



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

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COMMITTEE AGAINST TORTURE
Thirty-third session
(8 - 26 November 2004)

DECISION

Communication No. 207/2002

Submitted by: Mr. Dragan Dimitrijevic (Represented by
counsel)

Alleged victims: The complainant

State party: Serbia and Montenegro

Date of the complaint: 20 December 2001

Date of present decision: 24 November 2004

[ANNEX]

*Made public by decision of the Committee against Torture.

ANNEX

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

Thirty-third session

Concerning

Communication No. 207/2002

Submitted by: Mr. Dragan Dimitrijevic (Represented by counsel)

Alleged victims: The complainant

State party: Serbia and Montenegro

Date of the complaint: 20 December 2001

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 2004,

Having concluded its consideration of complaint No. 207/2002, submitted to the Committee against Torture by Mr. Dragan 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. The complainant is Mr. Dragan Dimitrijevic, a Serbian citizen of Romani origin born on 7 March 1977. He claims to have been the victim of violations by Serbia and Montenegro of articles 2, para.1 read in conjunction with article 1; article 16, para.1; and articles 12, 13 and 14 taken alone and/or together with article 16, para.1 of the Convention. He is represented by the non-governmental organizations Humanitarian Law Center, based in Belgrade, and European Roma Rights Center, based in Budapest.

The facts as submitted by the complainant

2.1 The complainant was arrested on 27 October 1999 at around 11 a.m. at his home in Kragujevac, Serbia, in connection with the investigation of a crime. He was taken to the local police station located in Svetozara Markovica Street. Upon arrival he was handcuffed to a radiator and beaten up by several police officers, some of whom the complainant knew by their first names or their nicknames. The police officers kicked and punched him all over his body while insulting his ethnic origins and cursing his “gypsy mother”. One of the officers struck the complainant with a big metal bar. Some time later the officers unfastened the complainant from the radiator and handcuffed him to a bicycle. Then they continued punching and beating him with their nightsticks and the metal bar. At one point the complainant began bleeding from his ears, despite which the beating continued until he was released at about 4.30 p.m.

2.2 As a result of the ill-treatment the author had to stay in bed for several days. He sustained injuries on both arms and legs, an open wound on the back of his head and numerous injuries all over his back. For several days following the incident he bled from his left ear and his eyes and lips remained swollen. Fearing reprisals by the police the complainant did not go to hospital for treatment. Consequently, there is no official medical certificate documenting the injuries referred to above. The complainant, however, has provided the Committee with written statements from his mother, his sister and a cousin indicating that he was in good health when he was arrested and severely injured at the time of his release.

2.3 On 31 January 2000, the complainant, through counsel, filed a criminal complaint with the Kragujevac Municipal Public Prosecutor’s Office alleging that he had been the victim of the crimes of slight bodily harm and civil injury, as provided for under articles 54(2) and 66 of the Serbian Criminal Code respectively. As there was no response for almost six months following the submission of the complaint, the complainant wrote a letter to the Public Prosecutor’s Office on 26 July 2000 requesting an update on the status of the case and invoking, in particular, article 12 of the Convention. By the time the complainant submitted his case to the Committee, i.e. more than 23 months after the submission of the criminal complaint, no response had been received from the Public Prosecutor.

2.4 The complainant claims that he has exhausted available domestic criminal remedies and refers to international jurisprudence according to which only a criminal remedy can be considered effective and sufficient in addressing violations of the kind at issue in the instant case. He also refers to the relevant provisions of the State Party’s Criminal Procedure Code (CPC) setting forth the obligation of the Public Prosecutor to undertake measures necessary for the investigation of crimes and the identification of the alleged perpetrators.

2.5 Furthermore, under article 153 (1) of the CPC, if the public prosecutor decides that there is no basis for the institution of a formal judicial investigation he must inform the complainant, who can then exercise his prerogative to take over the prosecution in the capacity of a “private prosecutor”. However, the CPC sets no time limit in which the public prosecutor must decide whether or not to request a formal judicial investigation. In the absence of such decision the victim cannot take over the prosecution of the case on his own behalf. Prosecutorial inaction following a

complaint filed by the victim therefore amounts to an insurmountable impediment in the exercise of the victim's right to act as a private prosecutor and to have his case heard before a court. Finally, even if there were a legal possibility for the victim himself to file for a formal judicial investigation because of the inaction of the public prosecutor, this would in effect be unfeasible if, as in the instant case, the police and the public prosecutor had failed to identify all of the alleged perpetrators beforehand. Article 158 (3) of the CPC provides that the person against whom a formal judicial investigation is requested must be identified by name, address and other relevant personal data. A contrario, such a request cannot be filed if the alleged perpetrator is unknown.

The complaint

3.1 The complainant claims that the acts described constitute a violation of several provisions of the Convention, in particular articles 2, para.1 read in conjunction with article 1; article 16, para.1; and articles 12, 13 and 14 taken alone and/or together with article 16, para.1. Such acts were perpetrated with a discriminatory motive and for the purpose of extracting a confession or otherwise intimidating and/or punishing him. He also submits that his allegations should be interpreted in the context of the serious human rights situation in the State party and, in particular, the systematic police brutality to which Roma and others are subjected to. In evaluating his claim the Committee should take into account his Romani ethnicity and the fact that his membership in a historically disadvantaged minority group renders him particularly vulnerable to degrading treatment. All else being equal, a given level of physical abuse is more likely to constitute "degrading or inhuman treatment or punishment" when motivated by racial animus and/or coupled with racial epithets than when racial considerations are absent.

