

REPUBLIC OF SERBIA¹

CAT A/54/44 (1999)

35. The Committee considered the initial report of Yugoslavia (CAT/C/16/Add.[7]) at its 348th, 349th and 354th meetings, held on 11 and 16 November 1998 (CAT/C/SR.348, 349 and 354) and has adopted the following conclusions and recommendations:

1. Introduction

36. Yugoslavia signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 April 1989 and ratified it on 20 June 1991. It recognized the competence of the Committee against Torture to receive and consider communications under articles 21 and 22 of the Convention.

37. The initial report of Yugoslavia was due in 1992. The Committee expresses concern over the fact that the report was submitted on 20 January 1998 only. The report contains background information, information on international instruments, on competent authorities, on court and police procedures and information concerning the compliance with articles 2 to 16 of the Convention.

2. Positive aspects

38. As a positive aspect, it can be mentioned that the provisions of article 25 of the Constitution of the Federal Republic of Yugoslavia forbid all violence against a person deprived of liberty, any extortion of a confession or statement. This article proclaims that no one may be subjected to torture, degrading treatment or punishment. The same norm is contained in the Constitutions of the constituent republics of Serbia and Montenegro.

39. The Criminal Code of Yugoslavia defines the punishable offences of unlawful deprivation of freedom, extortion of depositions and maltreatment in the discharge of office. Similar provisions are contained in the criminal codes of Serbia and of Montenegro. The Law on Criminal Procedure applicable throughout the Federal Republic of Yugoslavia contains a provision according to which any extortion of a confession or statement from an accused person or any other person involved in the proceedings is forbidden and punishable. This code also provides that during detention neither the personality nor the dignity of an accused may be offended.

40. The police regulations in Yugoslavia provide disciplinary and other measures, including termination of employment and criminal charges in cases of acts by police officers violating the provisions of the Convention.

¹ [Ed. Note: Formerly Yugoslavia. Effective 4 February 2003, the State of Yugoslavia changed

its name to Serbia and Montenegro. Effective 6 June 2006, the state again changed its name to Republic of Serbia.]

41. The current legislative reform in the area of criminal law, and especially criminal procedure, envisions specific provisions, which will, hopefully, contribute to the improved prevention of torture in Yugoslavia.

3. Factors and difficulties impeding the application of the provisions of the Convention

42. The Committee took into account the situation in which Yugoslavia currently finds itself, especially with respect to the unrest and ethnic friction in the province of Kosovo. However, the Committee emphasizes that no exceptional circumstances can ever provide a justification for failure to comply with the terms of the Convention.

4. Subjects of concern

43. The Committee's concerns relate mainly to legislation not complying with the Convention and, more gravely, the situation regarding the implementation in practice of the Convention.

44. With respect to legislation, the Committee is concerned over the absence in the criminal law of Yugoslavia of a provision defining torture as a specific crime in accordance with article 1 of the Convention. The incorporation of the definition contained in article 1 of the Convention, in compliance with article 4, paragraph 1 and article 2, paragraph 1, requires specific as well as systematic legislative treatment in the area of substantive criminal law. Article 4 of the Convention demands that each State party shall ensure that all acts of torture are offences under its own criminal law. A verbatim incorporation of this definition into the Yugoslav Criminal Code would permit the current Yugoslav criminal code formula defining the "extortion of confession" to be made more precise, clear and effective.

45. One of the essential means in preventing torture is the existence, in procedural legislation, of detailed provisions on the inadmissibility of unlawfully obtained confessions and other tainted evidence. In this respect the report of the State party (para. 70) only mentions the "general principles" of national criminal legislation. However, the absence of detailed procedural norms pertaining to the exclusion of tainted evidence can diminish the practical applicability of these general principles as well as of other relevant norms of the Law on Criminal Procedure. Evidence obtained in violation of article 1 of the Convention should never be permitted to reach the cognizance of the judges deciding the case, in any legal procedure.

46. Regulating pre-trial detention is of specific significance for the prevention of torture. Two issues are crucial in this respect, namely incommunicado detention and access to counsel. Article 23 of the Constitution of Yugoslavia requires that the detained person should have prompt access to counsel. This would imply that such access to counsel must be made possible immediately after the arrest. However, article 196 of the Law on Criminal Procedure permits the police to keep a person, in specific instances, in detention for a 72 hour period, without access either to counsel or an investigating judge. The report does not mention the duration of the post-indictment pre-trial detention, which should not be unduly extended.

47. With respect to the factual situation in Yugoslavia, the Committee is extremely concerned over the numerous accounts of the use of torture by the State police forces it has received from non-governmental organizations. Reliable data received by the Committee from non-governmental organizations include information describing numerous instances of brutality and torture by the police, particularly in the districts of Kosovo and Sandjack. The acts of torture perpetrated by the police, and especially by its special units, include beatings by fists and wooden or metallic clubs, mainly on the head, the kidney area and on the soles of the feet, resulting in mutilations and even death in some cases. There were instances of use of electro-shock. The concern of the Committee derives also from reliable information that confessions obtained by torture were admitted as evidence by the courts even in cases where the use of torture had been confirmed by pre-trial medical examinations.

48. The Committee is also gravely concerned over the lack of sufficient investigation, prosecution and punishment by the competent authorities (article 12 of the Convention) of suspected torturers or those breaching article 16 of the Convention, as well as with the insufficient reaction to the complaints of such abused persons, resulting in the de facto impunity of the perpetrators of acts of torture. De jure impunity of the perpetrators of torture and other cruel, inhuman or degrading treatment or punishment results, inter alia, from amnesties, suspended sentences and reinstatement of discharged officers that have been granted by the authorities. Neither the report nor the oral statement of the Yugoslav delegation said anything about the Yugoslav Government's efforts concerning the rehabilitation of the torture victims, the amount of compensation they receive and the actual extent of redress afforded them.

49. The Committee hopes that in the future it will be possible to bridge the disconcerting discrepancy between the Yugoslav report and the apparent reality of abuse. However, the Committee is also concerned with the apparent lack of political will on the part of the State party to comply with its obligations under the Convention.

5. Recommendations

50. The Committee calls upon the State party to fulfil the legal, political and moral obligations it undertook when it ratified the Convention. The Committee expects the second periodic report of Yugoslavia, already overdue, to address allegations of torture under Yugoslav jurisdiction and respond directly to them. The Committee expects, in particular, that the State party provides information concerning all specific allegations of torture handed over to its representatives during the dialogue with the Committee. In compliance with articles 10, 12, 13 and 14 of the Convention, the Committee would appreciate information on all the educational efforts that the Yugoslav Government intends to undertake with a view to preventing torture and breaches of article 16 of the Convention. In addition, the Committee would appreciate receiving information on legislative and practical measures the State party intends to undertake in order to provide victims of torture with appropriate redress, compensation and rehabilitation.

51. The Committee recommends the verbatim incorporation of the crime of torture into the Yugoslav criminal codes. In order to diminish the recurrence of torture in Yugoslavia, the Committee

recommends that the State party legally and practically ensure the independence of the judiciary, the unrestricted access to counsel immediately after arrest, the shortening of the length of police custody to a maximum period of 48 hours, the shortening of the period of pre-trial post-indictment detention, strict exclusion of all evidence directly or indirectly derived from torture, effective civil redress and a vigorous criminal prosecution in all cases of torture and breaches of article 16 of the Convention.

52. The Committee finally calls upon the State party to submit its second periodic report by 30 November 1999.