



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

Distr.
RESTRICTED*

CAT/C/35/D/172/2000
29 November 2005

Original: ENGLISH

Committee Against Torture
Thirty-fifth session
7 – 25 November 2005

DECISION

Communication No. 172/2000

Submitted by: Mr. Danilo Dimitrijevic
(represented by counsel)

Alleged victims: The complainant

State party: Serbia and Montenegro

Date of the complaint: 7 August 2000 (initial submission)

Date of present decision: 16 November 2005

[ANNEX]

*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 and 16,
paragraph 1; 14 alone; and 12, and 13 taken alone and/or in connection with article
16, paragraph 1*

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-fifth session

Concerning

Communication No. 172/2000

Submitted by: Mr. Danilo Dimitrijevic
(represented by counsel)

Alleged victims: The complainant

State party: Serbia and Montenegro¹

Date of the complaint: 7 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 16 November 2005,

Having concluded its consideration of complaint No. 172/2000, submitted to the Committee against Torture by Mr. Danilo Dimitrijevic 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 Danilo Dimitrijevic 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 and 16, paragraph, 1; article 14 alone;

¹ The Federal Republic of Yugoslavia (which changed its name to Serbia and Montenegro on 4 February 2003) succeeded the Socialist Republic of Yugoslavia on 27 April 1992.

and articles 12 and 13 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 At around noon on 14 November 1997, 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. However, since a criminal case was already pending against him, in which he was charged with several counts of larceny, the complainant assumed that this was the reason for his arrest. He made no attempt to resist arrest. At the police station, he was locked into one of the offices. Half an hour later, an unknown man in civilian clothes entered the office, ordered him to strip to his underwear, handcuffed him to a metal bar attached to a wall and proceeded to beat him with a police club for approximately one hour from 12.30 to 13.30. He sustained numerous injuries, in particular on his thighs and back. The complainant assumes that the man was a plain-clothes police officer. During the beating an officer, whom the complainant knew by name, also entered the room and, while he did not take part in the abuse, he did not stop it.

2.2 The complainant spent the next three days, from 14 to 17 November 1997, during the day, in the same room where he had been beaten. During that time, he was denied food and water, and the possibility of using the lavatory. Although the complainant requested medical attention, and his injuries visibly required such attention, he was not provided with any. During the night, he was taken from the police station to the Novi Sad District Prison in the Klisa neighbourhood. He was not ill-treated there. At no time was he told why he had been brought to the police station, 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.

2.3 On 17 November 1997, the complainant was brought before the investigating judge of the Novi Sad District Court, Savo Durđić, for a hearing on the charges of larceny against him, in accordance with Article 165 of the Serbian Criminal Code (Case file No. Kri. 922/97). Upon noticing the complainant's injuries, the judge issued a written decision ordering the police immediately to escort him to a forensic specialist for the purpose of establishing their nature and severity². In particular, the judge ordered that a forensic medical expert examine the "injuries visible in the form of bruises on the outside of the suspect's legs..." The judge did not inform the public prosecutor of the complainant's injuries, even though, according to the complainant, he should have done so in accordance with Article 165 (2) of the CPC. Rather than taking the complainant to a specialist, as instructed, the police presented him with a release order, on which the required internal registration number was missing and which incorrectly stated that his detention started at 11 p.m. on 14 November 1997, although he had been taken into custody eleven hours earlier³. In the complainant's

² This order has been provided.

³ This release order has been provided.

view, this was an effort to evade responsibility for subjecting him to the physical abuse he had been subjected to during that period.

2.4 Upon his release, and being ignorant of his rights under the law and frightened by his experiences in the preceding three days, the complainant did not seek immediate medical assistance. He did, however, go to a privately owned photographic studio and had photographs taken of his injuries. He has provided these photos, dated 19 November 1997. On 24 November 1997, and having consulted a lawyer, the complainant attended the Clinical Centre of the Novi Sad Forensic Medicine Institute for an examination. However, he never received the report and was told that it had been sent to the investigating judge. The case file (No. Kri. 922/97) was examined on several occasions by the complainant's counsel but did not contain the report. In response to queries from counsel, the Medical Institute stated in a letter, dated 30 September 1999, that the report had been forwarded to the judge of the Novi Sad District Court.⁴ To date this report has not been found in the case file.

