the penalty had been achieved.

31. Ms. PODANIN (Serbia), replying to a question regarding the detention of persons with mental disabilities against their will, said that the Health Protection Act stipulated that if a psychiatrist decided that the nature of a patient's mental illness could endanger the life of another person or lead to property damage, and if the head of a psychiatric institution considered that hospitalization was necessary, the person concerned could be admitted to hospital without his or her consent. However, an expert professional opinion on whether an extended stay was necessary

must be delivered the following day. The competent court must be informed of the situation within 48 hours. Urgent proceedings were then initiated and the competent judge was required to examine the patient in the presence of two doctors. The psychiatric institution was required to provide the judge with all relevant information regarding the patient. Moreover, the patient would also be heard if he or she was fit to make a statement. The court's decision could be appealed by the patient, members of the patient's family or his or her legal representative. The patient could be kept in the institution for up to a year but could be discharged earlier and treated at home if the doctor in charge of the patient's treatment considered that his or her condition had improved.

32. The following figures had been provided by the country's special hospitals for psychiatric disorders for the period 2006 to September 2008: Novi Knezevac hospital: no patients in 2006, 1 patient in 2007, 1 in 2008; Vrsac hospital: 6 patients in 2006, 14 in 2007, 21 in 2008; Kovin hospital: 2 patients in 2006, 8 in 2007, 13 in 2008; Gornja Toponica hospital: 1,228 patients in 2006, 1,339 in 2007, 461 in 2008; and Laza Lazarevic hospital in Belgrade: 433 patients in 2006, 326 in 2007, 264 patients in 2008. All special hospitals had adopted regulations based on the existing legislation concerning the detention and treatment of patients.

33. Mr. VULEVIC (Serbia) said that the report by Mental Disability Rights International on the situation of children and adults with disabilities in specialized social-care institutions in Serbia merely reflected the organization's views. The methodology used and the way in which the information had been presented were highly questionable. In several cases, the report provided false information, and where the information was correct the way in which it had been interpreted was unacceptable. In fact, the findings of the report as a whole were unacceptable to anyone who was familiar with the situation.

34. In 2001, Serbia had embarked on far-reaching social-welfare and child-care reforms, which comprised, inter alia, a strategy for social welfare reform and the "Strategy for improving the position of persons with disability". Special emphasis had been placed on the welfare of mentally disabled persons. The reform efforts included measures to achieve progressive deinstitutionalization.

35. On 20 November 2007, the Ministry of Labour and Social Policy had submitted proposals to the Government for improving the living conditions of persons in care institutions. The proposals were based on the results of institutional inspections carried out by the Ministry and social labour inspection, which was independent of the Ministry. In response to the proposals, the Government had formulated three short-term and seven long-term reform objectives. The short-term measures for immediate implementation by the Ministry included the requirement of prior consent by the Ministry for the placement of children with disabilities in institutions, and the prohibition on using premises that did not meet the requisite standards for the placement of such children.

36. The long-term objectives, six of which had been implemented already, included the development of alternative services at the local level, such as day-care centres for disabled persons and home-care assistance. New regulations had been adopted to provide the legal basis for the deinstitutionalization of disabled children. During the transitional period, some of the children were placed in alternative care or specialized foster families, or transferred to the children's institution in Subotica. Training programmes for staff working in specialized

child-care institutions were organized in three institutions, primarily at Kulina. The courses were run by a Belgrade-based NGO. Funds had been made available to improve the living conditions of children in all of Serbia's specialized institutions. Implementation of the project for the development of specialized foster care had already commenced. In autumn 2007, an expert group had been established to prepare a new law on social protection, which would provide for the protection of children in residential care, the strengthening of community-based care facilities, and the creation of additional services for disabled children.

37. Out of Serbia's 40,000 registered mentally disabled persons, including 11,249 who were children, 3,000 were living in institutions, including some 1,000 children. A total of 2,483 children and 1,700 adults went to local day-care centres. Following the report of Mental Disability Rights International, the Government had ordered an extraordinary review of the situation of children in all social-care institutions in Serbia.

38. Mr. PANTELIC (Serbia) said that the functioning of the police was governed by the new Police Act. The Office of the Inspector-General, which had been established in 2001 and commenced work in 2003, was responsible for internal oversight. By virtue of the Police Act, the Office had been converted into an independent internal oversight service tasked to monitor the lawfulness of police action and prevent abuse of authority and human rights violations in the performance of police duties. The Office acted on complaints filed by legal entities and on the basis of its own findings. Between 2003 and 2008, the Office had received 1,112 complaints of abuse of authority, excessive use of force and illegal use of firearms, inter alia. Legal proceedings had been instituted in 400 cases; 371 complaints had been settled in some other way. Criminal charges had been brought in relation to 36 violent offences committed by 43 police officers. Disciplinary action had been recommended against 41 officers. Special attention was paid to complaints filed by members of minority groups. The Humanitarian Law Centre had filed 31 complaints of violations against Roma, 30 of which had been processed to date. In four cases, the complaints had been considered well founded; 14 complaints had been deemed baseless.

39. A commission had been established in 2005 within the Ministry of the Interior to oversee the implementation of the Convention against Torture; the commission's mandate was identical to that of the European Committee for the Prevention of Torture.

40. Mr. MARIÑO MENENDEZ asked whether the Serbian authorities assumed responsibility for the protection of Serbian nationals under the Convention against Torture wherever they lived, including Serb minorities residing in Kosovo.

41. He requested clarification on the dates of entry into force of the new Criminal Code and the new law on the judiciary.

42. He also wished to know whether NGOs needed special permission from the Department for the Enforcement of Prison Sentences, and whether NGOs other than the Helsinki Committee and Human Rights Watch had been granted access to Serbian prisons.

43. Mr. GAYE enquired whether the reported prison overcrowding in the State party might be a result of undue delays in the processing of cases. He requested an update on the implementation of training programmes for law enforcement and judicial officials recommended

by the Committee following consideration of the State party's initial report. The delegation should also provide additional information on the role of the judiciary in monitoring the enforcement of prison sentences. He asked whether State institutions engaged in dialogue with NGOs and the ombudsman regarding their findings during visits to places of detention. He also wished to know whether Serbian legislation prohibited trade in instruments of torture, and whether Serbia had ratified the Optional Protocol to the Convention.

44. Ms. SVEAASS said that, while the value of symbolic redress for victims of the war was beyond doubt, cash compensation was also important, as it could facilitate access to rehabilitation. She asked whether the State party intended to investigate the alleged violations described in the report by Mental Disability Rights International, notwithstanding its critical views on the document. She also wished to know whether the measures taken to improve the situation of Roma people had produced tangible results. If so, the delegation should provide relevant information.

45. Ms. BELMIR asked whether judges had the right of appeal against impeachment and suspension. She enquired whether the introduction of court holidays, during which people could only litigate in urgent cases, might be partly responsible for the reported backlog of cases. The delegation should indicate what had been done to implement the recommendation of the Human Rights Committee to increase the number of judges. She asked whether the power of the Minister responsible for judicial affairs to lay down court rules of procedure would be maintained after the planned reforms of the justice system.

46. Ms. GAER asked whether the Government had held accountable persons who had incited violence against international personnel or others in Kosovo.

47. Mr. CIPLIC (Serbia) informed the Committee that his delegation would submit its replies to the remaining questions in writing.

The discussion covered in the summary record ended at 5 p.m.