



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

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Committee against Torture

Concluding observations on the third periodic report of Serbia*

1. The Committee against Torture considered the third periodic report of Serbia¹ at its 1862nd and 1865th meetings,² held on 23 and 24 November 2021, and adopted the present concluding observations at its 1874th meeting, held on 1 December 2021.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure and submitting its periodic report thereunder, as this improves the cooperation between the State party and the Committee and focuses the examination of the report and the dialogue with the delegation.

3. The Committee appreciates the dialogue held with the State party's delegation and the additional information and explanations provided.

4. The Committee recalls its previous concluding observations³ with respect to the State party's declaration that it is unable to monitor the application of the Convention in Kosovo owing to the fact that, pursuant to Security Council resolution 1244 (1999), civil authority there is exercised by the United Nations Interim Administration Mission in Kosovo.

B. Positive aspects

5. The Committee welcomes the following legislative, administrative and institutional measures taken by the State party in areas of relevance to the Convention:

(a) The National Strategy for the Prosecution of War Crimes, 2021–2026, adopted in October 2021;

(b) The strategy for preventing and combating gender-based violence against women and domestic violence, 2021–2025, adopted in April 2021;

(c) The strategy to improve the position of persons with disabilities, 2020–2024, adopted in March 2020;

(d) The national strategy on the realization of the rights of victims and witnesses of crime, 2020–2025, adopted in 2020;

(e) The amendment to article 137 (3) of the Criminal Code to increase the punishment for ill-treatment and torture, which entered into force in December 2019;

* Adopted by the Committee at its seventy-second session (8 November–3 December 2021).

¹ CAT/C/SRB/3.

² See CAT/C/SR.1862 and CAT/C/SR.1865.

³ CAT/C/SRB/CO/2, para. 4.



- (f) The law on free legal aid, No. 87/2018, which entered into force in October 2019;
- (g) The Law on Asylum and Temporary Protection, No. 24/2018, which entered into force in March 2018;
- (h) The Law on Prevention of Domestic Violence, No. 94/2016, which entered into force in June 2017;
- (i) The strategy to reduce overcrowding in institutions for the execution of criminal sanctions until 2020, No. 43/2017, adopted in May 2017.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

6. In its previous concluding observations,⁴ the Committee requested the State party to provide information on its implementation of the Committee's recommendations on taking steps to ensure in practice that detained persons undergo an independent medical examination from the outset of their deprivation of liberty⁵ and on publicly condemning and investigating threats to and attacks on human rights defenders, journalists, lesbian, gay, bisexual, transgender and intersex persons and members of the Roma community.⁶ The Committee expresses its appreciation for the State party's response on those matters and for the substantive follow-up information provided on 2 August 2016⁷ and in its third periodic report. The Committee considers that the above-mentioned recommendations have been only partly implemented (see paras. 14 (c) and 42 below).

Definition of torture

7. The Committee welcomes the amendment of the Criminal Code in 2019 to ensure that acts of torture committed by public officials are punished with graver penalties. It acknowledges that article 25 of the Constitution of Serbia prohibits torture, inhuman or degrading treatment or punishment, and that its article 16 enables generally accepted rules of international law and ratified international treaties to be applied directly. However, the Committee is concerned that the definition of torture in the Criminal Code is not aligned with article 1 of the Convention, that acts of torture or ill-treatment are not punished with penalties commensurate with their grave nature, and that the statute of limitations for the crime of torture remains in place (arts. 1 and 4).

8. The Committee recalls its previous concluding observations⁸ and requests that the State party, as a matter of priority, expedite the drafting and adoption of amendments to articles 136 and 137 of the Criminal Code in order to incorporate into the legal definition of torture all the elements contained in article 1 of the Convention and ensure that penalties for torture are appropriate to the gravity of the crime, as set out in article 4 (2) of the Convention. The State party should further ensure that the offence of torture is not subject to any statute of limitations, in order to preclude any risk of impunity in relation to the investigation of acts of torture and the prosecution and punishment of perpetrators.

Convention as a source of law in national courts

9. The Committee notes that, in accordance with article 167 (1) and (2) of the Constitution, the Constitutional Court is empowered to decide on the compliance of ratified international treaties with the Constitution. It further notes with concern the scarcity of cases in which the Convention has been invoked and directly applied before the domestic courts (arts. 2 and 10).

⁴ Ibid., para. 23.

⁵ Ibid., para. 9 (a).

⁶ Ibid., para. 19.

⁷ CAT/C/SRB/CO/2/Add.1.

⁸ CAT/C/SRB/CO/2, para. 8.

