



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

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COMMITTEE AGAINST TORTURE
Thirty-fifth session
(7 - 25 November 2005)

DECISION

Communication No. 174/2000

Submitted by: Mr. Slobodan Nikolić; Mrs. Ljiljana Nikolić
(represented by the Humanitarian Law Center)

Alleged victims: The complainant's son, N. N. (deceased); the
complainants

State party: Serbia and Montenegro

Date of complaint: 18 March 1999 (initial submission)

Date of present decision: 24 November 2005

[ANNEX]

*Made public by decision of the Committee against Torture.

** Reissued for technical reasons.

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. 174/2000

Submitted by: Mr. Slobodan Nikolić; Mrs. Ljiljana Nikolić
(represented by the Humanitarian Law Center)

Alleged victims: The complainant's son, N. N. (deceased); the
complainants

State party: Serbia and Montenegro

Date of complaint: 18 March 1999 (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 24 November 2005,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention:

1.1 The complainants are Mr. Slobodan Nikolić and his wife, Mrs. Ljiljana Nikolić, nationals of Serbia and Montenegro, born on 20 December 1947 and on 5 August 1951. They claim that the State party's alleged failure to proceed to a prompt and impartial investigation of the circumstances of their son's death constitutes a violation by Serbia and Montenegro of articles 12, 13 and 14 of the Convention. The complainants are represented by counsel.

The facts as submitted by the complainants:

2.1 On 19 April 1994, the complainants' son, N. N., born on 19 April 1972, died in Belgrade. The postmortem examination of his corpse was carried out on 25 April 1994 by a medical team of the Institute for Forensic Medicine of the Faculty of Medicine in Belgrade. The autopsy report states that the death was caused by damage to vital brain centers caused by the fracture of cranial bones and hemorrhage from the

rupture of the aorta and the torn blood vessels surrounding the multiple bone fractures. These injuries “were inflicted with a brandished, blunt and heavy object”.

2.2 According to the police report, the complainants’ son was found dead on the sidewalk in front of building no. 2 at Pariske Komune Street in Novi Beograd on 19 April 1994. He had fallen out of the window of apartment no. 82 on the 10th floor of the same building at 9.40 a.m. In an attempt to escape his arrest by the police, he had connected several cables and had tied them to a radiator. When trying to descend to the subjacent window on the ninth floor, the cables broke apart and N. N. fell on the concrete pavement.

2.3 According to police inspector J. J., this incident was preceded by the following events: On 19 April 1994, he and two other inspectors, Z. P. and M. L., went to apartment no. 82 at 2, Pariske Komune Street to arrest the complainant on the basis of a warrant, as he was suspected of having committed several property-related offences. Through a slit above the threshold of the entrance door, they noticed a shadow in the corridor. Assuming that N. N. was in the apartment, they unsuccessfully called on him to open the door. After having ordered an intervention team to break the entrance door, inspector J. J. warned N. N. that the police would forcibly enter the flat, if he continued to refuse opening the door. J. J. then went to the eleventh floor and entered the flat located directly above apartment no. 82. From a window, he saw N. N. looking out of the window below. After having returned to apartment no. 82, J. J. again called on N. N. to surrender, promising that he would not be subjected to physical violence. The intervention team then broke the door of the apartment, where they only found M. K., the girlfriend of the deceased, who was crying and stated that N. N. had fallen out of the window. Looking out of the window, J. J. saw the body of a man lying on the sidewalk.

2.4 The deceased was identified as N. N., based on documents found in one of his pockets, as well as by M. K., and his death was established by a physician of the Secretariat for Internal Affairs. At around 10:30 a.m., the investigating judge of the Belgrade District Court, D. B., arrived together with the deputy public prosecutor of the District of Belgrade (hereafter “deputy public prosecutor”), V. M., inspected “the scene of the crime”,¹ interviewed M. K. and ordered that the body of the deceased be sent to the Institute of Forensic Medicine for an autopsy.

2.5 The report of the investigating judge states that several police officers informed him that N. N. had “categorically declined” to unlock the door after having argued with the police for some time. When they entered the flat, the deceased “had just jumped out of the window.” M. K. confirmed that N. N. had refused to open the door. When she tried to snatch the keys of the apartment from his pocket, he told her that he would rather escape through the window than to open the door. Although she did not see what happened in the room from where N. N. had tried to escape, M. K. concluded from his absence that he had jumped out of the window, when the policemen entered the flat. She stated that there was no physical contact between N. N. and the members of the police intervention team. Apart from the cables tied to the radiator, the report mentions that a white three-socket extension cable was hanging on a tree above the sidewalk where the corpse of the deceased was lying. One single- and

¹ The term “scene of the crime” is used in the police report dated 19 April 1994.

one double-wire of around 2.5 meters length each were tied to the socket box – probably the missing ends that had been torn from the cables tied to the radiator. Lastly, the report states that the investigating judge ordered the police to interview all witnesses of the incident.

2.6 On 22 April 1994, the deputy public prosecutor advised the complainants that he considered that their son's death had been caused by an accident and that, accordingly, no criminal investigation would be initiated.

2.7 On 18 July 1994, the complainants brought charges of murder against unknown perpetrators, asking for a criminal investigation to be initiated by the Belgrade public prosecutor's office. They claimed that the police clubbed their son with a blunt metal object, thereby causing his death, and subsequently threw his corpse out of the window to conceal the act. On 12 August and on 5 December 1994, the deputy public prosecutor informed the complainants that no sufficient grounds existed for instituting criminal proceedings, and advised them to file a criminal report with the public prosecutor's office, submitting the evidence on which their suspicion was based.

2.8 In the meantime, the investigating judge had requested a commission of medical experts of the Belgrade Institute of Forensic Medicine, composed of the same doctors who had conducted the autopsy, to prepare an expert opinion on the death of N. N. In their report dated 22 November 1994, the experts concluded on the basis of the autopsy report, as well as other documents, that the location, distribution and types of injuries observed on N. N. indicated that they were the result of the fall of his body from a considerable height on a wide, flat concrete surface. The "signs of the injury reactions (inhalation of blood and [...] bruises around the wounds and torn tissues)" indicated that N. N. was alive at the moment when he incurred the injuries.

2.9 On 13 and 24 January 1995, the complainants challenged inconsistencies in the medical findings of the expert commission, as well as in the autopsy report, and requested the Belgrade District Court to order another forensic expertise from a different institution at their expense.

2.10 On 27 June 1995, the complainants sought the intervention of the Public Prosecutor of the Republic, who, by reference to the forensic expertise of the expert commission, affirmed the position of the deputy public prosecutor. Similarly, the Deputy Federal Public Prosecutor, by letter of 8 January 1996, advised the complainants that there were no grounds for him to intervene.

2.11 At the complainants' request, Dr. Z. S., a pathologist from the Institute of Forensic Medicine of the Belgrade Military Hospital, evaluated the autopsy report of 19 April 1994 and the expert commission's forensic findings of 22 November 1994. In a letter of 21 March 1996, he informed the complainants that, although the described injuries could be the result of the fall of the body of the deceased from a considerable height, it could not be excluded that some of the injuries had been inflicted prior to the fall. He criticized (a) that the autopsy had been carried out six days after the death of N. N.; (b) that the reports did not describe any decomposition changes of the body; (c) that the autopsy report stated that the brain membranes and brain tissue of the deceased were intact, while at the same time noting the presence of

brain tissue on the front side of his sweatshirt; (d) the contradiction between the size of the rupture of the aorta (3 cm x 1 cm) and the relatively small quantity of blood found in the chest cavity (800 ccm); (e) the expert commission's finding that the first contact of the deceased's body with the ground was with his feet, resulting in transverse fractures of the lower leg bones instead of diagonal fractures, which would usually result from a similar fall; (f) the unclear description by the expert commission of the mechanism of injuries, i.e. "that the first contact of the body was with the feet which caused feet and lower leg fractures, which was followed by *bending* and twisting (*extension* and rotation) of the thorax", given that *extension* means *stretching* of the body rather than bending; and (g) that the autopsy report diagnosed decollement, i.e. the separation of the skin of subcutaneous tissue from the muscle membrane, on the external side of the left thigh, although such an injury was usually "inflicted by a strong blow with a brandished blunt weapon", i.e. "the blow of the body on the ground", which was unlikely to occur after a fall on the feet and a fracture of both lower leg bones.

2.12 By letter of 28 August 1996, the complainant's lawyer requested the Belgrade Public Prosecutor's Office to order another forensic expertise, to be conducted by the Institute of Forensic Medicine of either the Belgrade Military Hospital or the Faculty of Medicine of Novi Sad, and, for that purpose, to exhume the body of N. N. at the expense of the complainants to address the doubts expressed by Dr. Z. S. In addition, he requested clarification of the following questions: (a) The time and place of death; (b) whether the contusions of the brain and the wound on the lower forehead of the deceased could have been the consequence of injuries inflicted by blows before the fall; (c) whether the small quantity of blood found in the chest cavity indicated that N. N. was already dead at the time of the fall, given that a living person discharges about 70 milliliters of blood from the left auricle into the aorta with every heartbeat (totaling about 4.9 liters per minute); (d) how it could be explained that the autopsy report did not establish any circular fractures of the bones of the base of the cranium after a fall from a height of 20 to 30 meters; and (e) which parts of the body would usually be damaged after a fall from this height, based on the weight of the body, its free movement during, as well as the velocity of the fall.

2.13 On 2 October 1996, the complainants' lawyer requested the Belgrade Public Prosecutor's Office that several potential witnesses be interviewed either by the Serbian Ministry of the Interior or by the Secretariat for Internal Affairs of Novi Sad: (a) The complainants, to find out whether M. K., when delivering the tragic news of their son's death, said: "Aunt Ljilja, they have killed Nikolica – they have killed Dumpling!"; (b) R. J. and Z. T., colleagues of the mother, who were present when M. K. told the mother that her son had died; (c) M. K., to establish whether she saw N. N. tying the cables to the radiator; whether he had been sleeping and, if so, whether he was already dressed when the police arrived at the door; how it was possible that she did not see N. N. jump out of the window, if she was in the same room; or, alternatively, how she could claim that there was no contact between N. N. and the policemen, if she was in another room; (d) neighbours in building no. 2, Pariske Komune Street, in particular D. N., the tenant of the flat above apartment no. 82, and S. L., who removed the biological traces in front of the building, to ask him what exactly he removed and whether he did this before or after the end of the in situ investigation; (e) several friends of the deceased, to find out whether N. N. had a fight with M. K. prior to 19 April 1994 and whether M. K. had threatened that she would

“fix him”; (f) officials of the Belgrade Central Prison, to elucidate whether N. N. had escaped from prison, but was subsequently released on probation by decision of 23 July 1993 of the deputy public prosecutor; and (g) A. N., the sister of N. N., to ask her whether an intervention team of the Belgrade Secretariat for Internal Affairs came to her flat in January 1994, threatening that they would throw N. N. from the sixth floor, should they capture him.

2.14 In a report dated 27 November 1996, the same medical experts who prepared the autopsy report and the first forensic expertise dated 22 November 1994, while dismissing the questions asked by the complainants’ lawyer (para. 2.12) as too vague, addressed the objections raised by Dr. Z. S. (para. 2.11), observing (a) that it was not customary to state the time and place of death in an autopsy report, as this information was already contained in the report of the doctor establishing the death and in the police report; (b) that the reason for the late autopsy was that the blood of the deceased (presumably a drug addict) was tested for HIV and that the results were received late on Friday, 22 April 1994, so that the autopsy could not be carried out before Monday, 25 April; (c) that the corpse had been kept in a refrigerator and only started to decompose during the autopsy and its subsequent cleaning and transport to the hospital chapel; (d) that the purpose of the autopsy report was to record the injuries and changes of the body of the deceased, rather than to explain how the brain tissue came on his sweatshirt; it could have passed through his nose or mouth, as the front skull cavity, which forms the roof of the nose cavity and of the pharynx, displayed numerous fractures of the skull base bones, which were always accompanied by ruptures of the attached hard brain tissue; (e) that the little amount of blood found in the chest cavity of the deceased was not due to death prior to the fall but to the considerable blood loss resulting from his injuries; (f) that Dr. Z. S. himself did not rule out that a fall on the feet could cause transversal fractures of the leg bones; (g) that the bending of the body following the contact of the feet with the ground did not exclude that numerous injuries, such as the aorta rupture, led to hyperextension of the body; (h) that the mechanism of the fall first on the feet and, in a second phase, on the left side of the body and the head explained the decollement in the region of the left thigh, the fissure on the lower left forehead, the fracture of the skull bones, and the brain contusions; and (i) that the fall on the feet reduced the body’s impact on the ground, which explained why the autopsy report recorded neither protrusion of the thigh bone heads through pelvic bones, nor circular fractures of the skull base.

2.15 On 26 February and 18 June 1997, the complainants’ lawyer requested the district public prosecutor to resubmit his questions (para. 2.12) to the commission of forensic experts to seek clarification of the contradictions between the experts’ findings and the findings of Dr. Z. S.

2.16 On 21 August 1997, Dr. Z. S. commented on the experts’ second forensic report (para. 2.14), criticizing (a) that the experts had not provided a satisfactory explanation as to why the result of the HIV test had not been included in the autopsy report; (b) the contradiction between the experts’ finding that the brain tissue on the deceased’s clothes came through his nose and mouth and the statement in the autopsy report that the mucous membrane of the lips and mouth cavity were “examined in detail” but that “no signs of injuries [were] observed”, and that no “foreign content”, i.e. traces of brain tissue, was found in the nose and mouth; (c) the experts’ failure to

identify the part of the brain from which brain tissue was missing; (d) their failure to explain why such a small amount of blood was found in the thoracic cavities, given that the complainants' son probably continued to breath for some time following the infliction of the injuries, that the total blood flow of an adult is 5000 ml per minute, and that blood pressure is the highest near the heart where the 3 x 1 cm aorta fissure was located; (e) the experts' superficial and contradictory description of the bone fractures; and (f) their conclusion that all recorded injuries resulted from the body's fall on the concrete ground, ignoring the possibility that some injuries could have been inflicted with a blunt mechanical weapon before the fall.

2.17 In a letter of 29 August 1997 to the Department for the Control of Legality of the Belgrade City Secretariat for Internal Affairs, the complainants drew attention to the fact that inspector J. J. reportedly was crying when the investigating magistrate arrived at Pariske Komune Street no. 2 and that he went on vacation the following day. They referred to the case of N. L., who had allegedly been forced to wear a bullet proof vest, on which he received blows with a baseball bat during his interrogation by, *inter alia*, inspector J. J., leaving few traces and causing a slow and painful death after two weeks.²

2.18 On 30 August 1997, the complainants brought charges of murder against police inspectors J. J., Z. P. and M. L., alleging that they had maltreated their son with hard round objects (such as a baseball bat), inflicting a number of grave injuries to his body, thereby voluntarily causing his death. Assuming that the transversal fractures of the lower legs had been inflicted prior to the fall, it could be ruled out that the injured had tried to escape through the window. The complainants also claimed that the police had breached the Code of Criminal Procedure (a) by forcibly entering the flat without the presence of a neutral witness; (b) by calling the investigating magistrate 30 minutes after the incident, rather than immediately, allegedly to remove incriminating evidence and to put M. K. on tranquilizers; (c) by interviewing no other witnesses than the police inspectors; (d) by having the deceased's body identified by M. K. rather than by his family; (e) by failing to seal the door or to return the keys of the apartment to the complainants; and (f) by sending M. K. to deliver the tragic news to the complainants. The complainants also informed the district prosecutor that several witnesses could testify that the police had previously shot at and threatened their son. They challenged the deputy public prosecutor for bias, since he had already indicated that he would reject any criminal charges.

2.19 After the District Public Prosecutor had decided, on 24 September 1997, not to initiate criminal proceedings against inspectors J. J., Z. P. and M. L., the complainants, on 4 October 1997, filed a request for an investigation of their son's alleged murder with the Belgrade District Court.³ In particular, they requested the investigating judge to interrogate J. J., Z. P. and M. L. in the capacity of accused, to detain them on remand in order to prevent any interference with witnesses, to

² See a newspaper article submitted by the authors in *VREME Magazine*, 9 March 1996, "The deadly bat".

³ In accordance with Section 60 of the Code of Criminal Procedure of the State party, the injured party may apply for criminal proceedings to be instituted, if the public prosecutor finds that there are no sufficient grounds to initiate criminal proceedings *ex officio*. If the investigating judge rejects the request for the initiation of criminal proceedings, a special chamber of the competent court decides whether such proceedings shall be initiated. See *ibid.*, Section 159.

summon and examine certain witnesses, including the complainants themselves, and to seek clarification of the remaining forensic inconsistencies. By letter of 28 January to the President of the District Court, the complainants criticized that only one of their requests, i.e. the interrogation of the police inspectors, had been complied with. They also challenged that the authorities persistently refused to state the time of their son's death, that no explanation had been given for the numerous bruises on the deceased's body, that the Institute of Forensic Medicine had refused to hand out any photographs of the deceased and that its forensic findings were intended to conceal their son's abuse by the police, that M. K. had given three different versions of the incident to the investigating judge, the complainants, and her friends, respectively, and that not a single pedestrian on the busy streets facing apartment no. 82 had witnessed their son jumping out of the window.

2.20 By decision of 17 February 1998,⁴ the Belgrade District Court found that the absence of any physical contact between the police inspectors and the deceased had been established on the basis of the concurring statements of J. J., Z. P. and M. L., the report of the investigating judge, as well as the police report of 19 April 1994, and the findings and opinions of the experts from the Institute of Forensic Medicine of the Belgrade Faculty of Medicine dated 22 November 1994 and 27 November 1996. It concluded that there were no grounds for conducting an investigation against the charged police inspectors for the criminal offence of murder.

2.21 On 13 March 1998, the complainants appealed to the Supreme Court of Serbia and Montenegro and, on 23 March, they supplemented their reasons of appeal. They challenged that the District Court had failed to address their arguments or the objections raised by Prof. Dr. Z. S., an internationally renowned expert selected by the United Nations for autopsies conducted on the territory of the former Yugoslavia, while merely relying on the contradictory findings of the commission of forensic experts and on the un-scrutinized statements of M. K., as well as of the charged inspectors themselves, against one of whom criminal proceedings had previously been instituted for similar conduct. No fingerprints of the deceased had been found in apartment no. 82; the cables attached to the radiator had not even been examined for his biological traces.

2.22 By decision of 21 May 1998,⁵ the Supreme Court of Serbia in Belgrade rejected the complainants' appeal as unfounded. It endorsed the findings of the Belgrade District Court, considering that the commission of experts, in its supplementary findings and opinions of 27 November 1996, responded to all objections raised by the complainants' lawyer and by Dr. Z. S. in a precise manner.

The complaint:

3.1 The complainants claim that the State party failed to proceed to a prompt an impartial investigation of their son's death and alleged prior torture, in violation of article 12, although the forensic evidence submitted by the complainants strongly suggested that their son was the victim of an act of torture within the meaning of article 1 of the Convention.

⁴ See Belgrade District Court, Decision of 17 February 1998, Ki. No. 898/97 (Kv. No. 99/98).

⁵ See Supreme Court of Serbia in Belgrade, Decision of 21 May 1998, Kž. II 224/98.

