REPUBLIC OF SERBIA[i]

CAT Article 20 Examinations Re: Systematic Torture

CAT A/59/44 (2004)

CHAPTER IV. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

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B. Summary account of the results of the proceedings concerning the inquiry on Serbia and Montenegro

I. INTRODUCTION

156. On 19 December 1997 the Humanitarian Law Center (HLC), a non-governmental organization based in Belgrade, submitted information to the Committee containing allegations of systematic use of torture within the territory of Serbia and Montenegro and requested the Committee to examine the situation under article 20 of the Convention. In May 1998 the Committee invited HLC to submit additional information substantiating the facts of the situation. In November 1998 the information received from HLC was transmitted to the State party, which was requested to submit its observations. Owing to the political situation in the country at that time, the Committee decided to postpone its examination of the situation. In May 2000, the Committee decided to reiterate its request to the State party to submit observations on the allegations received. The observations were finally submitted on 23 August 2000.

157. In November 2000, the Committee decided to establish a confidential inquiry, in view of the fact that the information available to it provided well-founded indications that torture was being systematically practised in the country. At the same time, the Committee requested the Government to agree to a visit by the members designated to conduct the inquiry. The Government agreed to the visit, which took place from 8 to 19 July 2002.

II. VISIT TO SERBIA AND MONTENEGRO FROM 8 TO 19 JULY 2002

158. The visit was undertaken by Peter Burns, Andreas Mavrommatis and Ole Vedel Rasmussen. The Committee members visited Belgrade where they held discussions with the Minister for Foreign Affairs, representatives of the Federal Ministry of Justice, the Serbian Deputy Minister of Justice, the Serbian Minister of the Interior and his principal private secretary, the Serbian Public Prosecutor, the Director of the Serbian prison system, members of the Serbian Supreme Court, the head of the Belgrade District Court, the head of the Department of Public Security (Chief of Police) at the Serbian Ministry of Internal Affairs, the Supreme Military Prosecutor and the Coordinator of the

[i] [Ed. Note: Effective 6 June 2006, Serbia and Montenegro changed its name to Republic of Serbia].

Commission for Truth and Reconciliation. They also met with representatives of the Organization for Security and Cooperation in Europe (OSCE) Mission in Serbia and Montenegro, the Council of Europe and non-governmental organizations (NGOs). The members also travelled to Novi Pazar, where they met with the District Prosecutor and representatives of NGOs. Visits were also made to a number of police stations and prisons in Belgrade and other parts of Serbia.

159. Furthermore, the members visited Podgorica, Montenegro, where they met with the Acting Foreign Minister and Deputy Prime Minister, the Minister of Justice, the Deputy Minister of Internal Affairs and the Public Prosecutor. While in Montenegro the members also met with NGO representatives and visited two police stations and the Spu prison (see sect. V below). In view of the fact that the Yugoslav authorities had not exercised power over the territory of Kosovo since the establishment there of the United Nations Mission in Kosovo (UNMIK) in 1999, the Committee felt that it was advisable not to include Kosovo in the visit.

160. The Federal and Republican authorities were supportive of the visit and very cooperative. The members visited prisons and places of detention without prior notice and talked in private with detainees. The only difficulty encountered by the members was related to the interviews with pre-trial detainees. By law, such interviews had to be approved by the respective investigating judges, a rule that applied to any person wishing to meet a pre-trial detainee. Unfortunately, the members had not been informed of this requirement before arriving in the country. In the end, the necessary authorizations were obtained and the members were able to interview some pre-trial detainees. However, the Committee members would have wished that the State party had made the necessary arrangements beforehand, so as to avoid delays in their programme of work.

III. FINDINGS OF THE COMMITTEE WITH RESPECT TO SERBIA

161. The widespread use of torture under the regime of President Slobodan Milosevic has been extensively documented by national and international NGOs, the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia of the Commission on Human Rights and OSCE. Direct testimonies and information from governmental and non-governmental sources received by the members prior to and during their visit to Serbia confirmed the reliability of the information contained in those reports and the assessment that torture was systematically used during the Milosevic regime, mainly for political reasons. A considerable amount of information in this respect is contained in the Committee s files and excerpts were transmitted to the State party.

162. The information collected by the members during their visit to Serbia and Montenegro showed that the characteristics and frequency of torture changed completely after October 2000, under the new political regime. Their findings in this respect are based mainly on testimonies obtained from persons at liberty claiming to have been tortured or ill-treated, detainees, NGOs,

prison doctors, law enforcement personnel, government officials and members of the judiciary.

A. Information obtained through interviews with alleged victims and visits to places of deprivation of liberty

163. The Committee members interviewed two persons at liberty who alleged that they had been tortured while they were in detention. They also conducted private interviews with 40 persons deprived of their liberty. The interviewees were selected from among those who had arrived most recently in the places of detention that were visited. Some were selected on the basis of medical records kept in those places for the months preceding the visit. Ten interviewees stated that they had been treated in a way that the Committee members considered could fall within the definition of torture contained in article 1 of the Convention.

164. At each prison and police station visited, the Committee members examined the log books which, in general, were well kept. At the police stations, the members looked at the rooms used for interrogation and the cells in which detainees were held. Although the visit was not intended to focus on the material conditions of detention, the members could not help being struck by some of those conditions. For example, the cells in most of the police stations were unlit, unventilated, unfurnished and lacked acceptable sanitation facilities.[1] As for the conditions in prisons, the members noted that the time allowed for daily outdoor exercise by remand prisoners was far too short (about half an hour). The rest of the day prisoners stayed in their cells without being offered any purposeful activities. Some were even kept in solitary cells for long periods. Furthermore, there seemed to be no system of inspection by independent experts of conditions of imprisonment. Prisoners wishing to file complaints could only do so by writing to the Ministry of Justice. The Helsinki Committee for Human Rights, which had recently been allowed to visit some prisons, told the members of the Committee that such complaints remained largely unanswered.

165. As a whole, the members of the Committee got the impression that the situation in prisons had improved significantly since October 2000 and that the authorities had been successful in reforming staff practices, retaining only those staff members who were committed to appropriate behaviour. That impression was confirmed by the testimonies of the prisoners themselves.

1. Prisons

Belgrade Central Prison

166. A Committee member with medical expertise examined the medical records of 70 pre-trial detainees who were under the jurisdiction of the Belgrade District Court. Fifty-five of them contained no indications of ill-treatment or physical violence by the police. In the remaining 15 records (representing 21 per cent), it was noted that the detainees had alleged having been beaten by the police. In six of them (representing approximately 9 per cent of the total number of records examined) marks had been found and were described by the examining doctor. Furthermore, the prison doctor told the members that approximately one third of the prisoners bore lesions upon their arrival, though the lesions were not necessarily due to ill-treatment by the police. Where the

prisoners (about 10 per cent of them) alleged having been beaten by the police, the lesions were generally light, such as bruises. The allegations made by the prisoners were always reflected in their medical records. The doctor also indicated that there were no cases of inmates being beaten by the prison guards, although such cases had been frequent in the past.

