



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

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Committee Against Torture
Thirty-fourth session
2 – 20 May 2005

DECISION

Communication No. 171/2000

Submitted by: Mr. Jovica Dimitrov (represented by the
Humanitarian Law Center and the European
Roma Rights Center)

Alleged victims: The complainant

State party: Serbia and Montenegro

Date of the complaint: 29 August 2000 (initial submission)

Date of present decision: 3 May 2005

* Made public by decision of the Committee Against Torture.

Subject matter: Torture and/or ill-treatment in detention.

Procedural issues: None

*Substantive issues: Torture, cruel, inhuman or degrading treatment or punishment.
State party to ensure prompt and impartial investigation and examination by
competent authorities.*

*Articles of the Convention: 2, paragraph 1 read in connection with 1; 16, paragraph,
1; and 12, 13 and 14 taken alone and/or in connection with article 16, paragraph 1*

On 3 May 2005, the Committee against Torture adopted the annexed draft as the Committee's Decision, under article 22, paragraph 7, of the Convention in respect of communication No. 171/2000. The text of the Decision is appended to the present document.

[ANNEX]

ANNEX

**DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE
22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Thirty-fourth session

Concerning

Communication No. 171/2000

Submitted by: Mr. Jovica Dimitrov, represented by the
Humanitarian Law Center and the European
Roma Rights Center)

Alleged victims: The complainant

State party: Serbia and Montenegro

Date of the complaint: 29 August 2000 (initial submission)

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 3 May 2005,

Having concluded its consideration of complaint No. 171/2000, submitted to the Committee against Torture by Mr. Jovica Dimitrov under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant,

Adopts the following:

Decision of the Committee against Torture under article 22 of the Convention

1.1 The complainant is Jovica Dimitrov, a Serbian citizen of Roma origin, residing in Serbia and Montenegro. He claims to be a victim of violations of article 2, paragraph

1 read in connection with articles 1; 16, paragraph, 1; and articles 12, and 13 and 14 taken alone and/or read in connection with article 16, paragraph 1, by Serbia and Montenegro, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by the Humanitarian Law Center (HLC), based in Belgrade and by the European Roma Rights Center (ERRC), based in Budapest, both non-governmental organizations.

The facts as presented by the complainant:

2.1 In the early hours of 5 February 1996, the complainant was arrested at his home in Novi Sad, in the Serbian province of Vojvodina, and taken to the police station in Kraljevic Marka Street. The arresting officer presented no arrest warrant nor did he inform the complainant why he was being taken into custody. The complainant himself made no attempt to resist arrest. During the ensuing interrogation, the arresting officer struck the complainant repeatedly with a baseball bat and a steel cable, and kicked and punched him all over his body. The complainant lost consciousness on several occasions. Apart from brief breaks, the ill-treatment lasted from 6.30 a.m. to 7.30 p.m., leaving the complainant with numerous injuries on his buttocks and left shoulder. After 7.30 p.m., the complainant was released, again without being given an arrest warrant or a release order; nor was he told of the reason for his arrest and detention. According to the complainant, this was in contravention of articles 192 (3), 195 and 196 (3) of the Criminal Procedure Code (CPC), which deals with police powers of arrest and detention.

2.2 Following his release, the complainant returned home and spent the next 10 days in bed, being nursed by his sister. On 9 February 1996, he went to see a doctor who examined him and ordered continued bed rest. He prepared a report describing his injuries as follows: "Left upper arm: livid-red and brown discoloration 10 x 8 cm with slightly raised red edges; right shoulder blade and shoulder: livid-red discolorations in the form of stripes 3 x 11 cm, and 4 x 6 cm on the shoulders; gluteal part of the body: blue-livid discolorations of the size of a man's palm on both sides; outside of the left mid-thigh: distinct red stripe 3x5 cm; inside of right knee: light blue swelling 5x5 cm; area around ankle and soles (both legs): slight, light blue swelling." The conclusions and opinion was that the "Patient should be referred to a neurologist and a laboratory

for tests.” The complainant also provides a statement from his sister, who states that he was arrested at 6.30 in the morning on 5 February, held in detention until 7.30 pm, and that upon return his face was swollen, and he had bruises on his shoulders, back, legs and over his kidneys. There was clotted blood on his legs and his backside was dark blue all over. He had to stay in bed for ten days and put on compresses, and take pills for the pain. He told her that he had been beaten with a steel wire and baseball bats and fainted from the beating.

2.3 Fearing possible reprisals by police and not fully aware of his legal rights, the complainant did not file a criminal complaint with the Novi Sad Municipal Public Prosecutor's Office until 7 November 1996, in which he alleged that an unidentified police officer had committed the crime of extracting a statement by force in violation of 65 of the Serbian Criminal Code (SCC). According to the complainant, he had been arrested several times prior to the incident in question and had been interrogated about several unrelated criminal offenses. The complainant considers that the ill-treatment to which he was subjected was intended to obtain his confession for one or more of these crimes.

2.4 The complaint was immediately registered by the Public Prosecutor's Office. But only on 17 September 1999 (more than three and a half years (43 months) following the incident at issue and 34 months since the complainant filed the criminal complaint) did the Public Prosecutor's Office request the investigating judge of the Novi Sad Municipal Court to undertake preliminary "investigatory actions". Such investigation precedes the possible subsequent institution of formal judicial investigations, for which the identity of the suspect must be ascertained. The investigating judge of the Novi Sad Municipal Court accepted the public prosecutor's request and opened a case file. Since that date, the prosecuting authorities have taken no concrete steps, with a view to identifying the police officer concerned. According to the complainant, if the intent of the investigating judge was really to identify the police in question, he could have heard other police officers present in the police station at the time of the abuse, and especially the on-duty shift commander who must have known the names of all officers working that particular shift. Finally, the complainant indicated in his criminal complaint that during his detention in the police station he was taken to the Homicide Division, which in and of itself could have served as one of the starting

points for an official investigation into the incident at issue. No investigation has been undertaken.

2.5 According to the complainant, under article 153 (1) of the CPC, if the public prosecutor finds on the basis of the evidence, that there is reasonable suspicion that a certain person has committed a criminal offence, he should request the investigating judge to institute a formal judicial investigation further to articles 157 and 158 of the CPC. If he decides that there is no bases for the institution of a formal judicial investigation, he should inform the complainant of this decision, who can then exercise his prerogative to take over the prosecution of the case on his own behalf – i.e. in his capacity of a “private prosecutor”. As the Public Prosecutor failed formally to dismiss his complaint, the complainant concludes that he was denied the right personally to take over the prosecution of the case. As the CPC sets no time limit in which the public prosecutor must decide whether or not to request a formal judicial investigation into the incident, this legal provision is open to abuse.

The complaint:

3.1 The complainant claims that he has exhausted all available criminal domestic remedies by having filed a complaint with the Public Prosecutor’s Office. In the complainant’s view, civil/administrative remedies would not provide sufficient redress in his case.¹

3.2 The complainant submits that the allegations of violations of the Convention should be interpreted against a backdrop of systematic police brutality to which the Roma and others in the State party are subjected, as well as the generally poor human rights situation in the State party.² He claims a violation of article 2, paragraph 1, read in connection with articles 1, and 16, paragraph 1, for having been subjected to ill-treatment for the purposes of obtaining a confession, or otherwise intimidating or punishing him.³

¹ He refers to international jurisprudence to support this claim.

² In this context, the complainant provides reports from various national and international non-governmental organisations and the Concluding Observations of CAT of 1998, A/54/44, paras.35-52.

