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Human Rights Committee

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Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Serbia

1. The Committee considered the second periodic report submitted by the Republic of Serbia (CCPR/C/SRB/2) at its 2780th and 2781st meetings (CCPR/C/SR.2780 and 2781), held on 17 and 18 March 2011. At its 2796th meeting (CCPR/C/SR.2796), held on 29 March 2011, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of the Republic of Serbia, and expresses appreciation for the constructive dialogue with the delegation of the State party, and the oral and written responses provided. It also appreciates the written replies (CCPR/SRB/Q/2/Add.1) that were submitted in response to the list of issues.

3. The Committee recalls its previous consideration of the human rights situation in Kosovo (see CCPR/C/UNK/CO/1, adopted on 27 July 2006). The Committee notes that, as the State party continues to accept that it does not exercise effective control over Kosovo, and in accordance with Security Council resolution 1244 (1999), civil authority continues to be exercised by the United Nations Interim Administration Mission in Kosovo (UNMIK). The Committee considers that the Covenant continues to apply in Kosovo, and it therefore encourages UNMIK to provide it, in cooperation with the institutions of Kosovo, and without prejudice to the final legal status of Kosovo, with a report on the human rights situation in Kosovo since July 2006.

B. Positive aspects

4. The Committee welcomes the following positive developments in the State party, in particular in light of the reforms engaged as a result of the State party's candidacy to the European Union:

(a) Adoption of a new Constitution in 2006, which allows the Constitutional Court to examine individual complaints on human rights violations (article 170 of the Constitution);

(b) Adoption, in March 2009, of the Law on the Prohibition of Discrimination, and the appointment by the National Assembly, in May 2010, of the Commissioner for the Protection of Equality, empowered to examine complaints about discrimination, and make recommendations thereon;

(c) Adoption of the Law on the Ombudsman (NHRI), and the appointment by the National Assembly, in July 2007, of an Ombudsman with broad competence in the field of human rights, in accordance with the Paris Principles (General Assembly resolution 48/134);

(d) Ratification, in 2006, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(e) Ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2009.

C. Principal matters of concern and recommendations

5. The Committee takes note of the information that the provisions of international human rights treaties, including those under the Covenant, are part of the State party's laws and can be invoked directly in court. The Committee notes, however, that there are only limited examples where the provisions of the Covenant have been invoked in particular cases. While welcoming the delegation's contention that the provisions of the Covenant will be part of the curricula of the Judicial Academy, the Committee expresses concern about the insufficient awareness of the provisions of the Covenant among the judiciary and the wider legal community, and the practical application of the Covenant in the domestic legal system (art. 2).

The State party should ensure that its authorities, including judges, prosecutors, and lawyers, are adequately trained and fully aware of the provisions of the Covenant, and of their applicability in the State party. The State party should also take effective measures to widely disseminate the Covenant within the State party.

6. The Committee is concerned that, as admitted by the delegation, the authorities of the State party do not have a coordinated approach nor a specific mechanism to examine and give effect to the Committee's conclusions of violation in cases decided under the individual complaints mechanism of the Optional Protocol to the Covenant (art. 2).

The State party should establish a mechanism to study the Committee's conclusions to individual communications, and propose measures to be taken by the State party to give effect to the Committee's views under the Optional Protocol, and provide victims with an effective remedy for any violation of their rights.

7. While welcoming the establishment, in 2007, of the National Human Rights Institution (Ombudsman) and its work conducted to date, and noting with interest the information provided by the delegation to the effect that the Ombudsman is to be officially empowered to act as a National Preventive Mechanism for the purposes of the Optional Protocol to the Convention Against Torture, the Committee is concerned that, if no adequate resources are allocated, the effective functioning of the institution may be affected (art. 2).

The State party should consider providing the Office of the Ombudsman with the necessary additional financial and human resources, given its new role as National Preventive Mechanism, so as to ensure fulfilment of its current activities and to enable it to carry out its new functions effectively.

8. While welcoming the efforts made by the State party during the reporting period to address the discriminatory situation of women in various areas of life, including the adoption of the Law on Gender Equality, in 2009, and other initiatives, the Committee is concerned about the limited results obtained in practice. It is concerned about the subsisting gap between women and men in violation of the principle of equal pay for equal work, as well as about the low number of women in high-level and decision-making positions, and the fact that stereotypes subsist with respect to the position of women in society, including with regard to Roma women. (arts. 2, 3 and 26).

The State party should continue its efforts to improve the representation of women, including in high-level, decision-making positions within the State and local administration. It should ensure that men and women are treated equally, including with respect to their salaries for similar positions. In general, the State party should take the necessary practical steps to eradicate stereotypes regarding the position of women in society in general, and with regard to Roma women in particular.

9. With reference to its previous concluding observations (para. 17), the Committee remains concerned that domestic violence prevails, and that few cases regarding domestic violence reach the courts. The Committee is also concerned that, in spite of the progress made, including the establishment of hotlines for victims, and the adoption, in 2009, of the National Strategy for Improving the Position of Women and the Advancement of Gender Equality, non-governmental organizations remain the main providers of assistance to victims of domestic violence, including with respect to the running of shelters (arts. 2, 3 and 26).