167. The Committee members also interviewed 21 pre-trial detainees, some of whom were selected on the basis of the medical records examined. All of them were charged with common crimes. Nine of them reported having been beaten or subjected to other forms of torture by the police in order to obtain confessions.

Sremska Mitrovica Prison

168. At Sremska Mitrovica Prison, with over 1,000 inmates the largest in the country, the members were informed that the new management team had introduced important changes. Until the end of 2000, disciplinary measures in reported cases of ill-treatment had not been taken against those found guilty of such abuses. However, the director claimed that all problematic guards had been transferred. Since then, no conflicts between prisoners and staff or incidents of inter-prisoner violence had been observed. The prison doctor confirmed that there had been no acts of torture or ill-treatment in the prison.

169. Five inmates were interviewed in this prison, none of whom reported having been tortured before or during their stay in the prison. Four of them said that the situation had changed completely over the previous two years, since the arrival of the new director and the removal of some of the guards. One inmate, kept in a punishment cell after having tried to escape from prison, did not complain of any ill-treatment by the staff.

Pozarevac Penitentiary for females

170. Six inmates were interviewed individually in the closed section. None of them alleged having been tortured or ill-treated by the police or prison guards. In the open and semi-open sections a group of prisoners reported previous cases of ill-treatment. However, they described the current situation as very good. One prisoner reported an incident in which a guard had beaten her on the palm of her hand in anger while she was working in the field. Reportedly, the guard was suspended and disciplinary procedures were ongoing. The prison doctor confirmed that in the previous three years she had not learnt of any case of torture or ill-treatment.

Belgrade Military Prison

171. One inmate was interviewed in this prison. He had been arrested on charges of desertion. He made no allegations of torture or ill-treatment.

2. Police stations

172. The members of the Committee visited nine police stations, namely those at Bozidura Adzije,

Rakovica, Vozdovac, Palilula, 29 November, Stari Grad and Milan Rakic Streets in Belgrade, the Smederevo main police station and the central police station in Novi Sad. At the time of the visit there were two detainees in Vozdovac, one in Milan Rakic and one in Smederevo. None of them reported having been tortured or ill-treated. At the 29 November police station there was only one old man in the detention area; he did not allege any maltreatment. One member of the Committee spoke with two alleged illegal immigrants who were waiting to see the judge for misdemeanours; they indicated that they had been treated well.

B. Information submitted by non-governmental organizations

173. Representatives of NGOs with whom the Committee members met provided information on cases of torture brought to their attention by the alleged victims. In their view, massive violations of the right to freedom from torture had not been registered since the change of Government. However, the frequency with which law enforcement officers resorted to excessive force in the performance of their duty remained a matter of concern. They said that much remained to be done regarding the training of law enforcement personnel on human rights matters and that further personnel changes in the police had to be carried out in order to make a clear break with the practices of the former regime and restore public confidence in law enforcement agencies. They reported that torture was frequently used as a means of extracting information. However, in many instances torture was due to the mentality prevailing among policemen, for whom the use of excessive force had always been part of their routine work. Moreover, NGOs pointed out that since the change of Government few alleged perpetrators of acts of torture reportedly committed under the old regime had been investigated or tried.

174. HLC provided information on 12 selected cases involving 21 alleged victims that occurred between 1 December 2000 and March 2002. They reportedly took place in Belgrade, Smederevo, Becej (Vojvodina), Presevo, Novi Sad, Smederevska Palanka, Srbobran (Vojvodina), Vladicin Han, Kragujevac and Backa Palanka. All the victims alleged having been severely beaten; one reported having received electric shocks and another, an asthmatic patient, was not allowed to use his inhalator when he suffered a serious attack of asthma at the police station. Six of the alleged victims were Roma.

175. The Yugoslav Lawyers Committee for Human Rights provided information on 16 cases, all but 4 of which had occurred in Serbia after 5 October 2000. The reports alleged severe beatings with truncheons, *falaqa*, denial of medical assistance to an unconscious victim, sexual assault (possibly rape) and the discharge of firearms close to the head. The incidents reportedly took place in the street, as well as during questioning at police stations. In one case the victim was allegedly beaten by prison guards and in another by soldiers. The locations included Belgrade, Leskovac, Tutin, Sjenica (both in the Sandzak), Surdulica, Prokuplje and Vranje.

176. The Minority Rights Centre, an NGO that monitors the situation of Roma, reported that this minority was particularly exposed to violence by the police and provided some examples, which are included in a report entitled "Abuses of Roma Rights in Serbia".[2] Information was also received from other NGOs following the visit, including the Leskovac Committee for Human Rights, the

Sandzak Committee for Human Rights and Freedoms and the Bujanovac Committee for Human Rights. The cases presented came from most regions of Serbia.

C. Information received from government officials

177. Virtually all government officials with whom the members of the Committee met admitted that torture had been practised extensively under the former regime. They claimed, however, that under the new Government the situation had changed completely, particularly as far as the attitude of the police was concerned.

178. The Minister of Internal Affairs stated that torture was no longer used by the police. Some cases of excessive use of force had occurred since October 2000, but the appropriate measures had been adopted. Those measures included initiating disciplinary and, if necessary, criminal investigations and the suspension from service of the alleged perpetrators while the investigations were being conducted. He also said that all the senior officers of the Ministry had changed and that the process of changing other personnel was almost completed in all regions. Almost two thirds of the heads of police stations throughout Serbia had changed.

179. The Director of Prisons at the Ministry of Justice stated that torture in prisons had been eradicated. This had been achieved mainly by changing the wardens and their deputies. A large number of prison staff had been dismissed and criminal charges had been brought against many of them. He did not have statistics, however, about the number of persons involved. Cases of excessive use of force by prison guards were now rare and ended up generally with the dismissal of those found guilty. The Ministry did not have statistics about those cases either. All prisoners were examined by a doctor upon their arrival in prison. If they alleged having been tortured or ill-treated by the police, this information would be included in their medical reports and made available to the investigating judge. He acknowledged that a system of prison inspection by an independent body did not exist. For that reason he had invited the Helsinki Committee for Human Rights to carry out visits to prisons. Efforts were being made, however, to establish a monitoring system with the participation of experts not belonging to the Ministry.