3.2 They submit that other inconsistencies further supported their suspicion, *inter alia*: (a) the fact that N. N. was explicitly told that he would not be subjected to physical force, if he opened the door of apartment no. 82; (b) that the search warrant issued on 19 April 1994 only authorized the police to enter the apartment to “search for goods related to criminal offences”, rather than to arrest N. N., and that it stated 11 a.m. as the time of the entry, although the police report stated 9.40 a.m. as the time of death; and (c) that it was unreasonable to expect that anyone would risk his life by trying to climb from the tenth to the ninth floor of a high-rise, only secured by some electric cables, break the window and enter the apartment on the ninth floor, only in order to find himself in the same situation as before, assuming that the police had plenty of time to reach the (presumably locked) door of the apartment on the ninth floor before this could be opened from inside.

3.3 The complainants claim that the dismissal of all their motions to initiate criminal proceedings, and of their subsequent appeals, raises doubts about the impartiality of the Serbian authorities’ investigation into N. N.’s death and alleged prior torture, thus disclosing a violation of article 13 of the Convention. Thus, the investigating judge had never initiated an investigation or even heard the complainants; none of the witnesses named by the complainants’ lawyer was ever heard or cross-examined.

3.4 The complainants submit an *amicus curiae* by Human Rights Watch/Helsinki dated 24 November 1997, which states that the “[i]nconsistencies in the various police and medical reports could only be adequately addressed in a court of law.”

3.5 For the complainants, the State party’s failure to investigate the circumstances of their son’s death *de facto* prevents them from exercising their right to a fair and adequate compensation, guaranteed in article 14 of the Convention, as the legal successors of their son and as indirect victims of the acts of torture that he had presumably been subjected to. They refer to a similar case, in which the European Court of Human Rights found that the disappearance of the applicant’s son amounted to inhuman and degrading treatment within the meaning of article 3 of the European Convention, and awarded 15.000 £ compensation for the disappeared son’s pain and suffering and an additional 20.000 £ for the applicants’ own anguish and distress.⁶

3.6 The complainants submit that the same matter has not been and is not being examined under another procedure of international investigation or settlement, and that they have exhausted all available domestic remedies.

Committee’s request for State party’s observations:

4.1 By notes verbales of 2 November 2000, 19 April 2002 and 12 December 2002, the Committee requested the State party to submit its observations on the admissibility and merits of the communication. On 14 January 2003, the State party informed the Committee that it “accepts the individual complaint No. 174/2000”.

⁶ See European Court of Human Rights, *Kurt v. Turkey*, Judgment of 25 May 1998.

4.2 After consultations with the Secretariat, the State party, on 20 October 2003, explained that “the acceptance”, in its note verbale of 14 January 2003, “implies that Serbia and Montenegro recognizes the competence of the Committee against Torture to consider the aforementioned [complaint], but not the responsibility of the State concerning the individual [complaint] in question.”

4.3 At the same time, the State party advised the Committee that it was still in the process of collecting data from the relevant authorities in order to prepare its observations on the merits of the complaint. No such information has been received to date.

Issues and proceedings before the Committee:

5. Before considering any claim contained in a communication, the Committee against Torture 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, paragraphs 5 (a) and (b), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement, and that the complainants have exhausted all available domestic remedies. It therefore considers that the complainant’s claims under articles 12, 13 and 14 of the Convention are admissible and proceeds to its examination on the merits.

6.1 The Committee has considered the communication in the light of all information made available to it, in accordance with article 22, paragraph 4, of the Convention. It regrets that the State party has not submitted any observations on the substance of the complaint and observes that, in the absence of any such observations, due weight must be given to the complainants’ allegations, to the extent that they are substantiated.

6.2 The Committee must decide, pursuant to article 12 of the Convention, whether there are reasonable grounds to believe that an act of torture has been committed against the complainants’ son prior to his death and, if so, whether the State party’s authorities complied with their obligation to proceed to a prompt and impartial investigation.

6.3 The Committee considers that the following elements cast doubts on the sequence of events leading to the death of the complainants’ son, as established by the State party’s authorities:

(a) The fact that the autopsy report states that the injuries “were inflicted with a brandished, blunt and heavy object,” thus suggesting that N. N. had been tortured prior to his fall from the window of apartment no. 82.