The State party should continue its efforts to combat domestic violence and establish support centres for victims with adequate medical, psychological and legal support, and shelters for victims of violence, including for children. In order to raise public awareness, it should disseminate information on this issue through the media. The State party should ensure that cases of domestic violence are thoroughly investigated and that the perpetrators are prosecuted and punished with appropriate sanctions, if convicted. It should also ensure that the victims are adequately compensated. For these purposes, the State party should ensure that the police, local authorities, medical and social workers are adequately trained and sensitized on the issue.

10. With reference to its previous concluding observations (para. 9), the Committee remains concerned at the persistence of impunity for serious human rights violations, committed both before and after 2000. While it notes that the authorities of the State party have conducted investigations into such crimes, it regrets that few investigations have led to prosecutions, and that relatively light sentences have been handed down, which are not commensurate with the gravity of the crimes committed. The Committee is also concerned at the difficulties faced by individuals trying to obtain compensation from the State for human rights violations, in particular regarding war crimes, as well as the existing statutory limitation period of five years (arts. 2, 6 and 7).

The Committee recalls its previous recommendation that the State party has an obligation to fully investigate all cases of alleged violations of human rights, in particular violations of articles 6 and 7 of the Covenant, during the 1990s, and to bring those responsible for such violations to trial so as to avoid impunity. The State party should also ensure that all victims and their families receive adequate compensation for such violations.

11. The Committee is concerned that torture and ill-treatment are only punishable by a sentence of up to a maximum of eight years' imprisonment, and that the statutory limitation period is ten years (art. 7).

The State party should amend its legislation and practice, both with respect to the length of the maximum prison term for torture and related crimes, and extend the statutory limitation period, bearing in mind the gravity of such crimes.

12. With reference to its previous concluding observations (para. 10), the Committee remains concerned that no significant progress has been made to investigate, prosecute, and punish those responsible for the killing of more than eight hundred persons whose bodies were found in mass graves in and near Batajnica, and to compensate the relatives of the victims (arts. 2 and 6).

The State party should urgently take action to establish the exact circumstances that led to the burial of hundreds of people in Batajnica region, and to ensure that all individuals responsible are prosecuted and adequately sanctioned under the criminal law. The State party should also ensure that relatives of the victims are provided with adequate compensation.

13. While noting the ongoing cooperation of the authorities of the State party with the International Criminal Tribunal for the former Yugoslavia (ICTY), the Committee remains concerned at reports that alleged war criminals remain within the territory of the State party territory, but have neither been arrested nor brought to justice (arts. 6 and 7).

The State party should ensure that it continues to cooperate fully and effectively with the ICTY, and ensure that all remaining individuals, including Ratko Mladic, suspected of war crimes and violation of international humanitarian law, who are under its jurisdiction, are transferred to the ICTY.

14. With reference to its previous concluding observations (para. 15), the Committee remains concerned that no organization for independent, effective and systematic monitoring of police detention premises exists in the State party. The Committee is also concerned about the poor and inadequate conditions of detention in police detention premises, as well as the fact that accused and suspects have been held together, and that minors have been detained together with adults (arts. 7 and 10).

The State party should ensure that an appropriate system for monitoring police detention exists, in particular in light of the State party's obligations resulting from its ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It should also ensure that all police detention facilities are in line with its obligations under the Covenant.

15. While noting that the State party has started building new prison facilities and renovating others, the Committee remains concerned about the continuing overcrowding in prisons (arts. 7 and 10).

The State party should take further steps to improve the treatment of prisoners and the prison conditions, in line with its obligations under the Covenant and the Standard Minimum Rules for the Treatment of Prisoners. In this regard, the Committee invites the State party to consider not only the construction of new prison facilities, but also the wider application of alternative non-custodial sentences.

16. While taking note of the progress made with regard to combating trafficking in persons, the Committee is concerned at information indicating that more than half of the victims of trafficking and sexual exploitation are minors. It is also concerned about the uncertain situation of witnesses who are foreign nationals in trafficking trials, and the fact that they are only granted temporary residence permits for the duration of the trial (art. 8).

The State party should continue its efforts to raise awareness and to combat trafficking in persons, including at the regional level and in cooperation with neighbouring countries. It should ensure that all individuals responsible for trafficking in persons are prosecuted and punished commensurate with the crimes committed, and that victims of trafficking are rehabilitated. The State party should vigorously pursue its public policy to combat trafficking, in particular in minors for sexual exploitation, through the adoption of specific targeted measures and action plans on the issue, bearing in mind that the best interests of the child must be a primary consideration in all such actions. Child victims of trafficking should be provided with appropriate assistance and protection, and full account should be taken of their special vulnerabilities, rights and needs. The State party should also ensure that the situation of foreign nationals acting as official witnesses in trafficking trials is reviewed individually at the end of such trials, with the aim of assessing whether they would be at risk if they returned to their country of origin.