D. Legal safeguards for the prevention of torture and ill-treatment

180. The new Criminal Procedure Code (CPC), which entered into force on 28 March 2002, contains important improvements with respect to its predecessor regarding law enforcement procedures at the pre-trial stage. Some of these improvements are of direct relevance to the prevention of torture, such as limits on the time that a person can be held in police custody and the right to a defence counsel. However, CPC is not applicable to persons detained on suspicion of committing a misdemeanour. According to the Law on Misdemeanours, the police may detain suspects for up to 24 hours before bringing them before a judge. Suspects have no right of access to a defence counsel while in police custody. The Committee members noted that suspected misdemeanours were frequently cited as the reason for detention in police stations. According to information provided to them by the Ministry of Internal Affairs, in the period from January to June 2002, 1,918 persons were detained and 1,865 were deprived of their liberty. Of these 1,104 persons

were detained in police premises for misdemeanours against public order alone. On the basis of these statistics, the protection afforded by the new CPC, including the right of access to a defence counsel, appears not to apply to a significant number of individuals detained by the police.

181. The general principle concerning the right to a defence counsel is contained in article 5 of CPC, according to which a person deprived of liberty shall be immediately informed that he is entitled to a defence counsel of his own choice and to request that members of his family or other persons close to him be informed of his detention.

182. Article 226 of CPC provides that in the course of collecting information an individual may be summoned by the police but may not be questioned for more than four hours. Force may not be used to obtain information from citizens. An official note or a record shall be read to a person who has given information. This person may raise objections, and the police authorities are obliged to note them in the official note or record. The same article states that when the police are collecting information from a person who for good reasons is suspected of being the perpetrator of a criminal offence, that person may be summoned as a suspect; the summons shall contain information to the effect that the suspect is entitled to have a defence counsel. If in the course of collecting information the police authority deems the person who is summoned to be a suspect, it should immediately inform him of the criminal offence with which he is charged, of his right to have a defence counsel, who shall be present at further interrogations, and that he is not obliged to answer the questions put to him in the absence of his defence counsel. Article 226 also stipulates that the police authority shall inform the public prosecutor when a suspect is being interrogated; the public prosecutor may be present at the interrogation.

183. According to article 5 of CPC, a person who has been detained without a court warrant shall immediately be brought before the competent investigating judge. Article 227, paragraph 3, states that if the escort of the person deprived of liberty takes longer than eight hours, owing to unavoidable obstacles, the authorized police official is obliged to give the reasons for the delay in a statement to be submitted to the investigating judge. Furthermore, article 229 stipulates that a person deprived of liberty cannot be held by the police for the purpose of gathering information for more than 48 hours before being brought before a judge.[3]

184. According to the information received by the Committee members, the above principles seem to be generally observed in cases where CPC applies. Nevertheless, torture still seems to take place during the 48 hours before the suspect is brought before a judge and before he is given the opportunity to contact his lawyer. Sometimes the suspect is not allowed to call in his lawyer or does not know a lawyer, in which case he is obliged to choose one from the list proposed by the police. In some of the cases examined by the members the alleged victims complained that the lawyer□s role had been perfunctory and that he had paid no attention to the fact that his client had been ill-treated.

185. Some of the officials with whom the Committee members met argued that it did not make sense for the police to extract confessions under duress, given that such confessions could not be used as evidence in legal proceedings. In this regard, article 89 of CPC stipulates that it is forbidden to use force in order to obtain a statement or confession from a defendant and that, in case of failure

to comply with this provision, the decision of the court may not be based on such statements or confessions. The members believe, however, that even if convictions cannot be based exclusively on confessions the police still use the information extracted from detainees to complete their investigations. Incidentally, some of the police officers interviewed by the Committee members during their visits to police stations claimed that they lacked modern equipment for crime investigation and had to use very rudimentary tools.

186. In his meeting with the Committee members the Public Prosecutor underlined the efforts being made to change the police mentality. In his opinion, such change had to accompany the changes with regard to personnel and the internal reorganization of the police force currently under way. The police approach to the collection of evidence had to change too. The police had to understand that evidence of a crime could only be obtained through legal means. This was very important for his Office since, under the Yugoslav legal system, public prosecutors did not direct the police investigation and could not give instructions to the police on how to collect evidence.

187. The need to change the police mentality was underlined by several interlocutors, as well as in a report published in October 2001 by OSCE, entitled "Study on Policing in the Federal Republic of Yugoslavia". According to this report, "the reason why so many situations are accompanied by assaults, resistance and resentment is because the police officers not only fail to act, but fail to understand that it is their duty to act, according to a professional code of conduct. In the absence of a Code of Ethics or Policing Principles, this latter unsatisfactory situation would seem to prevail throughout Yugoslavia. It is therefore proposed that a major programme of education in human rights for police officers be introduced throughout the police forces of Yugoslavia that is credible and practically related to operational police situations".[4]

E. Investigation and punishment of those responsible for torture

1. Disciplinary proceedings

188. The Chief of Public Security for Serbia, who is responsible for Internal Police Oversight at the Ministry of Internal Affairs, explained to the Committee members that each regional police department had a unit of internal control that reviewed and supervised every police officer. If a unit received information on police abuses from any source, it could initiate an investigation and bring the case before the corresponding disciplinary tribunals established by the Ministry. Disciplinary measures included a reduction in monthly salary of up to 30 per cent for one to six months and transfer to a lower salary level for a certain time. Ultimately, the officer concerned could be dismissed from service. Disciplinary proceedings could be conducted, regardless of any criminal procedure under way. The Committee members were subsequently informed by the Ministry that 392 complaints had been submitted against the police in the period January-June 2002, of which 43 cases were considered to be well founded and resulted in the initiation of disciplinary proceedings. However, the information did not specify how many complaints included allegations of torture or ill-treatment and whether any criminal proceedings had been initiated.

189. The members note that, according to the Decree on Disciplinary Responsibilities in the Ministry of Internal Affairs,[5] which regulates internal disciplinary proceedings, the decision whether to proceed with such proceedings lies with the officer immediately in command of the officer against whom a complaint has been made. The commanding officer assesses whether the evidence gives rise to suspicion that a violation has taken place and passes the case on to the prosecutor of the disciplinary tribunal. This gives commanding officers the opportunity to block proceedings against members of their unit. Furthermore, the members received allegations indicating that the Decree and police practice failed to ensure that any injured party is informed of the progress and outcome of the proceedings.

190. Regarding the functioning of the disciplinary tribunals, NGOs reported that, although the police are now far more responsive to the complaints and observations of human rights organizations, they frequently attempt to deny that a specific instance of torture occurred or, if that is impossible because of compelling evidence (such as medical records, photographs and eyewitnesses), they tell the public that the case will be investigated and the perpetrators brought to account. However, this does not always happen. In serious cases of torture, and in spite of clear evidence to the contrary, disciplinary tribunals regularly give more credence to the statements of the officers involved than to those of the victims. Furthermore, there seem to be instances in which officers serving on disciplinary tribunals have themselves been accused of committing acts of torture.

191. In its study on policing referred to earlier, OSCE said that there was a need to assure the quality of the work of all Internal Control Units in a way that satisfied the public and that in order to address the public□s concerns it was necessary to create an independent body with substantial powers of oversight and intervention. The report added that there must be □external and totally independent oversight of police investigation of complaints in the future if the police are to be held properly accountable, but the Authority responsible for it must possess robust powers to require the production of documents, papers and files relating to the complaint and be empowered to direct further investigation if necessary□.[6]

2. Criminal proceedings

192. The members of the Committee noted a number of weaknesses in the legislation regarding the prohibition of torture and in the functioning of the institutions charged with the investigation of complaints.

193. In its conclusions and recommendations on the initial report of Yugoslavia, the Committee expressed concern at the absence in the criminal law of a provision defining torture as a specific crime in accordance with article 1 of the Convention and recommended that the crime of torture be incorporated verbatim into the Yugoslav criminal codes.[7] This situation remains unchanged. As a result, the perpetrators of acts of torture can only be charged under criminal provisions such as □extraction of statements□[8] or □civil injury□.[9] The scope of these provisions, however, is more restrictive than the definition in article 1. For instance, situations where torture is committed at the instigation of or with the consent or acquiescence of a public official do not seem to be envisaged

in those provisions. Furthermore, judges in general do not seem to be fully aware of Yugoslavia□s international obligations regarding human rights and the Convention in particular. This was confirmed by the members of the Serbian Supreme Court with whom the Committee members met, who stated that judges often learned about these obligations and the jurisprudence of international bodies only when NGOs brought them to their attention.

194. Broadly speaking, it seems that judges and prosecutors only undertake an investigation if they receive a formal complaint from the victim or his lawyer. When asked about the reaction of the investigating judges when somebody complained of torture, the members of the Supreme Court said that, in theory, the judges had to inform the public prosecutor about the facts and that it was up to the public prosecutor to initiate proceedings. They added that in practice, however, the public prosecutors took action only when a lawyer filed a complaint and brought the case to public notice.

195. The lack of prosecutorial action was even more flagrant in the past and in regions such as Kosovo and Sandzak.[10] When Committee members raised this question with the Public Prosecutor of Serbia, especially regarding cases that occurred before October 2000, he said that some prosecutors were dealing with cases but that he did not have information about them at present. His Office had also dealt with some war crimes. However, they were very difficult to investigate because the evidence had to be provided by the police, who were not always willing to cooperate.[11]

196. One of the first obstacles encountered by the victims when filing complaints is the pressure to refrain from doing so put on them by the police, who threaten to press charges of their own against them. If the victims nevertheless go ahead with their complaints, the police systematically file complaints against them for obstructing a law enforcement officer in the performance of his duty (article 213 of the Serbian Criminal Code) or for breaching the public peace. The Committee members were informed of one such case in which the four-month suspended prison sentence for alleged obstruction (swearing at police officers) was almost as harsh as that given to a police officer for causing bodily injury. Furthermore, it was repeatedly alleged that the police complaint was usually dealt with very quickly, whereas the victim□s complaint was investigated very slowly or not at all. While members of the Serbian Supreme Court told the Committee members that they could neither confirm nor dismiss this allegation, the Public Prosecutor said that he was aware of the situation.

197. Regarding the role of prosecutors in the investigation of complaints, a number of interlocutors, including the Public Prosecutor himself, underlined the fact that prosecutors have no control, in practice, over the police as far as the collection of evidence is concerned.[12] The Committee members note with concern that this is contrary to the provisions of article 46 of CPC, according to which the Public Prosecutor shall be competent to request that an investigation be carried out and to direct pre-trial proceedings. The same provision states that police officers and other State authorities competent to investigate criminal offences are under obligation to proceed with their inquiry whenever the competent public prosecutor so requests.

198. NGOs reported that prosecutors very often fail to prosecute acts of torture and do not even inform the alleged victim about the outcome of his/her complaint. The lack of notification, however,

can be an important obstacle to the continuation of the proceedings. Under article 61 of CPC, when the prosecutor dismisses a criminal complaint or decides to withdraw charges, the injured party may assume the capacity of private prosecutor and proceed with the case within eight days of being notified of the prosecutor□s decision. If the injured party does not receive such notification, the Code provides a time period of three months, starting from the date the complaint was dismissed or the charges withdrawn, for the injured party to institute criminal proceedings. Members of the Supreme Court confirmed that failure to notify was very common but that judges allowed the injured party to continue the proceedings as private prosecutor even in the absence of such notification.

199. NGOs provided information on a number of cases in which police officers had been found guilty of acts relating to torture. They alleged, however, that few cases reached the courts and that very seldom did those responsible for acts of torture receive sentences commensurate with the gravity of the crime committed. The sentences rarely exceed six months□ imprisonment and are frequently suspended, which allows the police officers in question to keep their jobs.[13] They also reported that normally police officers are not suspended from their duties while they are under investigation. Members of the Supreme Court shared the view that only a few cases of torture reach the courts. The Deputy Minister of Justice of Serbia said that only in a small number of cases do the victims of torture file complaints and that an even smaller number end up in convictions. Furthermore, the sentences given by the judges are generally very light, and are sometimes even conditional sentences.

200. NGOs also alleged that very often trials have to be postponed, even several times in the same case, because of failure by the accused policemen to show up at the hearings. Members of the Supreme Court confirmed this allegation. Apparently, when confronted with this situation judges complain to the competent head of the police, but such complaints do not always receive a proper response.[14]

201. Representatives of the Sandzak Committee for the Protection of Human Rights told the Committee members about some of the difficulties they faced when filing criminal complaints about incidents that had taken place some years earlier. They said that in 2001 and 2002 they filed 33 complaints regarding acts falling under articles 65 and 66 of the Serbian Criminal Code that had taken place in Sandzak, mainly in the 1990s. Only two, however, were under investigation; all the others had been dismissed. They said that it was very difficult for the lawyers to submit medical evidence, given that between 1992 and 1997 medical institutions were not allowed to provide medical reports to victims of police brutality. The documentary evidence that accompanied complaints consisted mainly of testimonies, names of witnesses and photographs. They said that, in their opinion, the District Prosecutor misinterpreted article 65 of the Serbian Criminal Code: according to his understanding, a crime existed only if the acts in question resulted in serious bodily harm. Another difficulty they encountered was that some of the cases involved crimes that were subject to statutory limitations.[15]

202. When the Committee members took these allegations up with the District Prosecutor of Novi Pazar, he pointed out that the time limit for submitting complaints under articles 65 and 66 was five years and that many of the cases were therefore subject to statutory limitations. He added that, apart

from the 33 cases referred to above, his Office and the municipal judges had dealt with many others during the previous 10 years. He promised to collect data and some statistics in this regard and to forward them to the Committee. No information, however, was ever received.

IV. FINDINGS OF THE COMMITTEE WITH RESPECT TO MONTENEGRO

203. Only a few of the cases reported to the Committee by NGOs since 1997 occurred in Montenegro. During the visit, NGOs in Montenegro provided the Committee members with information about some cases. One NGO stated that its lawyers had filed 20 complaints which, at the time of the visit, were at different stages of the criminal procedure. None of the Committee□s interlocutors described the use of torture in the Republic as systematic, either in the past or at the present time.

204. During their stay in Montenegro the members of the Committee visited the prison in Spu□. The Committee had not been informed of allegations of torture or ill-treatment in that prison. The prison director explained that, during the previous three years, he had been engaged in an extensive reform programme which included staff training. A great deal of emphasis had been placed on establishing the best relations possible between staff and prisoners. In 2002 only two instances of excessive use of force were reported. The first incident concerned a mentally ill prisoner who had been beaten by a prison guard for refusing to leave his cell. The second concerned a prisoner who physically attacked a witness in court; force was used to subdue the prisoner when he had already begun to retreat. The guards involved in these two cases were punished by paying them only half of their salaries for three months. Had those acts resulted in serious injuries to the prisoners, the incidents would have been treated as assaults, i.e. as criminal cases.

205. The Director further explained that all prisoners were examined by a doctor upon their arrival in prison. Any injuries were noted. The medical reports were made available to the prisoner□s lawyer, his or her family, the Minister of the Interior and the investigating judge. Furthermore, the doctor on duty told the Committee members that about five years earlier detainees complained frequently of having been tortured or ill-treated by the police when they arrived in prison and that there had been some serious cases. Since then the situation had changed a great deal, although there were still detainees who reported having been beaten and who had slight injuries. The members of the Committee looked at the medical records of the inmates who had arrived since January 2002. There were 167 men and 8 women, of whom 39 men had alleged having been beaten, 24 had injuries that had been described by the doctors as □not serious□ and 3 had □serious□ injuries.

206. While in Spu□ the Committee members interviewed three prisoners. One of them, recently arrived, claimed that the police had beaten him in front of his family in Berhane. According to his medical report he had three fractured ribs. The second interviewee, who had been convicted of drug trafficking, stated that when he was arrested in 1998 he was held in custody for three days before being brought before a judge. He alleged that during those three days he had been beaten and threatened with a pistol shoved into his mouth in order to get him to provide information about drug dealers operating in Montenegro. Before being brought before a judge he did not have access to a lawyer. The third interviewee had been arrested some three days prior to the Committee□s visit to

Spu□, at the Yugoslav-Hungarian border, for attempted robbery and for shooting and wounding two petrol station attendants. He claimed that for about one day he was deprived of food and water, was not allowed to go to the toilet and was kept with his hands tied very tightly behind his back.

207. While in Montenegro the Committee members also visited the police station in Danilovgrad, where there were no detainees at the time. They also visited the central police station in Podgorica where there was one detainee who had just been arrested. Although the members insisted on interviewing him in private, they were not allowed to do so for reasons that were not clear.

208. The situation in Montenegro regarding the right to file complaints and to have one□s complaint examined does not seem to differ much from that in Serbia. Victims who file complaints very often find themselves being prosecuted for obstructing a law enforcement officer in the performance of his duty, and investigating judges do not inform prosecutors of allegations of torture or ill-treatment made by detainees. The Montenegrin authorities still do not recognize the applicability of the new Federal Code of Criminal Procedure in the Republic and continue to apply the 1976 Code, under which a person arrested by the police has to be presented before an investigating judge within 24 hours after his arrest. However, in certain cases article 196 permits detained persons to be kept in custody for 72 hours before having access to a lawyer and before being brought before an investigating judge. Furthermore, torture is not defined in the Criminal Code of Montenegro, which contains similar provisions to those laid down in articles 65 and 66 of the Serbian Criminal Code.

209. The government officials with whom the Committee members met expressed their commitment to the protection of human rights and explained some of the initiatives the Government of Montenegro was taking in this field, such as the drafting of a law to establish an ombudsman, the measures to improve the functioning of the criminal justice system and the reform of the police. They also expressed their willingness to cooperate with international organizations. The Deputy Minister of the Interior said that hotlines had been established and the telephone numbers regularly published in the daily newspaper so as to enable every citizen to call and complain about abuse of authority by officials. In addition, training programmes on human rights for the police force were being developed. In 2001 his Ministry had received nine complaints of torture, which resulted in disciplinary proceedings and the dismissal of 18 officers.

210 With respect to criminal proceedings, the Public Prosecutor of Montenegro said that although by law prosecutors could initiate proceedings ex officio, this possibility was used only in exceptional circumstances. He also said that his Office was promoting a reform that would allow public prosecutors to supervise and direct investigations conducted by the police.

V. CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

211. Since the beginning of the inquiry the Committee examined a great deal of information from reliable sources concerning the use of torture in Serbia and Montenegro prior to October 2000. That information was corroborated by testimony received by the three Committee members who visited the country from victims, witnesses and government officials. On the basis of that information the

Committee concluded that torture had been systematically practised in Serbia prior to October 2000.[16] Furthermore, the Committee noted with dismay that, despite the gravity of the cases, no significant steps were being taken to investigate them, punish those responsible and compensate the victims. The Committee nevertheless welcomed the establishment of the Commission for Truth and Reconciliation[17] with a mandate to encourage and organize research on human rights abuses and breaches of international and humanitarian law and the law of war that took place in the territory of the former Yugoslavia, with a view to establishing the truth and contributing to general reconciliation within Serbia and Montenegro and with neighbouring countries. It noted that the Commission intended to collect as much testimony as possible and to establish a list of victims, but not necessarily a list of perpetrators, since it did not have judicial powers to deal with them.

212. In contrast with the situation prevailing in the country prior to October 2000, the Committee observed that, under the new political regime, the incidence of torture appeared to have dropped considerably and torture was no longer systematic.[18] Nonetheless, it was clear that cases of torture continued to occur, particularly in police stations, and that reforms of the police and the judiciary had yet to demonstrate their full effectiveness in preventing and punishing the practice. In order to put an end to an apparent culture of impunity, senior police officers, judges and prosecutors who seemed to adopt a reactive approach to the problem of torture must become proactive in dealing with it. Currently, their actions appear to depend largely on the existence of public pressure to act in certain cases, the submission of criminal complaints by private individuals or NGOs representing them, or the initiation of private prosecutions. The Committee wishes to recall in this regard that the State party has an obligation to spare no effort to investigate all cases of torture, provide compensation for the loss or injury caused and prosecute the persons responsible. Furthermore, under Security Council resolution 827 (1993) and the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the State party also has an obligation to cooperate fully with the Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law, including torture.

213. In the light of these conclusions, the Committee considered it appropriate to make the following recommendations:

(a) Complaints relating to allegations of torture by public officials under the previous regime should be fully and impartially investigated, the offenders prosecuted and the victims compensated. The results of such investigations should be made public;

(b) Full cooperation should be extended to ICTY, including through apprehending and transferring those persons who have been indicted and remain at large, as well as granting the Tribunal full access to requested documents and potential witnesses;

(c) The Commission for Truth and Reconciliation should be empowered to investigate all allegations of torture committed under the previous regime, make its findings public and recommend remedial action, including the prosecution of individuals, where appropriate. The Commission should be given, as necessary, the authority and the means to fulfil its mandate as soon as possible;

(d) The law should ensure that safeguards are in place to prevent torture of all detainees in police custody, whether charged with serious crimes or other offences, and to enable them to notify their families and to have access to a doctor and legal counsel of their choice;

(e) The State party should fully ensure the independence of the judiciary and the procuracy;

(f) The State party should take such measures as are necessary to ensure that ethnic and religious minorities are not mistreated by law enforcement personnel because of discrimination;

(g) A system of inspection of the conditions of imprisonment by independent experts should be established. Visits to prisons by NGOs should continue to be allowed;

(h) The crime of torture, as defined in the Convention, should be incorporated into the domestic law. The State party is reminded that torture is considered an international crime under customary international law, as well as under the Convention. No statute of limitations should apply to torture or any other international crime. In parallel with this the right to fair and adequate compensation and rehabilitation should be introduced, as laid out in the Convention;

(i) Under article 12 of the Convention, prosecutors and judges should investigate allegations of torture whenever they come to their attention, whether or not the victim has filed a formal complaint. In particular, every investigating judge, on learning from a detainee□s statement that he or she has been subjected to torture, should initiate promptly an effective investigation into the matter;

(j) In the light of what appears to be a culture of impunity, investigation of cases of torture should be prompt, impartial and effective. It should include a medical examination carried out in accordance with the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(k) Law enforcement personnel should have at their disposal all modern methods and equipment, as well as the professional training necessary to conduct effective and fair criminal investigations;

(l) All law enforcement officers should be trained in international standards relating to the custody and treatment of detainees, in accordance with the Convention and the United Nations Code of Conduct for Law Enforcement Officials;

(m) Medical examinations of all detainees should be carried out in all prisons within 24 hours of the time of detention. Any medical examination of a person detained should contain: (i) an account of statements made by the person concerned which are relevant to the medical examination, including his/her description of his/her state of health and any allegations of ill-treatment; (ii) an account of objective medical findings based on a thorough examination; (iii) the doctor□s conclusion in the light of (i) and (ii). Furthermore, the result of the medical

examination referred to above should be made available to the prisoner concerned and his/her lawyer;

(n) Judges, prosecutors and lawyers should be made fully aware of Serbia and Montenegro□s international obligations in the field of human rights, particularly those enshrined in the Convention;

(o) The State party should establish an independent mechanism to investigate all human rights abuses, whenever they occur, that are brought to its attention;

(p) Persons alleged to have committed acts of torture should be suspended from official duties during the investigation of such allegations. Those found guilty should be dismissed from public service in addition to any other punishment;

(q) Measures should be taken to ensure that the mechanisms of internal oversight of the police function promptly and are independent and effective. An independent complaints authority with wide powers of oversight and intervention should be created within the police force;

(r) The State party should devise appropriate schemes for the compensation of victims of torture;

(s) The State party should develop official programmes for the rehabilitation of victims of torture. Thus far, only private institutions have developed such programmes;

(t) The State party should urge the Republic of Montenegro to adopt those guarantees contained in the new Code of Criminal Procedure that are relevant for the prevention of torture and ill-treatment.

VI. ADOPTION OF THE REPORT BY THE COMMITTEE AND TRANSMISSION TO THE STATE PARTY

214. At its twenty-ninth session, the Committee adopted the report on its inquiry and decided to transmit it to the State party, in accordance with article 20, paragraph 4, of the Convention. The Committee invited the State party, under rule 83, paragraph 2, of its rules of procedure, to inform it of the action taken in response to its conclusions and recommendations.

VII. SUMMARY OF THE REPLY FROM THE STATE PARTY

215. On 13 October 2003 the State party informed the Committee that its recommendations were very important in the context of the promotion of human rights to be conducted under the programmes of technical assistance to be provided by the Office of the High Commissioner for Human Rights and on the basis of the memorandum of understanding signed by the Ministry for Foreign Affairs of Serbia and Montenegro and the Office of the High Commissioner.

Safeguards against torture and other forms of inadmissible punishment

216. The Charter on Human and Minority Rights and Civil Liberties, published in the Official Gazette of the State Union No. 6/2003, provides in its article 12 not only for the prohibition of torture, but also for an explicit prohibition of inhuman or degrading treatment or punishment. In this sense, it constitutes a step forward with respect to the Constitution of the Federal Republic of Yugoslavia and the Constitutions of the Republics of Serbia and Montenegro.

217. The Basic Criminal Code of Serbia and Montenegro and the criminal codes of the member States incriminate unlawful arrest, extraction of statements and maltreatment in the performance of duty. At the time of the adoption of the amendments to the Criminal Code of the Federal Republic of Yugoslavia (now the Basic Criminal Code) in 2001 it was considered that the international obligations under the Convention were incorporated in articles 190 and 191, as well as in articles 65 and 66 of the Criminal Code of the Republic of Serbia and articles 47 and 48 of the Criminal Code of the Republic of Montenegro. Furthermore, article 12 of the 2001 Code of Criminal Procedure states that any violence against an arrested person and a person whose freedom is limited, as well as any extraction of confession or any other statement from an accused or any other person participating in the proceedings are prohibited and punishable. Other provisions of the Code regarding interrogation, prohibition of the use of force, the obligation of the court not to take into account statements obtained under torture and to remove from the case records statements obtained in contravention of the prohibitions, etc. are also referred to.

218. The laws of the member States concerning the enforcement of criminal sanctions contain no absolute prohibition of torture and other similar treatment. Nonetheless, they provide for human treatment of convicted persons. The member States have also taken measures to reform their legislation in order to guarantee the principle of the independence of the judiciary with respect to the executive. In the Republic of Serbia, the Law on Judges was amended in March 2003, aligning it with international standards. It is expected that the Criminal Code will be amended soon to include the criminal offence of torture.

219. The Government of the Republic of Montenegro set up a working group to draft a Criminal Law, a Law on Criminal Procedure and a Law on the State Prosecutor. It is envisaged that the criminal offence of torture will be incorporated in the Criminal Law. The Code of Criminal Procedure is expected to provide for the verification of suspects allegations during pre-trial and investigation relative to torture and other inhuman treatment and punishment.

Charges and trials in the period 1992-2002 in the cases involving torture and maltreatment

220. From 1 January 1992 to 30 September 2002, the Ministry of the Interior of the Republic of Serbia brought 32 charges against 43 police officials on suspicion of having committed 21 criminal offences of maltreatment, 6 offences of unlawful arrest, 3 offences of coercion to sexual intercourse, 3 offences of unnatural carnal knowledge through the abuse of duty and extraction of statement and 1 offence of carnal act in connection with the criminal offence of coercion to sexual intercourse or

unnatural carnal knowledge through the abuse of duty. The greatest number of charges was brought in 2001 and 2002.

221. Between 1 January 2000 and 31 October 2002, citizens lodged 4,625 complaints against police conduct; 523 of them were considered founded and, as a result, disciplinary action was taken against 158 officers for serious breaches of duty and against 111 officers for minor breaches of duty. Pending completion of the proceedings, 32 officers were removed. Ten criminal and 14 minor offence charges were brought, while 4 officers had their employment contract terminated by agreement. It was established that 2,929 complaints were unfounded, while 1,173 are being investigated. The greatest number of processed cases (32 criminal charges against 43 officers) involved improper and/or excessive use of force related to the use of means of coercion. Three persons died, while five sustained serious injuries in those incidents. Upon completion of the proceedings, 12 officers were sentenced to prison terms from 80 days to 6 years.

222. Disciplinary action was taken against 32 officers, 4 officers were dismissed, 10 were fined and 5 were given another assignment. Proceedings against two officers were dropped, five were acquitted and proceedings against six officers are pending.

223. In addition to legal measures taken ex officio by the Ministry of the Interior, 1,076 charges were pressed by citizens directly to the Public Prosecutor against 1,578 officers, most often because of the criminal offence of maltreatment in the line of duty (930), followed by extraction of statement (124) and unlawful arrest. The prosecution of most of the charges was discontinued, as they were found baseless.

224. In ruling on compensation of victims, the courts have begun to apply the Convention against Torture directly.

225. In Montenegro disciplinary actions were taken against 258 police officers in the period from 1 July 2001 to 1 September 2002.[19] Lately, attention has been focused on the regulation and limitation of police powers, including the use of force and firearms, arrest, treatment of persons in detention and the appointment of defence counsel upon first interrogation while in custody.

226. Concerning the recommendation of the Committee against Torture on the case of the Roma from Danilovgrad, the Government of Montenegro authorized the State Prosecutor to reach a court settlement to compensate the victims for material and other damage in the amount of 985 dinars.

Safeguards against torture of convicted and detained persons

227. In Serbia convicted and detained persons are allowed to submit complaints to the Director of the Penal Sanctions Execution Department and its organizational unit, the Surveillance Service.

228. Each institution is routinely surveyed once a year. Besides internal surveillance, delegates of the International Committee of the Red Cross visit penitentiary facilities. Between 1999 and December 2002 there were 215 such visits.

229. A long period of economic hardship in the country has dramatically affected the functioning of institutions for the execution of penal sanctions. Over the past two years, efforts have been made to improve the financial situation of prison officers and their incentives for work. As a result, the treatment of convicted persons has improved too. Efforts have also been made to ensure better detention conditions.

Measures taken to train law enforcement officials

230. Police officers in both union member States undergo training to prevent torture. In the Republic of Serbia new laws on police and police training are being prepared and are expected to be ready for adoption in the autumn of 2003. The Ministry of the Interior has decided to create the post of Inspector General who will ensure that police procedures are in conformity with the law. Officers of the Ministry of the Interior are made aware of human rights instruments, particularly of the prohibition of torture, humanitarian law and the Code of Conduct for Law Enforcement Officials in the training received at secondary and higher police schools and Police College, as well as seminars.

231. In the Republic of Montenegro, a new draft Police Law has been submitted to Parliament. This law promotes a new concept of public administration and its relationship with the public that implies full transparency, openness and cooperation. Furthermore, a Code of Conduct is being drawn up. In 2003, a number of conferences and seminars on human rights and policing have been held. With the assistance of HLC, a specialized course in international humanitarian law was held to educate judges, prosecutors, practising lawyers and police detective inspectors. Seminars devoted to the role of community policing also took place.

Cooperation with ICTY

232. Serbia and Montenegro attaches great importance to its cooperation with the Tribunal, which is conducted under the Law on Cooperation with ICTY. Pursuant to that law, a National Cooperation Council was established. The Council developed a step-by-step procedural process of cooperation. Cooperation is evidenced in the transfer of indictees, submission of documents, assistance in hearing witnesses and suspected persons, proceedings before national courts and the execution of protective measures. To date, 9 indicted persons were arrested and handed over to the Tribunal and 12 who were resident in the country voluntarily surrendered.

233. ICTY has forwarded to the authorities 17 warrants for the arrest of other indictees, including Radovan Karadzic, former Bosnian Serb leader, General Ratko Mladic, former Bosnian Serb commander, Vladimir Kovacevic, former member of the armed forces of Serbia and Montenegro, as well as 14 Bosnian Serb army soldiers. Most of these have wanted circulars issued on them, whereas two of them will have them issued fairly soon. From early 2001 to May 2003 Serbia and Montenegro met 99 requests by the Office of the Tribunal□s Prosecutor (OTP) for submission of

documents. Only in eight cases was OTP told that its request could not be met or that the requested documents did not exist. Additionally, 14 requests were met partially by submitting part of the requested documents.

234. As far as witnesses are concerned, this aspect of cooperation consists of finding, notifying and serving hearing papers or waivers for witnesses to testify on classified or privileged information. Between the beginning of 2001 and early May 2003, 115 requests were made by OTP or the Trials Chamber; in only 10 cases could the wanted persons not be identified. Serbia and Montenegro fulfils even other ICTY requests, such as those to set up meetings with government authorities, for ICTY investigators to be present during the exhumation of bodies, etc.

235. Apart from that, several other cases have been or are being tried by national courts. In July 2003 a law was passed dealing with the organization and competence of government authorities in proceedings against perpetrators of war crimes, including those covered by article 5 of the ICTY Statute. Under this law, the authorities of the Republic of Serbia have the authority to prosecute perpetrators of war crimes committed in the territory of the former Yugoslavia, whatever the nationality of either the perpetrator or the victim. The law provided for the establishment of the Office of a Special War Crimes Prosecutor, who has already been appointed. It also stipulates that the District Court in Belgrade is the court competent to decide on war crimes cases.