10. **The State party should ensure:**

(a) **The full and direct applicability of the provisions of the Convention in national courts so that it can be invoked before them, and clarify the precedence of international human rights instruments to which the State is a party over national legislation in the case of a conflict;**

(b) **That State officials, including judges, prosecutors and lawyers, receive training that covers the provisions of the Convention in order to assert the rights established in those provisions and to ensure that they are taken into account and directly applied in the national courts.**

National human rights institution

11. The Committee is concerned about reports of the compromised independence, effectiveness and visibility of the Protector of Citizens. It is further concerned about the notable reduction in the number of visits carried out by the national preventive mechanism, particularly within police detention units and during the period of restrictions related to the coronavirus disease (COVID-19) pandemic, the delayed publishing of its findings and recommendations and the perceived lack of trust by civil society organizations formerly cooperating with the mechanism (art. 2).

12. **The State party should take measures to strengthen the independence of the Protector of Citizens, including the independence of its staff responsible for facilitating the work of the national preventive mechanism and its operational autonomy, particularly with regard to conducting independent, regular and unannounced visits to all places of deprivation of liberty, including institutions for persons with psychosocial disabilities and social care homes, in cooperation with representatives of civil society organizations. The national preventive mechanism must be able, while respecting the precautions that the COVID-19 pandemic imposes, to physically access all places of deprivation of liberty in order to exercise its prevention mandate effectively. The State party should ensure that the national preventive mechanism reports publicly on its findings, without delay, and alerts the authorities to adverse detention conditions or conduct amounting to torture or ill-treatment.**

Fundamental legal safeguards

13. The Committee is concerned that the legal framework guaranteeing legal safeguards for detained persons is not effectively implemented in practice, including cases where individuals do not receive notification of their rights at the initial stages of detention, inadequate services provided by court-appointed lawyers, the presence of police officers during medical examinations, the failure of medical professionals to document injuries and other traces of torture and ill-treatment in line with international standards and a lapse in the referral of medical reports to the Public Prosecutor and the relevant judicial authorities (arts. 2 and 11–12).

14. **Recalling its previous recommendations,⁹ the Committee urges the State party to ensure that all fundamental legal safeguards against torture are guaranteed in practice, and not merely in law, for all detained persons from the outset of their deprivation of liberty, in accordance with international standards, including the right of detainees:**

(a) **To be promptly informed, in a language that they understand, both orally and in writing, of their rights, including by being served with the written letter of rights; to be given the reasons for their arrest and the charges against them; to sign a paper confirming that they have understood the information provided to them; and to notify family members, or any other person of their choice, that they have been taken into custody;**

(b) **To have access to a competent and independent lawyer, by reinforcing the system of free legal aid;**

⁹ Ibid., para. 9.

(c) **To request and receive a medical examination by an independent medical doctor from the outset of the deprivation of liberty; to medical examinations that are conducted out of hearing and out of sight of police officers and prison staff, unless the doctor concerned explicitly requests otherwise; to have their medical record immediately brought to the attention of a prosecutor whenever the findings or allegations may indicate torture or ill-treatment; and to health-care professionals that are not exposed to any form of undue pressure or reprisals when fulfilling their duty;**

(d) **To have their detention systematically recorded in a register at the place of detention and in a central register of persons deprived of their liberty, which their lawyers and family members can access, in line with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.**

Conditions of detention

15. The Committee welcomes the significant steps taken to reduce overcrowding, including by renovating and increasing the capacity of the existing detention infrastructure and the use of non-custodial measures. It remains concerned, however, that overcrowding in pretrial detention facilities and in prisons across the country persists. It is further concerned about the shortage of prison staff and the consequent inability to prevent violence and manage vulnerable prisoners in this context (arts. 2, 11 and 16).

16. **The Committee recommends that the State party:**

(a) **Take into account the lessons learned from the COVID-19 pandemic and intensify its efforts to significantly reduce prison overcrowding, by trying to limit prison admissions and making greater use of non-custodial measures, such as parole and early release, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(b) **Continue to renovate all places of detention in need of repair with a view to improving their infrastructure and material conditions and to bring prison conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the European Prison Rules adopted by the Council of Europe;**

(c) **Improve the remuneration and working conditions and increase the number of prison staff, provide prison staff with training on the management of inmates and strengthen the monitoring and management of inter-prisoner violence, vulnerable prisoners and other prisoners at risk.**

Health care in prisons

17. The Committee welcomes the actions taken to train medical staff and to reconstruct and renovate medical units within prison establishments. It is concerned, however, about reports indicating that health-care services in prisons are inadequate, particularly with regard to the provision of psychiatric treatment, and notes that medical screenings of newly arriving detainees, including the recording and analysis of their injuries, are cursory and that there is no systemized practice of reporting to judicial authorities (arts. 12 and 13).