17. While noting the efforts made by the State party to reinforce its judiciary and secure its independence, such as the enactment of the new Law on Judges, the Committee is concerned about issues arising from the overall inadequate functioning of the courts in the administration of justice, resulting in unreasonable delays and other shortcomings in the procedures. In addition, with respect to cases of judges dismissed in the 2009 re-election process, the Committee is concerned that the re-election process, which was aimed at reinforcing the judiciary and which resulted in the reduction in the number of judges, lacked transparency and clear criteria for re-election, and did not provide for a proper review of the cases dismissed (art. 14).

The State party should ensure strict observance of the independence of the judiciary. It should also ensure that judges who were not re-elected in the 2009 process are given access to a full legal review of the process. The State Party should also consider undertaking comprehensive legal and other reforms to make the functioning of its courts and general administration of justice more efficient.

18. While noting the information provided by the State party that the Law on Criminal Procedure allows for free legal aid to be granted in certain criminal cases, the Committee is concerned that no comprehensive system on the granting of legal aid exists in the State party, and that neither legislation nor practice provides for free legal aid in civil cases (arts. 9 and 14).

The State party should review its free legal aid scheme to provide for free legal assistance in any case where the interests of justice so requires.

19. Despite the action taken so far by the State party to address the problem of individuals without identification documents, including displaced persons, as a result of the past conflicts, a large number of persons under the State party's jurisdiction, mainly Roma, live without any identification documents, and their births were never registered with the

authorities. The Committee considers that this situation creates an impediment for members of the State party's most vulnerable group, namely the Roma, to enjoy a range of human rights, including those under the Covenant, and prevents them from benefiting, inter alia, from social services, social benefits and adequate housing, as well as limits their access to employment (arts. 12, 24 and 26).

The State party should continue its efforts to provide all persons under its jurisdiction with identification documents, in particular those who were never registered or issued such documents. The State party should increase its efforts to ensure effective access to adequate housing, social benefits and services for all victims of past conflicts under its jurisdiction, including the Roma.

20. Despite article 44 of the State party's Constitution, which states that all churches and religious communities are equal, the Committee is concerned at the differentiation made in the Act on Churches and Religious Communities, regarding "traditional" and other religions, in particular when it comes to the official registration of a Church or religious community and the acquisition of legal personality (arts. 18 and 26).

The State party should review its legislation and practice to ensure that the principle of equal treatment, as proclaimed under article 44 of its Constitution, is fully respected, and in compliance with the requirements of articles 18 and 26 of the Covenant.

21. With regard to its previous concluding observations (para. 22), the Committee remains concerned that journalists, human rights defenders, and media workers continue to be attacked, threatened, and murdered. It is also concerned that defamation remains a crime under national law, in particular taking into account that defamation complaints are being widely used against journalists and human rights defenders by Government and public officials (arts. 6, 7 and 19).

The Committee urges the State party to take the necessary measures to ensure that the restrictions imposed on freedom of opinion and expression are in line with the provisions of the Covenant. The State party should take vigorous measures to ensure the protection of journalists, independent civil society actors, including non-governmental organizations and media representatives. The State party should make sure that those responsible for crimes against media or civil society workers are identified, prosecuted, and, if convicted, punished accordingly. The State party should also consider decriminalizing defamation.

22. While noting the State party's efforts to improve the situation of the Roma, including the adoption of the Strategy for Improving the Status of Roma (2009) and its accompanying Action Plan, as well as the establishment of the Governmental Council for Improving the Status of Roma and the Implementation of the Decade of Roma Inclusion (2005-2015), the Committee remains concerned at widespread discrimination and exclusion of the Roma in various areas of life, such as education, housing, adequate health care, and political participation (arts. 2, 26 and 27).

The State party should strengthen its efforts to eradicate stereotypes and widespread abuse against Roma by, among others, conducting more awareness-raising campaigns to promote tolerance and respect for diversity. The State party should also adopt measures to promote access by Roma to various opportunities and services at all levels, including, if necessary, through appropriate temporary special measures.

23. While recognizing the efforts undertaken by the State party to ensure better protection to representatives of national minorities, including the adoption of the Law on

National Minority Councils (2009), the Committee remains concerned at the low level of representation of minorities in State organs or local authorities. The Committee is also concerned about the lack of disaggregated statistics collected at the national level, which would enable a better assessment of the actual situation of all minorities (arts. 25, 26 and 27).

The State party should continue its efforts aimed at ensuring full protection and equal treatment of members of national minorities under its jurisdiction. It should take measures, including, if necessary, through appropriate temporary special measures, to ensure enhanced representation of members of national minorities in national and local organs. The State party should also collect statistical data reflecting the posts occupied in the central and local organs, disaggregated by ethnic group. Such information should be made available to the Committee in the State party's next periodic report.

24. The State party should widely disseminate the Covenant and its two Optional Protocols, as well as the text of the second periodic report, the written replies to the list of issues drawn up by the Committee, and the present concluding observations, so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also requests the State party to broadly consult with civil society and non-governmental organizations when preparing its third periodic report. The State party should ensure that the present concluding observations are translated into the minority languages of the State party (art. 2).

25. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on the implementation of the recommendations made by the Committee in paragraphs 12, 17 and 22 herein.

26. The Committee requests the State party to provide, in its third periodic report due for submission by 1 April 2015, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole.