



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

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COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC) OF
THE 840th MEETING*

Held at the Palais Wilson, Geneva,
on Monday, 5 November 2008, at 10 a.m.

Chairperson: Mr. GROSSMAN

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.840/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (*continued*)

Second periodic report of Serbia (CAT/C/SRB/2; CAT/C/SRB/Q/1 and CAT/C/SRB/Add.1 (document distributed in English only))

1. *At the invitation of the Chairperson, the members of the delegation of Serbia took places at the Committee table.*

2. Mr. ČIPLIĆ (Serbia) recalled that after the democratic changes in 2000, the then Federal Republic of Yugoslavia had been admitted to membership of the United Nations as one of the successor States of the former Socialist Federal Republic of Yugoslavia, continuing to be party to all the same international human rights instruments. The Socialist Federal Republic of Yugoslavia had signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in April 1989 and ratified it in 1991. In September 2006 the Republic of Serbia had also ratified the Optional Protocol to the Convention against Torture and in 2004 had ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

3. Upon the submission of the notification of succession on 12 March 2001, the then Federal Republic of Yugoslavia had started submitting to the relevant treaty bodies its initial reports on the implementation of the international treaties and United Nations conventions that it had ratified. The initial report of Serbia and Montenegro on the implementation of the International Covenant on Civil and Political Rights and its initial report on the implementation of the International Covenant on Economic, Social and Cultural Rights had been submitted to the relevant treaty bodies in July 2004 and May 2005 respectively. The initial report of the Republic of Serbia on the implementation of the Convention on Elimination of All Forms of Discrimination against Women had been submitted in May 2007 and the initial report on the implementation of the Convention on the Rights of the Child had been submitted in May 2008. In order to give a picture of the implementation of the United Nations human rights instruments in its entire territory, the Republic of Serbia had requested the competent committees to consider the implementation of those instruments in the Autonomous Province of Kosovo and Metohija, as a part of the territory of the State party under the United Nations Interim Administration Mission in Kosovo (UNMIK) since 1999 pursuant to United Nations Security Council resolution 1244. In July 2006, the Human Rights Committee had consequently considered the report presented by UNMIK on the implementation of the International Covenant on Civil and Political Rights in the Province. The report of UNMIK on the implementation of the International Covenant on Economic, Social and Cultural Rights would be considered in November 2008.

4. Up to the present, reporting on the implementation of international human rights instruments by the Republic of Serbia had been complex, owing in particular to the long periods of time covered. They had been prepared in the course of a dynamic process of reforms and structural changes at the end of which the Federal Republic of Yugoslavia had become the State Union of

Serbia and Montenegro. After the dissolution of the State Union in June 2006, the Republic of Serbia, as its only successor State, had taken over all its obligations under United Nations human rights treaties and conventions. For that reason, the reports submitted by the Republic of Serbia reproduced in part the reports submitted at the time when the State Union of Serbia and Montenegro had existed.

5. The period before 2000 had been marked by cases of violations of human rights, regardless of the accepted international commitments. The Republic of Serbia had then experienced conflicts, isolation and tense relations with neighbouring countries and the international community, economic sanctions and internal instability, which had all resulted in rapid economic collapse and the impoverishment of nearly all the population. Nevertheless, after the democratic forces had taken over in October 2000, they had started the process of building democratic institutions and had repealed discriminatory laws and those contrary to the international law. The question of the reinstatement of the country as a member of international organizations had first been resolved in relation to the United Nations and then to the Organization for Cooperation and Security in Europe and the Council of Europe; the Republic of Serbia was actively cooperating with those organizations in the field of human rights protection and promotion. As part of its strategy for European integration, Serbia had begun reforming its domestic legislation to bring it into line with the “*acquis communautaire*” of the European Union and had adopted the highest international human rights standards. In compliance with its international obligations, the Republic of Serbia was actively cooperating with the International Criminal Tribunal for the former Yugoslavia and with UNMIK. Just as it submitted periodic reports in accordance with its obligations under international instruments, the Republic of Serbia was directly interested in there being regular reporting by UNMIK, so that the treaty bodies concerned would consider the implementation of those instruments throughout its territory.