18. **The State party should improve the quality of health services provided to inmates; conduct prompt medical screening of inmates upon their entry into detention facilities and after transfers, in order to, inter alia, detect and prevent the spread of infectious diseases, including COVID-19; recruit more qualified medical doctors, including psychiatrists; appropriately maintain medical files and registers, including those used for recording injuries; and ensure that medical reports of injuries indicating ill-treatment are sent without delay to the independent mechanism responsible for carrying out a thorough examination and investigation.**

Impunity for acts of torture and ill-treatment

19. The Committee is concerned that inadequate efforts are made to investigate the vast majority of criminal complaints lodged against police officers, prison staff and other State agents. Noting the low number of reported and adjudicated complaints regarding acts of torture and other ill-treatment, the Committee is seriously concerned about the disproportionately low ratio of convictions as compared with acquittals and case dismissals, further noting that where penalties are handed down to public officials, these are largely inadequate and not proportionate to the gravity of the act of torture (arts. 12–13).

20. **The State party should:**

(a) **Ensure that all complaints of torture and ill-treatment are promptly investigated in an impartial manner by an independent body, and that there is no institutional or hierarchical relationship between that body's investigators and the suspected perpetrators of such acts;**

(b) **Ensure that the authorities launch investigations whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;**

(c) **Ensure that, in cases of alleged torture or ill-treatment, suspected perpetrators are suspended from duty immediately and for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, commit reprisals against the alleged victim or obstruct the investigation;**

(d) **Ensure that both the crime of torture and the attempt to commit such a crime are punishable with appropriate penalties that are commensurate with the gravity of their nature, as set out in article 4 (2) of the Convention;**

(e) **Compile and publish comprehensive disaggregated statistical information relevant to all complaints and reports received of torture or ill-treatment, including information as to whether such complaints led to investigations and, if so, by which authority, whether the investigation resulted in the imposition of disciplinary measures or prosecutions and whether the victims obtained redress.**

Introduction of life sentences to the Criminal Code

21. The Committee is concerned about amendments to the Criminal Code in 2019 introducing the penalty of life imprisonment for several offences, and excluding parole for four of them, thus eliminating the prospect of the prisoner's release and the possibility of a review of the sentence, hence amounting to mental pain or suffering in contravention to provisions of the Convention (arts. 2 and 4).

22. **The State party should reconsider the introduction of the penalty of life imprisonment without parole and ensure that convicted persons currently serving such sentences are entitled to a judicial review of their sentences and are eligible for parole.**

Juvenile justice

23. The Committee is concerned about the limited educational rehabilitation programmes for children deprived of liberty in correctional institutions and of reports regarding their ill-treatment, including as a disciplinary sanction (arts. 11 and 16).

24. **The State party should:**

(a) **Consider establishing an effective, specialized and well-functioning juvenile justice system, in compliance with international standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);**

(b) **Take effective measures to prevent any public official from mistreating children, including by investigating such acts and ensuring that appropriate disciplinary or penal measures are taken;**

(c) **Strengthen existing and develop new educational and rehabilitation programmes aimed at reducing juvenile recidivism and encouraging pro-social behaviour, provide adequate recreational activities conducive to the social integration of children deprived of their liberty and address the problem of the shortage of qualified officers specially trained to work with juveniles.**

Treatment of persons in social care and psychiatric institutions

25. The Committee regrets the lack of progress made by the State party in addressing the Committee's previous concerns¹⁰ regarding the involuntary confinement of persons with mental and psychosocial disabilities in psychiatric institutions, their deinstitutionalization and the continued use of restraints. The Committee is particularly concerned about the situation of women with disabilities in residential institutions who are exposed to high levels of violence without any prevention or protection measures in place. It is further concerned about the poor living conditions and the inadequate access to health care, education and rehabilitation experienced by children with disabilities in residential care, who are exposed to cruel, inhuman and degrading treatment without redress (arts. 2, 11, 13 and 16).