(b) The statement by inspector J. J. that he promised N. N. that he would not be subjected to physical violence, if he opened the door of apartment no. 82;

(c) The fact that the search warrant issued on 19 April 1994 did not explicitly authorize the police to arrest N. N., and that it states 11 a.m. as the time of entry into the apartment, although the death of N. N. occurred at 9.40 a.m., according to the police report;

- (d) The contradiction between the police report and the report of the investigating judge (both dated 19 April 1994) as to the voluntary nature of the death of N. N., describing it as an accident resulting from the deceased's attempt to escape his arrest (police report) or as the result of what appears to have been a suicide (investigation report: "Nikolić had just jumped out of the window");
- (e) The absence of witnesses who would have confirmed that N. N. jumped out of the window of apartment no. 82;
- (f) The alleged inconsistencies in the testimony of M. K. (paras. 2.5 and 2.19);
- (g) The fact that the investigating judge arrived at Pariske Komune Street no. 2 only at 10.30 a.m., apparently because he had not been informed of the death until 30 minutes after the incident, and that, despite his order to interview all witnesses, allegedly only the concerned police inspectors were interviewed;
- (h) The alleged inconsistencies in the autopsy report and in the forensic findings of the expert commission and, in particular, the objections raised by Dr. Z. S., particularly his statement that it could not be excluded that some of the injuries had been inflicted prior to the fall, which in turn might have been inflicted by treatment in violation of the Convention;
- (i) The alleged prior involvement of inspector J. J. in an act of torture; and
- (j) The uncertainty about prior threats by the police and attempts to arrest N. N., allegedly involving the use of firearms by the police.

6.4 On the basis of these elements, the Committee considers that there were reasonable grounds for the State party to investigate the complainants' allegation that their son was tortured prior to his death.

6.5 The question therefore arises whether the investigative measures taken by the State party's authorities, in particular by the Belgrade deputy public prosecutor, were commensurate to the requirement of article 12 of the Convention to proceed to a prompt and impartial investigation of the events preceding the death of N. N. In this regard, the Committee notes the complainants' uncontested claim that the deputy public prosecutor advised them already on 22 April 1994, i.e. three days before the autopsy, that he would not initiate criminal proceedings *ex officio*, as he considered their son's death an accident, and that he did not examine any of the witnesses named by their lawyer. It also notes that the investigating judge entrusted the same forensic experts, who had conducted the autopsy, with the preparation of both expert opinions, with a view to addressing the alleged inconsistencies in their own autopsy report, despite several requests by the complainants to order a forensic expertise from another institution. The Committee concludes that the investigation of the circumstances of the death of the complainants' son was not impartial and therefore in violation of article 12 of the Convention.

6.6 With regard to the alleged violation of article 13, the Committee observes that, although the complainants were entitled to complain to the courts after the deputy

public prosecutor had decided not to institute criminal proceedings against J. J., Z. P. and M. L., both the Belgrade District Court and the Supreme Court based their finding that there had been no physical contact between the police and N. N. exclusively on evidence that had been challenged by the complainants and which, according to them, was flawed by numerous inconsistencies.⁷ Both courts dismissed the complainants' appeals without addressing their arguments. The Committee therefore considers that the State party's courts failed to examine the case impartially, thereby violating article 13 of the Convention.

7. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the State party's failure to proceed to an impartial investigation of the death of the complainants' son constitutes a violation of articles 12 and 13 of the Convention.

8. Concerning the alleged violation of article 14 of the Convention, the Committee postpones its consideration until receipt of the information requested from the State party in paragraph 9 below.

9. Pursuant to rule 112, paragraph 5, of its rules of procedure, the Committee wishes to receive from the State party, within 90 days, information on the measures taken to give effect to the Committee's Views, in particular on the initiation and the results of an impartial investigation of the circumstances of the death of the complainants' son.

[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.]

⁷ See paras. 2.20-2.22 above.