6. In November 2006, the Republic of Serbia had adopted a new Constitution which guaranteed in particular the physical and psychological integrity of all. It provided that no one could be subjected to torture, inhuman or degrading treatment or punishment or be used for any medical or scientific experiments without their free consent. The new Penal Code and the Police Act, adopted in 2005, provided for effective, modern procedures that the police were required to apply when in contact with the population, and especially with persons deprived of liberty. Furthermore, a new Code of Criminal Procedure had been adopted in 2006 and would enter into force on 1 January 2009. The Law on Asylum, in force since 1 April 2008, defined for the first time the status of refugee on the basis of the 1951 Convention relating to the Status of Refugees. In September 2005, the Minister of Interior had set up a body to monitor the implementation of the European Convention on Prevention of Torture, Inhuman or Degrading Treatment or Punishment so as to detect and prevent all forms of torture by the police. A particularly important aspect of police reform had been the establishment of a system of internal control and responsibility within the police, which had provided a means of effectively combating corruption within the police forces with a view to the eventual establishment of strict ethical rules. The main institutional

measure taken to that end had been the putting in place in May 2006 of an internal police oversight unit within the Ministry of the Interior. Another important aspect of that mechanism had been the adoption of rules of procedure for dealing with complaints filed against the police by individuals. To prevent torture against persons deprived of liberty, officials of the Department for the Enforcement of Prison Sentences were tasked with ensuring lawful and proper conduct in the relevant facilities, through regular and unannounced visits.

7. The Ombudsman's Office, an independent body established under the Constitution, protected the rights of citizens and monitored the activities of the administration, the body responsible for the legal protection of the rights and interests of the Republic of Serbia, and other bodies, organizations, companies and institutions vested with public powers. To date, the Office was operational at the national level, at the level of the Autonomous Province of Vojvodina and at the local level. At the national level, the Ombudsman had been introduced into the domestic legal system through a law establishing a general nationwide parliamentary Office of Ombudsman, with four deputies, one of whom specialized in the protection of persons deprived of liberty. Since 2003, the Ombudsman's activities in the territory of the Autonomous Province of Vojvodina had ensured external monitoring of correctional facilities in the Province. Given that, in October 2008, the Parliament of the Republic of Serbia had elected a deputy Ombudsman with special responsibility for protecting the rights of persons deprived of liberty and as the Ombudsman's Office had already proved valuable in protecting human rights, it had been agreed by the political authorities that the Ombudsman would serve as a national mechanism for the prevention of torture, as required by the Optional Protocol to the Convention. The Republic of Serbia appreciated and supported civil society activities to monitor detention facilities. Various non-governmental organizations regularly visited Serbian prisons and made recommendations to improve conditions of detention. The Republic of Serbia had incorporated those recommendations into the strategy on the reform of the criminal punishment enforcement system adopted in 2005.

8. He drew attention to the question of the implementation of the Convention in the Autonomous Province of Kosovo and Metohija, which had been under the international administration of the United Nations since June 1999, pursuant to United Nations Security Council resolution 1244. Under that resolution, that Province formed an integral part of the territory of the Republic of Serbia; consequently, the Convention was applicable there. However, responsibility for its implementation in the Province rested with UNMIK. For that reason the report under consideration did not contain detailed information on the implementation of the Convention in that part of the territory of the Republic of Serbia. It should nevertheless be stressed that the human rights situation in general in Kosovo and Metohija was far from satisfactory and that the human rights of minorities, particularly Serbs and the Roma, were not respected there. In a climate of widespread discrimination based on ethnic and religious affiliation, origin and language, relations between communities and the treatment of minorities gave cause for extreme concern. Under such circumstances, and taking into account the concluding observations of the treaty bodies concerned after consideration of the initial

reports submitted to date by the Republic of Serbia on the implementation of the relevant international instruments, it would be desirable for the Committee to request all relevant information from UNMIK so that it might consider the implementation of the Convention in that Autonomous Province of the Republic of Serbia and make recommendations thereon.

9. The legal system and the regulations of the Republic of Serbia were in compliance with international norms and standards relating to the protection of all persons against violence and the consequences of inhuman or cruel treatment and punishment. Whether individually or in cooperation with international organizations, the authorities were constantly striving to put in place effective mechanisms at all levels of the administration to ensure the coherent implementation of the Convention. Cooperation with the Committee was valuable in that regard. The Republic of Serbia recognized the competence of the Committee under article 20 of the Convention; indeed, members of the Committee had visited Serbia in 2002 under that article. It also recognized the competence of the Committee to consider communications from other States as well as to receive and consider communications from or on behalf of individuals subject to its jurisdiction.

10. The Republic of Serbia, being aware of all inherited problems and the existing challenges, remained determined to make further progress in the process of democratization, to fulfil its international obligations and adopt the highest standards, especially in the domain of human rights and protection against torture, while cooperating fully with the competent international bodies in that regard. The dialogue with the Committee was a part of that process and the open and constructive exchange that would follow from consideration of the report, together with the Committee's recommendations, would contribute to the full implementation of the Convention and to the further improvement of human rights protection in the country.

11. Mr. MARIÑO MENÉNDEZ (Country Rapporteur) thanked the Serbian delegation for its introduction which had enabled the Committee to gauge the importance of the changes that had occurred in the country over the past 15 years; one of the most decisive had been the adoption of a democratic Constitution in 2006. The Committee welcomed the determination of the Republic of Serbia, now a full subject of international law, to meet all the challenges facing it as a member of the international community. Although the report covered the period 1992-2003, it would undoubtedly be necessary to refer back to a number of earlier facts in so far as they had been mentioned by the State party in its written replies to the list of issues. The delegation had said that, as a successor State of the Socialist Federal Republic of Yugoslavia, which had ratified the Convention against Torture in 1991, Serbia was bound by that instrument and also recognized the competence of the Committee to consider communications from individuals under article 22 of the Convention. In cases of succession of States, the successor State was required in particular to meet obligations arising for it from decisions taken by the Committee on communications that had been referred to it. It would therefore be useful to know the position of Serbia with regard to the action it was intending to take, as a successor State, in pursuance of the decisions taken by the Committee when Serbia had been an integral part of the Socialist Federal Republic of Yugoslavia or the State Union of Serbia and Montenegro.

12. The Committee had duly noted that Serbia did not consider itself responsible for implementing the Convention in the Autonomous Province of Kosovo and Metohija, since it was under the authority of UNMIK. The Committee would indeed need to find a way of monitoring the implementation of the Convention against Torture in that Province.

13. The Committee welcomed the main changes brought to its notice by the delegation, namely: ratification of the European Convention on Prevention of Torture, Inhuman or Degrading Treatment or Punishment and establishment of a body to monitor its implementation; adoption of the 2008 Law on Asylum establishing the status of refugee; adoption of a law establishing the Ombudsman's Office and a 2006 law on cooperation with the International Criminal Tribunal for the former Yugoslavia. It was also gratifying to note the establishment of an Office of Prosecutor for war crimes. The cooperation of Serbia with the Committee had proved generally close and fruitful, as demonstrated by the visit made to Serbia by Committee members under article 20 of the Convention. Serbia had unquestionably made progress in bringing its laws and practice into line with its own Constitution and the relevant rules of international law, in particular the "acquis communautaires" of the European Union.

14. Concerning article 1 of the Convention, he first recalled that the Committee usually urged States parties to incorporate into their legislation the full definition of torture set out in the Convention. Although the principle of the prohibition of torture was enshrined in the 2006 Constitution, torture was not specifically defined in Serbian law. It would be interesting to know whether the new Penal Code contained such a definition and provided for punishment proportionate to the seriousness of such acts, and whether torture was excluded from statutory limitations under Serbian criminal law. Since the Convention against Torture had been incorporated into Serbian legislation, it would also be interesting to know whether it could be directly invoked before the courts. Lastly, the Committee would like to know whether the legislation on war crimes contained a specific definition of torture, different from what was found in ordinary law.

15. With regard to articles 2 and 4 of the Convention, whose provisions were closely linked, fuller details would be appreciated about procedures that could be initiated in the event of allegation of torture. Under current Serbian criminal legislation, detainees appeared not to have access to a doctor. He invited comments from the delegation in that connection, particularly on whether the new Penal Code provided for the right of detainees to be examined by a doctor. When there was reason to believe that a person deprived of liberty had been subjected to torture, was an investigation launched automatically? Could the victim file a complaint directly or did the matter have to be referred to the Prosecutor's Office? It would be useful to learn whether Serbia might consider entrusting the body responsible for monitoring the implementation of the European Convention on Prevention of Torture with powers of investigation. It would also be interesting to know whether the decisions of bodies responsible for handling complaints regarding acts of torture could be a subject of appeal before the courts and whether police officers suspected or found guilty of committing an act of torture continued to serve in that capacity or whether they were automatically suspended. Statistical data on cases of suspended