26. **Recalling its previous recommendations,¹¹ the Committee recommends that the State party:**

(a) **Ensure that national legislation guarantees effective legal safeguards for all persons with mental and psychosocial disabilities with regard to involuntary hospitalization, including a complaint mechanism and effective judicial review, as well as for involuntary psychiatric and medical treatment in psychiatric institutions, including with regard to the strict regulation of the use of chemical and physical restraints;**

(b) **Ensure that the national preventive mechanism is able to conduct regular and unannounced visits to psychiatric and other social care institutions without any restrictions;**

(c) **Investigate effectively, promptly and impartially all complaints of ill-treatment of persons with mental and psychosocial disabilities, including children and persons hospitalized in psychiatric institutions, bring those responsible to justice and provide redress to victims;**

(d) **Ensure that mental health services in the community are sufficiently and adequately funded.**

International judicial cooperation

27. The Committee is concerned that the State party refuses to extradite persons suspected of crimes of torture and is slow to investigate these allegations and prosecute those responsible. The Committee notes the lack of action taken by the State party to comply with the surrender order issued by the International Residual Mechanism for Criminal Tribunals in the case of Petar Jojić and Vjerica Radeta, thereby negatively affecting its cooperation with the Mechanism (arts. 5 and 7–8).

28. **The State party should ensure that all persons suspected of complicity in and perpetration of war crimes and crimes against humanity, including senior police officials, military personnel and political officials, are brought to justice. The State party should either extradite alleged perpetrators of torture and ill-treatment to a State with jurisdiction over the offence or transfer them to an international criminal tribunal, according to its international obligations, or prosecute them, in compliance with the provisions of the Convention.**

¹⁰ Ibid., para. 18.

¹¹ Ibid.

Redress and compensation

29. While welcoming the establishment of working groups to improve the dispensation of compensation to victims of serious crimes and to safeguard the rights of victims and witnesses of crime, the Committee regrets that no specifics were provided to it on the outcome of these initiatives. It also regrets that the State party did not indicate whether victims of torture have received medical or psychosocial rehabilitation. The Committee is concerned that the State party has not provided specifics of redress and compensation to victims of persons convicted by the International Tribunal for the Former Yugoslavia or the International Residual Mechanism for Criminal Tribunals (arts. 2 and 14).

30. Recalling its general comment No. 3 (2012) on the implementation of article 14, the Committee urges the State party to take all the necessary measures to enable victims of torture and ill-treatment committed in the State party or abroad to obtain full and effective redress, including means of rehabilitation and care specifically tailored to their needs. The State party should compile and provide to the Committee information on redress and on compensation measures, including means of rehabilitation, ordered by the courts or other State bodies and actually provided to victims of torture or ill-treatment.

Forced removals and diplomatic assurances

31. The Committee recalls its decision in 2019 on an individual communication submitted by Cevdet Ayaz, finding that Serbia violated articles 3 and 22 of the Convention when Mr. Ayaz was wrongfully extradited to Turkey.¹² It regrets the lack of progress made by the State party in carrying out comprehensive post-expulsion monitoring of the complainant and ensuring redress (arts. 2–3 and 12–13).

32. The State party should establish a mechanism for the objective, impartial and reliable post-expulsion monitoring of Mr. Ayaz and further provide redress to the complainant, including adequate compensation of non-pecuniary damage resulting from the physical and mental harm that he endured, and provide the Committee with information on institutional and legal reforms undertaken to avoid a similar wrongful extradition.

Asylum system and non-refoulement

33. While welcoming the adoption of the Law on Asylum and Temporary Protection in 2018, the Committee is concerned that, in practice, asylum seekers are prevented from accessing the asylum procedure and being identified at an early stage due to insufficient procedural safeguards for the assessment of claims and the granting of international protection, particularly in the transit zone of Nikola Tesla international airport in Belgrade and at the border entry points. This includes the absence of a protection-sensitive screening mechanism within the refugee status determination process and an insufficient number of well-trained staff, including within the Border Police and the Asylum Office, to ensure fair and effective decision-making in line with relevant international standards (arts. 2–3 and 16).

34. Recalling its previous recommendations,¹³ the Committee further recommends that the State party:

(a) **Secure the civil structure of the Asylum Office and place it outside the Border Police Directorate;**

(b) **Allow for independent, fair and efficient judicial review of negative asylum decisions by amending the Law on Asylum and Temporary Protection to introduce judicial review at the second instance by the Administrative Court;**

(c) **Provide training on international refugee law and international human rights law, specifically on the principle of non-refoulement, to immigration officials, as**

¹² See CAT/C/67/D/857/2017.

¹³ CAT/C/SRB/CO/2, paras. 14–15.

well as ensure that all internal documents and standard operating procedures include sufficient safeguards against refoulement;

(d) **Ensure access to the territory and sufficient and effective protection from refoulement at Nikola Tesla international airport by making sure that persons detained in the transit zone of the airport receive information about their right to seek asylum, including effective access to the asylum procedure, immediately and in language they understand;**

(e) **Introduce a border monitoring mechanism that includes representatives of independent entities, such as international organizations and civil society with expertise in international refugee law and international human rights law, to ensure that border authorities are acting in line with the principle of non-refoulement and the prohibition of collective expulsion, as well as for the purpose of collecting accurate data;**

(f) **Ensure that asylum seekers and migrants held in detention are provided with adequate medical and mental health care, including a medical examination upon arrival and routine assessments, record any indications supporting their claims of being subject to torture or ill-treatment and provide them with support services.**

Training

35. While welcoming the training modules on the Convention that have been offered to police, security and immigration personnel, the Committee has not received information on whether this training is delivered to military personnel, including for international deployments, and has been adapted to the circumstances of the COVID-19 pandemic (art. 10).

36. **The State party should ensure mandatory training on the provisions of the Convention for all law enforcement personnel and other public officials who come into contact with persons deprived of their liberty, migrants and asylum seekers, including the absolute prohibition of torture and ill-treatment and of the penalties that they would face should they fail to meet their obligations in this regard, ensuring that such training is adapted to emergency circumstances. It should also continue to ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).**

Counter-terrorism

37. The Committee regrets the failure of the State party to provide it with information on persons convicted under counter-terrorism legislation, the legal safeguards and remedies available to persons subjected to counter-terrorism measures in law and in practice, whether there are complaints of the non-observance of international standards in this regard and the outcome of these complaints (arts. 2, 11 and 16).

38. **The State party should ensure that:**

(a) **The measures taken to combat terrorism are in conformity with the Convention and strictly necessary in the light of the situation and the requirements of the principle of proportionality;**

(b) **All allegations of torture and ill-treatment of persons accused of involvement in terrorist acts are promptly, impartially and effectively investigated and that perpetrators are prosecuted and appropriately punished;**

(c) **It provides the Committee with the information requested regarding persons convicted under counter-terrorism legislation;**

(d) **The human rights pillar of the United Nations Global Counter-Terrorism Strategy is included in the training programmes in the sphere of fight against terrorism and the impact of such training programmes is evaluated.**

Independence of the judiciary

39. The Committee regrets the persistence of its previous concern¹⁴ regarding political influence in judicial appointments (arts. 2 and 12).

40. **The State party should ensure the full independence, impartiality and effectiveness of the judiciary, including by ensuring that appointment of judges conforms to the relevant international standards, including the Basic Principles on the Independence of the Judiciary.**

Attacks on journalists and human rights defenders

41. The Committee is deeply concerned about the many consistent reports of repeated attacks, harassment, intimidation, arbitrary arrest and detention experienced by journalists and human rights defenders seeking to exercise their right to freedom of association or expression in the State party (arts. 2, 12–13 and 16).

42. **Recalling its previous recommendations,¹⁵ the Committee urges the State party to adopt and implement a public policy for the protection of journalists and human rights defenders that is the outcome of a participatory process, and to examine in greater depth the causes of the unprecedented violence towards these groups, with a view to ensuring that journalists and human rights defenders are able to carry out their work and activities freely in the State party, without fear of reprisals or attacks.**

Gender-based and domestic violence

43. The Committee recognizes the State party's efforts to codify women's rights and to criminalize gender-based violence in its Criminal Code. It is concerned, however, about the low rate of indictment for domestic violence charges and that, despite legal provisions for emergency measures, the majority of victims do not benefit from individualized protection plans (arts. 2, 12–14 and 16). It is further concerned about the limited number of shelters available to victims of domestic violence throughout the territory of the State party.

44. **The Committee recalls its previous recommendations,¹⁶ and further urges the State party to ensure that all cases of domestic and gender-based violence are promptly and thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately, and that the victims receive redress, including adequate compensation and rehabilitation. It also urges the State party to ensure the prevention of violence, including by removing legal impediments for women who are victims of domestic violence so that they may immediately petition the authorities for protection measures, including restraining orders and legal separation. The Committee recommends that the State party increase the number of specialized shelters in the country and ensure that survivors of gender-based violence are able to access these shelters and receive the necessary medical care, psychological support and legal assistance they require.**

Follow-up procedure

45. **The Committee requests the State party to provide, by 30 December 2022, information on follow-up to the Committee's recommendations on the definition of torture, the national human rights institution and impunity for acts of torture and ill-treatment (see paras. 8, 12 and 20 (a) above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

46. **The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through**

¹⁴ Ibid., para. 22.

¹⁵ Ibid., para. 19.

¹⁶ Ibid., para. 16.

official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.

47. The Committee requests the State party to submit its next periodic report, which will be its fourth, by 30 December 2025. To that end, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its fourth periodic report under article 19 of the Convention.