³ To support his argument that the treatment he received was torture, cruel, inhuman and/or degrading treatment or punishment, he refers to the United Nations Code of Conduct for Law Enforcement

3.3 He claims a violation of article 12 alone and/or read in connection with 16, paragraph 1, as the State party's authorities failed to conduct an official investigation into the incident, which gave rise to this complaint for more than three and a half years following the incident in question, and almost 34 months since the complainant filed a criminal complaint with the Public Prosecutor's Office. To date, the officer remains unidentified and consequently the institution of formal judicial investigations is impossible. Since the public prosecutor's office has failed formally to dismiss the complainant's criminal complaint, he cannot personally take over the prosecution of the case in his capacity of a "private prosecutor". The complainant also alleges that the public prosecutors in Serbia and Montenegro seldom institute criminal proceedings against police officers accused of misconduct and delay the dismissal of complaints, sometimes by years, thereby denying the injured party the right to prosecute his/her own case.

3.4 The complainant claims a violation of articles 13 alone or read in connection with article 16 of the Convention, as despite exhausting all criminal domestic remedies, 54 months following the incident and almost 34 months after the submission of his criminal complaint he has received no redress for the violation of his rights. To date, the State party's authorities have not even identified the police officer concerned.⁴

3.5 Article 14 is said to be violated since the complainant was denied a criminal remedy and has thus been barred from obtaining fair and adequate compensation in a civil lawsuit. The complainant explains that under domestic law, there are two different procedures, through which compensation for criminal offences may be pursued: by criminal proceedings under article 103 of the CPC following criminal proceedings, or/and by civil action for damages under articles 154 and 200 of the Law on Obligations. The first avenue was not an option, as no criminal proceedings were instituted and the second was not availed of by the complainant, as it is the practice of the State party's courts to suspend civil proceedings for damages arising from

Officials, the United Nations Body of Principles for the protection of All Persons under Any Form of Detention or Imprisonment, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Council of Europe's Declaration on the Police and the European Court of Human Rights.

⁴ The complainant refers to Communication No. 59/1996, *Encarnacio Blanco Abad v. Spain*, Views adopted on 14 May 1998.

criminal offences until prior completion of the respective criminal proceedings. Even if the complainant had attempted to avail of this recourse, he would have been prevented from pursuing it, as under articles 186 and 106 of the Civil Procedure Code he would have to identify the name of the respondent. Since the complainant to date remains unaware of the name of the officer against whom he is claiming violations of his rights the institution of a civil action would have been impossible.

The State party's submission on admissibility and merits and the complainant's comments thereon:

4.1 On 14 January 2003, the State party provided its submission on the admissibility and merits of the complaint. It contests the complainant's allegations and submits that police officers of the Secretariat of Internal Affairs in Novi Sad attempted three times to deliver a request for an interview to the complainant to discuss the contents of his complaint. As the complainant was never at home at the time of delivery, these requests were delivered to the complainant's wife. The complainant failed to contact the Secretariat of Internal Affairs.

4.2 The State party submits that the Municipal State Prosecutor's Office in Novi Sad received a report from the Secretariat of Internal Affairs of Novi Sad, on 2 October 1997, which confirmed that after checking its files, it was established that the complainant had not been brought to nor detained in any of its premises. The Secretariat of Internal Affairs provided the same information on 4 February 1999, at the request of the Municipal State Prosecutor's Office of 23 December 1998.

4.3 Finally, the State party submits that the complainant and two other persons had perpetrated 38 offences in the Czech Republic, for which they were sentenced to 10 years of imprisonment. The Municipal Court of Novi Sad ordered that the complainant's name be placed on a list of wanted persons, to serve prison sentence No.

I.K. 265/97 of 5 May 1998.⁵ It submits that, on 25 September 2002, the complainant was still in the Czech Republic.⁶

5.1 On 25 November 2003, the complainant commented on the State party's submission and argues that it suggests that as a convicted criminal he is not entitled to complain against police ill-treatment, and that given the circumstances, the investigating authorities did everything to investigate the incident at issue and provide redress. He recalls that the authorities did not interview anyone connected with the incident and ignored the medical certificate documenting the injuries sustained by the complainant. It did not interview the complainant's sister, who had nursed him after the incident, the doctor who examined him, the police officers on duty the day the incident occurred, or the complainant's lawyers. Neither did they request the Czech authorities through inter-state legal assistance to interview the complainant.