2.5 Also on 24 November 1997, the complainant filed a criminal complaint with the Municipal Public Prosecutor's Office in Novi Sad. He gave a detailed account of the incident and alleged that the following crimes had been committed "extraction of statements, civil injury and slight bodily harm." He also submitted a medical certificate allegedly relating to injuries caused to the complainant by police violence in 1994 (unrelated to the incident in question), a medical report dated 18 November 1997, the police release order, the Novi Sad District Court Order, and photographs of his injuries. Despite many inquiries as to the status of his complaint, including a letter from the complainant's lawyer, dated 3 March 1999, the Novi Sad Municipal Public Prosecutor's Office, has failed to date to respond in any way to the complaint. Criminal proceedings against the complainant with respect to the charges against him for larceny (Case file No. Kri. 922/97) also remain pending. The complainant is currently serving a four-year prison term for larceny in the Sremska Mitrovica Penitentiary, unrelated to case file, No. Kri 922/97.

2.6 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 basis 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 did not formally dismiss his complaint, the complainant concludes that he was denied the right personally to take over 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 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

⁴ This letter has been provided.

complainant's view, civil/administrative remedies would not provide sufficient redress in his case.⁵

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.⁶ He claims a violation of article 2, paragraph 1, read in connection with articles 1, and 16, paragraph 1, for having been subjected to police brutality inflicting on him great physical and mental suffering amounting to torture, cruel, inhuman and/or degrading treatment or punishment, for the purposes of obtaining a confession, or otherwise intimidating or punishing him.⁷

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 and failed to respond to queries on the status of the complaint. Since the public prosecutor's office failed formally to dismiss his criminal complaint, he cannot personally take over the prosecution of the case. The complainant alleges that 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 exhaustion of domestic remedies all criminal domestic remedies, he has received no redress for the violation of his rights. The State party's authorities have not even identified the police officer concerned.⁸

3.5 Article 14 is also 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, two different procedures exist, 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 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

⁵ He refers to international jurisprudence to support this claim.

⁶ 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.

⁷ 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 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.

⁸ The complainant refers to Communication No. 59/1996, *Encarnacio Blanco Abad v. Spain*, Views adopted on 14 May 1998.

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 a submission, merely stating that it "accepts" the complaint. Following a request for clarification from the Secretariat, the State party made another submission, on 20 October 2003, in which it states that the "acceptance" of the complaint implied that the State party recognised the competence of the Committee to consider the complaint, "but not the responsibility of the State concerning the complaint in question". In addition, it submitted that the Ministry on Human and Minority Rights of Serbia and Montenegro is still in the process of collecting data from the relevant authorities of the Republic of Serbia for the purposes of giving a response on the merits. The State party has provided no further information since that date.

5.1 On 25 November 2003, the complainant commented on the State party's submissions. He submits that by failing seriously to contest the facts and/or his claims, the State party has in effect expressed its tacit acceptance of both.⁹

Issues and proceedings before the Committee:

Consideration of admissibility

6.1 The Committee notes the State party's failure to provide information with regard to the admissibility or merits of the complaint. In the circumstances, the Committee, acting under rule 109, paragraph 7 of its rules of procedure, is obliged to consider the admissibility and the merits of the complaint in the light of the available information, due weight being given to the complainant's allegations to the extent that they have been sufficiently substantiated.

6.2 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 has taken note of the information provided by the complainant about the criminal complaint, which he filed with the public prosecutor. It considers that the insurmountable procedural impediments faced by the complainant due to the inaction of the competent authorities made recourse to 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 since the end of November 1997. 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.

⁹ 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.

Consideration of 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 in this respect the complainant's description of the treatment he was subjected to while in detention, which can be characterized as severe pain or suffering intentionally inflicted by public officials for such purposes as obtaining from him information or a confession or punishing him for an act he has committed, or intimidating or coercing him for any reason based on discrimination of any kind in the context of the investigation of a crime. The Committee also notes the observations of the investigating judge with respect to his injuries, and photographs of his injuries provided by the complainant. It observes that the State party has not contested the facts as presented by the complainant, which took place more than seven years ago, and observes that the medical report prepared after the examination of the complainant and pursuant to an order of the Novi Sad District Court Judge, has not been integrated into the complaint file and could not be consulted by the complainant or his counsel. 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 In light of the above finding of a violation of article 1 of the Convention, the Committee need not consider whether there was a violation of article 16, paragraph 1, as the treatment suffered by the complainant under article 1 exceeds the treatment encompassed in article 16 of the Convention.

7.3 Concerning the alleged violation of articles 12 and 13 of the Convention, the Committee notes that the public prosecutor never informed the complainant whether an investigation was being or had been conducted after the criminal complaint was filed on 24 November 1997. It also notes that the failure to inform the complainant of the results of such investigation, if any, effectively prevented him from pursuing a "private prosecution" of his case. 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 whenever there is reasonable ground to believe that an act of torture has been committed. The State party also failed to comply with 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.

7.4 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;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 prosecute those responsible for the violations found and to provide compensation to the complainant, 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.]