police officers would be appreciated. The Committee would like to have fuller details about the length of pretrial detention and the conditions in which the accused could be placed in solitary confinement for reasons of security, and also about the length of time that individuals could be held in pretrial detention in penitentiary establishments housing mentally disturbed persons. Information would also be welcome about the authorities responsible for monitoring conditions of detention in such establishments. In the same connection, it was stated in paragraph 67 of the replies of Serbia to the list of issues (CAT/C/SRB/Q/1/Add.1) that amendments to the law on social protection were planned; it would be useful if the delegation could explain the reasons why the law governing the situation of persons with mental disabilities placed in penitentiaries and the inspection of detention facilities needed to be amended. The situation in penitentiaries housing mentally disturbed persons seemed clearly to leave much to be desired, particularly in regard to the living conditions of detainees. Had measures been taken to remedy the situation?

16. Concerning the newly-established Ombudsman's Office, and considering that posts of delegates of the Ombudsman had been created at the local and provincial levels, fuller information was required about the linkages between the various levels and the respective powers of the national Office and its local branches. As that institution had apparently been set up to serve as the national preventive mechanism provided for by the Optional Protocol to the Convention, it would be useful to know whether the local branches of the Office of the Ombudsman would play a role in monitoring the implementation of the Optional Protocol and would ensure that visits were made to detention facilities. Since NGOs making such visits were required to conclude a prior agreement with the Department for the Enforcement of Prison Sentences, it would be interesting to know whether NGOs other than Human Rights Watch and the Helsinki Committee for Human Rights had concluded such an agreement.

17. Referring to paragraph 89 of the report, where it was stated that a new judicial system was being developed, he asked the delegation to describe its features and provide information about the degree of independence enjoyed by prosecutors within that system and their role in monitoring the situation of persons deprived of liberty and whether they would have the authority to institute criminal proceedings in cases of torture. Would prosecutors act on a completely independent basis or would they be answerable to the executive branch?

18. Concerning article 3 of the Convention, Serbia had stated that the administrative procedure for considering applications for asylum was governed by administrative regulations and not by a law. Regulations could change, however, and it might be appropriate to upgrade those administrative texts to the status of a law in order to strengthen certain safeguards. It would also be useful to know whether there existed a fast-track procedure for considering the admissibility of applications for asylum comparable to what had been adopted in the countries of the European Union and, if so, whether an appeal against the rejection of an application for asylum under that procedure had a suspensive effect on the prescribed expulsion. Furthermore, Serbia stated in paragraph 93 of its replies to the list of issues that it sought diplomatic assurances from States to which it extradited individuals; it should be made

clear whether Serbia also sought such assurances in cases of return, transfer, expulsion or non-admission to its territory.

19. With regard to articles 6, 7 and 8 of the Convention and considering that, as had been emphasized by the Serbian delegation, Kosovo was not administered by Serbia, he enquired whether there were still cases pending before the Serbian courts for facts that had occurred in Kosovo and Metohija before the adoption of Security Council resolution 1244. It would also be useful to know whether acts covered by the Convention came under Serbian jurisdiction in cases when their victims were Serbian citizens. It was to be recalled in that connection that States generally made every effort to protect the rights of their citizens even when those citizens were outside the territory over which the said States exercised full sovereignty. With reference to article 9 of the Convention, and in the case of proceedings against war criminals, the International Court of Justice, following legal action instituted by Bosnia and Herzegovina against Serbia for genocide, had found the Serbian State not guilty of that crime but had considered that persons – mainly members of paramilitary groups – involved in the Srebrenica massacre were guilty of genocide; it would therefore be appreciated if the delegation could specify whether an investigation had been carried out in that connection and whether the Serbian authorities had taken measures to ensure that Serbian citizens or persons under their jurisdiction alleged to have participated in that genocide would answer for their acts, or whether they were planning to take any such measures. Serbia should also explain the situation concerning the question of the transfer of Mr. Mladic to the International Criminal Tribunal for the former Yugoslavia.