5.2 He submits that apart from the State party's failure to investigate the incident, it has failed to provide the Committee with a plausible alternative explanation as to how the victim's injuries could have been inflicted other than through acts of its agents. In the complainant's view, by failing seriously to contest the facts and/or the legal arguments put forward, the State party has in effect expressed its tacit, yet clear, acceptance of both.⁷

Issues and proceedings before the Committee:

Consideration of admissibility

6.1 Before considering any claim contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been, and is not being examined under another procedure of international investigation or settlement. With respect to the exhaustion of domestic remedies, the Committee took note of the information

⁵ No further information is provided on this conviction.

⁶ It does not state for how long the complainant has been in the Czech Republic.

⁷ In this regard, he refers to decisions of the Human Rights Committee in particular Communication No. 88/1981, *Gustavo Raul Larrosa Bequio v. Uruguay*, Views adopted on 29 March 1983, para. 10.1.

provided by the complainant about the criminal complaint which he filed with the public prosecutor. The Committee considers that the insurmountable procedural impediments faced by the complainant as a result of the inaction of the competent authorities rendered the application of a remedy that may bring effective relief to the complainant highly unlikely. In the absence of pertinent information from the State party, the Committee concludes that in any event, domestic proceedings, if any, have been unreasonably prolonged. With reference to article 22, paragraph 4, of the Convention and rule 107 of the Committee's rules of procedure the Committee finds no other obstacle to the admissibility of the complaint. Accordingly, it declares the complaint admissible and proceeds to its examination on the merits.

Consideration on the merits

7.1 The complainant alleges violations by the State party of article 2, paragraph 1 in connection with article 1, and of article 16, paragraph 1, of the Convention. The Committee notes the complainant's description of the treatment to which he was subjected during his detention, which can be characterised as severe pain or suffering intentionally inflicted by public officials in the context of the investigation of a crime, as well as his sister's statement and medical report. It also notes the State party's failure to adequately address this claim and respond to the complainant's allegations. In the circumstances, the Committee concludes that due weight must be given to the complainant's allegations and that the facts, as submitted, constitute torture within the meaning of article 1 of the Convention.

7.2 Concerning the alleged violation of articles 12 and 13 of the Convention, the Committee notes that the Public Prosecutor did not request the judge to initiate a preliminary investigation until 34 months after filing the criminal complaint, and that no further action was taken by the State party to investigate the complainant's allegations after the criminal complaint was filed on 7 November 1996. The State party has not contested this claim. The Committee also notes that the failure to inform the complainant of the results of any investigation effectively prevented him from pursuing a "private prosecution" of his case before a judge. In these circumstances, the Committee considers that the State party has failed to comply with its obligation, under article 12 of the Convention, to carry out a prompt and impartial investigation

wherever there is reasonable ground to believe that an act of torture has been committed. In the same vein, it also disregarded its obligation, under article 13, to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities.

7.3 As for the alleged violation of article 14 of the Convention, the Committee notes the complainant's allegations that the absence of criminal proceedings deprived him of the possibility of filing a civil suit for compensation. In view of the fact that the State party has not contested this allegation and given the passage of time since the complainant initiated legal proceedings at the domestic level, the Committee concludes that the State party has also violated its obligations under article 14 of the Convention in the present case.

8. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of articles 2, paragraph 1 in connection with article 1, 12, and 13, and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. The Committee urges the State party to conduct a proper investigation into the facts alleged by the complainant and, in accordance with rule 112, paragraph 5, of its rules of procedure, to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the Views expressed above.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]