



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

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## Committee against Torture

Forty-fifth session

1-19 November 2010

### List of issues prior to the submission of the second periodic report of Serbia (CAT/C/SRB/2)\*

### Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

#### Articles 1 and 4

1. With reference to the Committee's previous concluding observations (para. 5)<sup>1</sup>, please provide detailed information on the measures taken to adopt a definition of torture in domestic penal law consistent with article 1 of the Convention, and which also includes appropriate penalties taking into account the gravity of the offence. Please also indicate the legislative measures taken by the State party to repeal the statute of limitations for crimes involving torture. If this has not yet taken place, please explain the reasons why.

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\* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

<sup>1</sup> Unless otherwise indicated, paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/SRB/CO/1.

**Article 2<sup>2</sup>**

2. In light of the Committee's previous concluding observations (para. 6), in which it expressed concern about the inadequate access of detainees to doctors and lawyers and the opportunity to contact their families, and considering the follow-up information submitted by the State party on 3 February 2010 (CAT/C/SRB/CO/1/Add.1), please provide further information on the steps taken, and procedures in place, to ensure that:

(a) All detainees undergo a medical examination within 24 hours of detention; and that medical records noting injuries which are consistent with allegations of ill-treatment are systematically brought to the attention of the relevant prosecutor. How are detainees made aware of their right to demand an independent medical examination by a doctor?<sup>3</sup>

(b) All persons deprived of their liberty are guaranteed free legal aid if in need of such support. Please clarify how soon detained persons are permitted to meet with their lawyers, and who makes this decision. Is it at the moment of apprehension or the moment when charges are laid, or an indictment confirmed?

(c) All persons deprived of their liberty who do not understand Serbian are provided with the services of an interpreter.<sup>4</sup>

3. Please provide details on the steps taken to establish an independent and external oversight mechanism for alleged unlawful acts committed by the police, as recommended by the Committee in its previous concluding observations (para. 6). According to the follow-up information provided by the State party<sup>5</sup>, article 170 of the Law on Police states that the external oversight of the work of the police shall be exercised by the National Assembly, the Government, competent judiciary bodies, bodies of State administration with authority to perform oversight duties and other legally authorized bodies. Please provide detailed information on the oversight mandates entrusted to the above-mentioned State institutions and bodies, as well as the procedures in place, frequency of oversight activities and results.

4. Further to the Committee's previous concluding observations (para. 7), and noting the recommendation adopted by the Sub-Committee on Accreditation of the International Coordinating Committee of National Human Rights Institutions to grant an "A status" accreditation to the Protector of Citizens (Ombudsman), please provide information on the human and financial resources allocated for the effective functioning of this national human rights institution. Please provide information on the activities and achievements of the Office of the Protector of Citizens with respect to prevention of torture and other cruel, inhuman or degrading treatment and punishment during the period 2008-2012. This information should include statistics on the number and types of complaints received by the

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<sup>2</sup> The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment No. 2, paragraph 3, states "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. (...) In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

<sup>3</sup> A/59/44, para. 212 (m). See also the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Serbia in November 2007, CPT/Inf (2009) 1, para. 20.

<sup>4</sup> CPT/Inf (2009) 1, para. 30.

<sup>5</sup> CAT/C/SRB/CO/1/Add.1, p. 2.

Office of the Protector of Citizens as well as the outcome of any complaints of torture and ill-treatment.

5. In its previous concluding observations (para. 8) the Committee expressed its particular concern about political interference with the independence of the judiciary. Please inform the Committee of the measures taken to guarantee the full independence and impartiality of judges and prosecutors, by ensuring, inter alia, that nominations are made according to objective criteria. Please also provide information on the other measures in place to fully ensure the independence of the judiciary in the performance of their duties in conformity with international standards, notably the United Nations Basic Principles on the Independence of the Judiciary. Has the State party defined the rules of procedures for courts and established an independent disciplinary body in this regard, as previously recommended by the Committee?

6. Please provide updated information disaggregated by sex, age, and ethnicity or origin of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences imposed in cases of violence against women since the consideration of the State party's initial report. Please also provide information on the measures adopted, including legislative, to address concerns regarding the still substantial number of women in Serbia who are subject to violence, in particular domestic violence, as well as the insufficient measures and services to protect victims.<sup>6</sup> Please describe the impact and effectiveness of these and other measures, including the National Strategy for Improving the Position of Women and Promotion of Gender Equality 2009-2015 and the Strategy for protection against domestic violence and other forms of gender-based violence (2008-2012) adopted by the Autonomous Province of Vojvodina. Please provide detailed information on specific training and sensitization programmes developed by the State party for law enforcement personnel concerning the treatment of women victims of violence.

7. Further to the Committee's previous concluding observations (para. 21), please provide updated information disaggregated by sex, age, and ethnicity or origin of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences imposed in cases of human trafficking since the consideration of the State party's initial report. Please also provide additional information on:

(a) Any new legislation and/or measures adopted to prevent and combat human trafficking, including the content of the amendments to the Criminal Code adopted in August 2009;

(b) Steps taken to ensure that victims of human trafficking have access to effective remedies and reparation;

(c) Measures adopted to ensure that victims of trafficking are provided with adequate recovery and social integration services and programmes, including sensitization of law enforcement officials in contact with these victims;

(d) The implementation of the Plan of Action to Combat Trafficking in Human Beings 2009-2011 adopted in April 2009;

(e) The activities and achievements of the Agency for the Coordination of Protection of Human Trafficking Victims;

(f) The signature of bilateral and subregional agreements with countries concerned, including neighbouring countries, to prevent and combat human trafficking.

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<sup>6</sup> CAT/C/SRB/CO/1, para 19; CEDAW/C/SCG/CO/1, para. 22; and CCPR/CO/81/SEMO, para. 17.

8. Further to the State party's ratification of the Optional Protocol to the Convention on 26 September 2006, please inform the Committee of steps taken by the State party towards the setting-up or designation of a national mechanism which would conduct periodic visits to any place under its jurisdiction and control where persons are or may be deprived of their liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment.

### **Article 3**

9. Please clarify whether, and if so how, the new Law on Asylum, effective as from 1 April 2008, and its corresponding implementing regulations meet the concerns of the Committee expressed in its previous concluding observations (para. 9). Please provide updated information about the number of persons, broken down by country, that have been granted asylum or humanitarian protection and the number of persons returned, extradited and expelled since the entry into force of the new asylum law. Please provide details about the basis on which they were sent back, including a list of countries to which individuals were returned. Please provide detailed information on the type of appeal mechanisms that may exist, on whether any appeals were made and the outcomes of all appeals, if any.

10. Please indicate the measures taken by the State party to ensure that the applications for asylum by persons from States to which the concepts of "safe country of origin" and "safe third countries" apply are examined with due consideration for the applicant's personal situation and in full conformity with the provisions of article 3 of the Convention.

11. Please provide detailed information on the number of cases of refoulement, extradition and expulsion carried out by the State party during the reporting period through the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances in which the State party has offered such diplomatic assurances or guarantees. What are the State party's minimum contents for such assurances or guarantees, whether given or received, and what measures with regard to subsequent monitoring have been undertaken in such cases?

12. Please provide information on the measures taken to establish an effective mechanism to identify persons in need of international protection among victims of trafficking found in the territory of the State party.

13. Please provide information on the number of reported cases of ill-treatment or physical abuse committed by law enforcement officials against asylum-seekers since the consideration of the State party's initial report and the penalties imposed on perpetrators of such acts. Please provide information on the situation of the thousands of internally displaced persons living in collective centres and irregular settlements throughout the country.<sup>7</sup>

### **Articles 5, 7 and 8**

14. Since the examination of the previous report in 2008, please indicate whether the State party has rejected, for any reason, any request for extradition by another State for an individual suspected of having committed an offence of torture, and has started prosecution

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<sup>7</sup> See report on the visit to Serbia and Montenegro of the Representative of the Secretary-General on the human rights of internally displaced persons, 2006 (E/CN/4/2006/71/Add.5, and report on the follow-up visit in 2009 (A/HRC/13/21/Add.1).

proceedings as a result. If so, please provide information on the status and outcome of such proceedings.

15. Please provide information about steps taken to conclude extradition agreements covering war crimes cases.

### **Article 9**

16. Further to the Committee's previous concluding observations (para. 11), and information provided by the State party in its follow-up report dated 3 February 2010 (CAT/C/SRB/CO/1/Add.1), please indicate any further measures taken by the State party to strengthen its cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), including to track down and deliver the two remaining indictees, Ratko Mladić and Goran Hadžić. Please provide information with respect to any particular challenges that the State party may be facing with respect to these requirements.

17. Please provide information on the content and implementation of the Law on Cooperation with the International Criminal Court, adopted in August 2009.

### **Article 10**

18. With reference to the previous concluding observations of the Committee (para. 14), please provide information on further educational programmes developed by the State party to ensure that all law enforcement officials are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted. Furthermore, please indicate whether the State party has developed a methodology to assess the effectiveness and impact of training/educational programmes on the reduction of cases of torture, violence and ill-treatment, and, if so, please provide information on the content and implementation of such methodology.

19. Please provide detailed information on training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological sequelae of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (the Istanbul Protocol)?

### **Article 11**

20. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any new rules, instructions, methods and practices or arrangements for custody that may have been introduced since the consideration of the previous report in 2008. Please also indicate the frequency with which these are reviewed. Please describe further steps taken by the State party to ensure effective and independent supervision of detention facilities and inform the Committee of any rules that would prohibit investigations, visits by international bodies or mechanisms, or other forms of human rights scrutiny.

21. Please provide updated information, including statistics, disaggregated by sex, age and ethnicity, on the number of pretrial detainees and convicted prisoners and the

occupancy rate of all places of detention for the period 2008-2012.<sup>8</sup> Please also provide information on the number of persons deprived of their liberty in psychiatric hospitals and other institutions for the mentally or physically disabled.

22. Please provide disaggregated statistical data regarding reported deaths in custody according to location of detention, sex, age, ethnicity of the deceased and cause of death since the consideration of the State party's initial report. Please give detailed information on the results of the investigations in respect of those deaths and measures implemented to prevent suicides and other sudden deaths in detention centres.<sup>9</sup>

23. Please provide information about the frequency of inter-prisoner violence, including any cases involving possible negligence on the part of the law enforcement personnel, and the number of complaints made in this regards. What preventive measures have been taken?

24. Please inform the Committee of the measures taken to protect and guarantee the rights of vulnerable persons deprived of liberty, notably Roma community members, women, persons suffering from mental illness and children.

25. In the light of the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in the report on its visit to Serbia in November 2007 (CPT/Inf (2009) 1), please indicate measures taken to:

(a) Immediately remove any "non-standard issue objects" (i.e. baseball bats, iron rods, wooden sticks, thick metal cables, etc.) from all police premises where persons may be held or questioned;<sup>10</sup>

(b) Reduce the occupancy levels in prison cells, especially in sections for remand prisoners;<sup>11</sup>

(c) Reinforce the health-care resources available in penitentiary establishments<sup>12</sup> and enhance the quality of prisoners' medical records;<sup>13</sup>

(d) Review the legal safeguards of persons in specialized institutions subjected to involuntary hospitalization;<sup>14</sup>

(e) Adopt a clear policy for the use of means of restraint in health-care facilities;<sup>15</sup>

(f) Ensure adequate provision of care and living conditions for residents with mental disabilities at the Special Institution for Children and Juveniles in Stannica.<sup>16</sup>

### Articles 12 and 13

26. The Committee notes the information in the State party's follow-up report on the status of the *Ovčara* case.<sup>17</sup> Please provide updated information on the status of the *Ovcara*

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<sup>8</sup> CAT/C/SRB/CO/1, para. 23.

<sup>9</sup> CPT/Inf (2009) 1, para. 77 and p. 93.

<sup>10</sup> *Ibid.*, p. 84.

<sup>11</sup> *Ibid.*, pp. 88, 90.

<sup>12</sup> *Ibid.*, p. 92.

<sup>13</sup> *Ibid.* para. 74.

<sup>14</sup> *Ibid.*, paras. 134-137 and p. 102.

<sup>15</sup> *Ibid.*, pp. 94 and 101-102.

<sup>16</sup> *Ibid.*, paras. 146-181 and pp. 104-108.

<sup>17</sup> CAT/C/SRB/CO/1/Add.1, p. 15.

trial, on whether the appeal process has been completed, the exact charges, and sentences imposed. Please provide updated detailed information on the investigation, prosecution and sanctioning of other war crimes and past human rights violations. Please provide information on any measures taken to address the lack of human resources and funding of the Belgrade War Crimes Chamber, as well as deficiencies in the system of witness protection.<sup>18</sup>

27. With reference to the Committee's previous observations (para. 23), please provide detailed statistical data, disaggregated by crime committed, age, sex and ethnicity, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on related investigations, disciplinary and criminal proceedings, convictions and on the penal or disciplinary sanctions applied.<sup>19</sup>

28. Please provide statistical data on the number of incidents in which individuals who had lodged a complaint of police ill-treatment during apprehension were subsequently charged by police authorities with resisting arrest.

29. Please provide information on the outcome of the investigations and any disciplinary/criminal proceedings related to:

(a) The alleged ill-treatment of detainees by security personnel in Leskovac District Prison during 2009;

(b) The alleged physical ill-treatment and verbal abuse of prisoners in the high security and remand wings of the Požarevac-Zabela Correctional Institution<sup>20</sup>, Belgrade District Prison<sup>21</sup> and Belgrade Special Prison Hospital, as reported by the CPT,<sup>22</sup>

(c) Death of prisoner X. on 17 July 2005 while being transferred from Požarevac-Zabela Correctional Institution to the Special Prison Hospital in Belgrade,<sup>23</sup>

(d) The alleged physical ill-treatment and sexual abuse of drug addicts in Crna Reka, a rehabilitation centre affiliated to the Serbian Orthodox Church;

(e) The reports of torture or cruel, inhuman or degrading treatment or punishment of persons with disability in social-protection institutions.<sup>24</sup>

30. Please provide information on the reforms undertaken to improve the internal complaints system for prisoners. Please also provide information on the steps taken to establish an independent complaints mechanism available to persons deprived of their liberty.

## Article 14

31. Please provide information on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to victims of torture, or their families, since the examination of the initial report in 2008. This information should

<sup>18</sup> Ibid., p. 12.

<sup>19</sup> CPT/Inf (2009) 1, para. 18 and pp. 84-85.

<sup>20</sup> Ibid., paras. 41-47.

<sup>21</sup> Ibid., para. 41 (end).

<sup>22</sup> Ibid., paras. 80-81.

<sup>23</sup> Ibid., para. 43.

<sup>24</sup> CAT/C/SRB/CO/1, p. 16.

include the number of requests made, the number granted, and the amounts ordered and those actually provided in each case.<sup>25</sup>

32. Please clarify whether the right to compensation depends on the existence of a judgement in criminal proceedings ordering compensation. Please indicate how many victims have been compensated despite the perpetrator not being identified. Do investigations into such cases continue until the perpetrator(s) is/are identified and brought to justice? Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment if the perpetrator has been subjected to a disciplinary, but not a penal, sanction?

33. In the light of the Committee's previous concluding observations (para. 18), please provide information on any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes.

### **Article 15**

34. Please inform the Committee on the concrete measures taken to ensure respect, both in law and in practice, for the principle of inadmissibility of evidence obtained through torture. Please provide examples of any cases that have been dismissed by courts due to the introduction of evidence or testimony obtained through torture or ill-treatment.

### **Article 16**

35. Please inform the Committee on measures taken to address concerns regarding the hostile environment for human rights defenders (para. 13), particularly those working on transitional justice, women's rights and the rights of lesbian, gay, bisexual and transgender (LGBT) people. Please comment on the reports that human rights defenders and journalists continue to be singled out as targets for intimidation, harassment, including physical attacks and death threats, and politically motivated charges. Please provide detailed information on the outcome of criminal investigations and prosecutions, including sentences imposed, for physical attacks and death threats made against human rights defenders.

36. Please indicate the measures taken to ensure that corporal punishment of children is explicitly prohibited in all settings. Please provide information about the penal sanctions in place for corporal punishment and on the implementation of the National Strategy for the Protection of Children from Violence, adopted in December 2008.

37. Please provide information as to whether the use of restrictions on people with disabilities in institutions is registered and recorded. If it is, please provide information on the number of persons who have been subjected to restrictions, disaggregated by location, age, gender, and reason for the restriction being imposed. Please also clarify whether the government has conducted an investigation into the use of restraints on individuals with disabilities in institutions. If it has, please provide the results of that investigation.

### **Other issues**

38. Referring to the Committee's previous recommendation as part of its concluding observations (para. 25), and to its annual report of 2004 (A/59/44, paras. 151-240), please

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<sup>25</sup> CAT/C/SRB/CO/1, para. 18.



provide information on the steps thus far taken to implement the Committee's recommendations (A/59/44, para. 213 (a) to (t)) addressed to the State party in November 2002, under the framework of the inquiry procedure provided for in article 20 of the Convention.

39. With reference to the previous concluding observations of the Committee (para. 26), please provide the Committee with the outstanding follow-up information on individual communications, under article 22 of the Convention.

40. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and in practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention. Please describe the relevant training given to law enforcement officers; the number and types of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

**General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

41. Please provide detailed information on the relevant new developments in the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the initial report, including any relevant jurisprudential decisions. In particular, please provide information on the content and relevant changes introduced by the new Criminal Procedure Code, adopted in 2006 and expected to enter into force on 31 December 2010.

42. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the initial report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

43. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2008, including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.

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