VIII. INFORMATION RECEIVED BY THE COMMITTEE AFTER ITS VISIT TO SERBIA AND MONTENEGRO

236. In the course of 2003 and the beginning of 2004, NGOs submitted information to the Committee alleging, inter alia, continuing police mistreatment of criminal suspects, failure by the State party to cooperate fully with ICTY, inadequate efforts to prosecute war criminals before domestic courts and an inadequate domestic system for bringing those responsible for war crimes to justice.

237. It was reported, in particular, that during the investigation of the assassination of Prime Minister Zoran Djindjic in March 2003, approximately 10,000 people were detained. They were held without their detention being authorized by a competent judicial body and without access to lawyers or family members, in some cases for up to two months, under emergency regulations introduced after the assassination. The reports also suggested widespread ill-treatment of detainees, sometimes amounting to torture.

238. A number of individual cases allegedly occurred both in Serbia and in Montenegro. Some of them were not linked to the investigation of the assassination of the Prime Minister.

239. The Committee took note with concern of the above information.

IX. PUBLICATION OF THE SUMMARY ACCOUNT

240. At its thirty-first session, the Committee decided to invite the State party, in accordance with article 20, paragraph 5, of the Convention and rule 84 of its rules of procedure, to inform it of its observations regarding the possible publication of a summary account of the results of the inquiry in its annual report. On 1 March 2004 the State party replied that it agreed to such publication. At its thirty-second session, the Committee approved the summary account and decided to include it in the annual report.

Notes

1/ In its 2001 Study on Policing in the Federal Republic of Yugoslavia, OSCE recommended that a major and comprehensive review of detention facilities be undertaken (recommendation No. 48).

2/ Petar Antic, Abuses of Roma Rights in Serbia, Belgrade, 2001.

3/ This period was three days under the previous CPC.

4/ OSCE, op. cit., p. 24.

5/ Decree of the Government of the Republic of Serbia No. 05 broj 011-5742/74, of 23 September 1992.

6/ OSCE, op. cit., pp. 22-23.

7/ *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44* (A/54/44), paras. 35-52.

8/ Article 65 of the Serbian Criminal Code states:

> (1) A person acting in an official capacity who uses force or threats or other proscribed or impermissible means with the intent of extracting a confession or other statement from a suspect, witness, expert witness or other person shall be punished with a term of imprisonment of three months to five years.
>
> (2) If the extraction of a confession or other statement is accompanied by severe violence or if it results in consequences of a serious nature for a defendant in criminal proceedings, the perpetrator shall be punished with a minimum term of imprisonment of four years.

9/ Article 66 of the Serbian Criminal Code states: A person acting in an official capacity who ill-treats, insults or threatens another in a manner degrading to his human dignity shall be punished with a term of imprisonment of three months to three years. Similar provisions to those contained

in articles 65 and 66 are contained in articles 190 and 191 of the Criminal Code of Yugoslavia of 1976.

10/ According to OSCE, the Kosovo Verification Mission had frequent contacts with the Serbian authorities, police commanders and members of the judiciary about reports of torture and ill-treatment. Generally, the OSCE-KVM was given assurances that all cases of torture and ill-treatment would be followed up and have the legally prescribed disciplinary and judicial consequences for the individual officer responsible. Such action would, however, only be possible if concrete allegations were made including the name of the officer and the time and location of the alleged offence. When the OSCE-KVM confronted the Chief Prosecutor of Pec and the President of the District Court of Pec with the question as to whether allegations of torture and ill-treatment by police would be actively investigated and prosecuted, the Prosecutor affirmed this, but said that he had never heard of such a case. Concrete action was rendered difficult for several reasons: first, Kosovo Albanians, or other citizens for that matter, who had become victims of torture or ill-treatment by the police, did not trust the State institutions to protect their rights and interests in pursuing legal redress and eventually receiving compensation. Second, in most cases, the identity of the offenders was unknown to the victims and the cooperation of regular police officers in an attempt to identify potential offenders was practically non-existent. And thirdly even if the individual, most often with the active support of the local OSCE-KVM office, filed a complaint with the local police commander, the consequences for the officer who had abused the complainant were insufficient to dissuade him from repeating the crime . The near total absence of a response by the judicial authorities to these allegations only served to foster a sense of impunity within the police system, encouraging the continuation and escalation of such human rights violations. *Kosovo, As Seen, As Told*, p. 52.

11/ The State Prosecutor told the Committee members that he would provide them with statistics on complaints filed under article 65 of the Serbian Criminal Code. At the time of writing the present report, those statistics had not been provided.

12/ HLC provided the Committee with information on the case of E.M., a Muslim from Priboj in the Sandjak region who was reportedly taken to a local police station on 19 November 1999 and beaten for several hours while he was being asked about a person he did not know. On 29 December 1999 HLC filed a criminal complaint against unidentified officers of the Priboj police station, charging them with infliction of slight bodily harm. On two occasions HLC asked the municipal prosecutor to disclose the identity of the officers and bring criminal charges against them. The prosecutor responded that, in spite of two requests, the Priboj police authorities had not provided him with the information required to identify the alleged perpetrators.

13/ Under Serbian labour legislation, a person sentenced to a jail term of up to six months may be reinstated in the position he/she previously held.

14/ The case of V.K. is an example of this practice. V.K. was beaten on 13 November 1996 by officers of the Pancevo Police Department, as a result of which he suffered brain damage, a broken occipital bone, a broken jaw and nose and irreparably damaged hearing. On 12 December 1996 he

filed a complaint accusing two police officers of inflicting severe bodily injuries. On 5 March 1997, the prosecutor dropped the charges, as a result of which V.K. undertook private prosecution. In the course of 2001, 12 hearings were scheduled but only 2 took place. One was postponed because judges were away for a conference and nine others because one or both defendants did not show up. (Helsinki Committee for Human Rights in Serbia, *Human Rights and Transition - Serbia 2001*, 2002, pp. 63-64.)

15/ According to article 95 of the Criminal Code of the Federal Republic of Yugoslavia, crimes punishable by a prison term of three to five years are subject to a statutory limitation of five years.

16/ As stated on several occasions, the Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors that the Government had difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice makes room for the use of torture may also add to its systematic nature.

17/ Created by decision of the President of the Republic dated 29 March 2001.

18/ Much of the information received concerns conduct that may not constitute torture under article 1 but instead may fall under article 16 of the Convention and, therefore, outside the scope of article 20.

19/ There is no indication of the types of conduct involved.