3.2 With respect to article 12 read alone or taken together with article 16, para. 1 of the Convention, the complainant claims that the State party's authorities failed to conduct a prompt, impartial and comprehensive investigation into the incident at issue, notwithstanding ample evidence that an act of torture and/or cruel, inhuman and degrading treatment or punishment had been committed. Public prosecutors seldom institute criminal proceedings against police officers accused of violence and/or misconduct even though such cases are in the category of those that are officially prosecuted by the State. When the victims themselves or NGOs on their behalf file complaints against police misconduct, public prosecutors as a rule fail to initiate proceedings. They generally restrict themselves to requesting information from the police authorities and, when none is forthcoming, they take no further action. Judicial dilatoriness in proceedings involving police brutality often results in the expiration of the time period envisaged by law for the prosecution of the case. Notwithstanding the proclaimed principle of the independence of the judiciary, practice makes clear that public prosecutor's offices do not operate on this principle and that both they and the courts are not independent of the agencies and offices of the Ministry of Internal Affairs. This is especially true with respect to incidents of police misconduct.

3.3 With respect to article 13 of the Convention the complainant submits that the right to complain implies not just a legal possibility to do so but also the right to an effective remedy for the harm suffered. In view of the fact that he has received no redress for the violations at issue he concludes that his rights under article 13 taken

alone and/or in conjunction with article 16, para.1 of the Convention have been violated.

3.4 The complainant further claims that his rights under article 14 taken alone and/or in conjunction with article 16, para. 1, of the Convention have been violated. By failing to provide him with a criminal remedy the State Party has barred him from obtaining “fair and adequate compensation” in a civil lawsuit, “including the means for as full a rehabilitation as possible.” Pursuant to domestic law, the complainant had the possibility of seeking compensation by way of two different procedures: 1) criminal proceedings, under article 103 of the Criminal Procedure Code, that should have been instituted on the basis of his criminal complaint, or 2) in a civil action for damages under articles 154 and 200 of the Law on Obligations. Since no formal criminal proceedings followed as a result of his complaint with the Public Prosecutor, the first avenue remained closed to him. As regards the second avenue, the author filed no civil action for compensation given that it is standard practice of the State party’s courts to suspend civil cases for damages arising out of criminal offences until prior completion of the respective criminal proceedings. Had the complainant decided to sue for damages immediately following the incident, he would have faced another insurmountable procedural impediment caused by the inaction of the public prosecutor office. Namely, articles 186 and 106 of the Civil Procedure Code stipulate that both parties to a civil action, the plaintiff and the respondent, must be identified by name, address and other relevant personal data. Since the complainant to date remains unaware of this information and as it was exactly the duty of the public prosecutor’s office to establish these facts, instituting a civil action for compensation would have clearly been procedurally impossible and thus rejected by the civil court.

State party’s submissions on the admissibility and the merits of the complaint

4. The complaint with its accompanying documents was transmitted to the State party on 17 April 2002. Since the State party did not respond to the Committee’s request, under rule 109 of the rules of procedure, to submit information and observations in respect of the admissibility and merits of the complaint within six months, a reminder was addressed to it on 12 December 2002. On 20 October 2003, the State party informed the Committee that the Ministry on Human and Minority Rights was still in the process of collecting data from the relevant authorities with a view to responding on the merits of the complaint. Such response, however, has not been received by the Committee.

Issues and proceedings before the Committee

5.1 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 in accordance with 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.

5.2 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not the complaint is admissible under article 22 of the Convention. In the present case the Committee has ascertained, as it is

required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. With respect to the exhaustion of domestic remedies, the Committee took note of the information provided by the complainant about the criminal complaint which he filed with the public prosecutor. The Committee considers that the insurmountable procedural impediment faced by the complainant as a result of the inaction of the competent authorities rendered the application of a remedy that may bring effective relief to the complainant highly unlikely. In the absence of pertinent information from the State party the Committee concludes that the domestic proceedings, if any, have been unreasonably prolonged. With reference to article 22, paragraph 4 of the Convention and rule 107 of the Committee's rules of procedure the Committee finds no other obstacle to the admissibility of the complaint. Accordingly, it declares the complaint admissible and proceeds to its examination on the merits.

5.3 The complainant alleges violations by the State party of article 2, para.1 in connection with article 1, and of article 16, para.1 of the Convention. The Committee notes in this respect the description made by the complainant of the treatment he was subjected to while in detention, which can be characterized as severe pain or suffering intentionally inflicted by public officials in the context of the investigation of a crime, and the written testimonies of witnesses to his arrest and release that the complainant has provided. The Committee also notes that the State party has not contested the facts as presented by the complainant, which took place more than five years ago. 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.

5.4 Concerning the alleged violation of articles 12 and 13 of the Convention, the Committee notes that the public prosecutor never informed the complainant about whether an investigation was being or had been conducted after the criminal complaint was filed on 31 January 2000. It also notes that the failure to inform the complainant of the results of such investigation, if any, effectively prevented him from pursuing "private prosecution" of his case before a judge. In these circumstances the Committee considers that the State party has failed to comply with its obligation, under article 12 of the Convention, to carry out a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. 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.

5.5 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.

6. 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.

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

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