20. Ms. SVEAASS, referring to question 5 on the list of issues, in which Serbia was requested to provide information concerning the inspection of various types of institution housing persons deprived of liberty, requested clarifications concerning the amendments to be made to the law on social protection, the process initiated to that end and the concrete measures taken. She noted that the Serbian Government had shown some openness and that several independent organizations, such as the Helsinki Committee for Human Rights in Serbia, had visited various institutions, in particular those housing disabled children and persons with mental disabilities. She wished to know whether the organization Mental Disability Rights International, which had submitted a report to the Committee, had been able to visit such institutions regularly. The delegation might also inform the Committee what became of the reports and information put forward by those organizations and what follow-up was given to them. It was important not only to have monitoring mechanisms but also to investigate reports and, where appropriate, to institute legal proceedings and compensate victims. It would be useful to know in that regard how far those responsible for violations were held accountable for their acts, how victims were compensated and in what respect treatment programmes had changed. Moreover, it appeared that, in some establishments, persons suffering from psychiatric disorders cohabited with persons suffering from other kinds of disability or from learning difficulties. Any person placed in care should be able to receive treatment in keeping with the diagnosis reached. Since the Ombudsman, whose Office would form part of the national preventive

mechanism, had not been able to attend to such matters, owing perhaps to a lack of resources, that institution should be strengthened.

21. Concerning the compensation owed to victims of war crimes, it was stated in the replies of Serbia to the list of issues that a war crimes witness protection programme had been set up in 2006. That was a very important measure, but it would be desirable to have more information about the compensation of the victims of such crimes. The delegation should make it clear, in particular, whether compensation schemes existed, whether compensation had actually been granted and whether there were more comprehensive schemes for taking care of victims wherever they might be when such compensation was awarded to them. She wished to know, lastly, what sentences were applicable to persons found guilty of war crimes, and in particular the maximum prison sentence, how many decisions had been handed down by the courts for such acts and what the sentences had been.

22. Mr. GAYE (Alternate Country Rapporteur) concurred with the comments made by Mr. Mariño Menéndez about the general situation prevailing in Serbia and commended the efforts made by the State party to establish the rule of law in its territory, strengthen democracy and align itself more closely with the values of the European Union. The persistence of significant normative distortions was very understandable, in view of the difficulties experienced by Serbia; the Serbian Government was to be commended for having initiated a process of normative clarification. Concerning article 10 of the Convention, the State party had indicated that a training programme had been developed for police and law enforcement officers; he would be interested to learn what its results were and whether the programme had been evaluated. On the subject of prisons, the prevailing overcrowding seemed to encourage acts of violence and torture. The Committee would appreciate more detailed information about the actual situation of the prison population, the number of persons in pretrial detention and the length of such detention. Either the judicial system functioned normally, without any backlog, in which case the overcrowding of prisons was due to a problem of infrastructure and resources; or the system moved slowly, in which case it would be advisable to think about reforming it so that accused persons could be brought to trial within a reasonable time.

23. Concerning acts of violence and torture committed against detainees by State officials or by other detainees, it would be useful to have statistical data on the procedures initiated following complaints of such acts. It would also be desirable for the Serbian delegation to provide far more detailed information about the monitoring of conditions of detention and the authorities entrusted with that responsibility. He had taken note of the information supplied by Serbia concerning the functions of the Inspector-General's Office but was of the opinion that one or more judicial authorities should be responsible for monitoring the situation in prisons and wondered whether that was indeed the case. Serbia had stated that the Ombudsman, various NGOs and international organizations made visits to prisons. Were recommendations made to the authorities following such visits and did the authorities take them into account? It would be useful, with regard to the acts of torture and ill-treatment in prisons, to have information concerning available procedures and the possibilities for lodging complaints in such cases, specifying who handled such complaints, what action was taken on them and whether a judicial body

was empowered to undertake a procedure automatically when it was alleged that such acts had been committed. Statistical data should also be provided about such procedures and it should be stated whether they had led to disciplinary or judicial sanctions. On the question of compensation for victims of acts of torture, he requested the State party to provide statistical data on action taken to that end, court decisions, compensatory measures imposed and the publication of such decisions.

24. Concerning article 15 of the Convention, it would be desirable to have information on cases in which evidence had been dismissed on the grounds that it had been obtained by torture and on any court decisions that had been quashed because they had been based on such evidence. On the subject of violence against women and girls, it would be important to make it clear whether an awareness-raising programme had been put in place, whether relevant training was provided to State officials and whether cases of such violence had been referred to the courts. Information should also be provided about the judicial means of redress available to victims. He also requested further details about the criteria for determining the status of refugees and the protection extended to them during the period prior to examination of their application; moreover, statistical data would allow the Committee to form a clearer idea of the situation of refugees in Serbia.

25. With regard to material specifically designed to inflict torture or other cruel, inhuman or degrading treatment, he asked whether Serbia had taken steps to ban the sale and importation of such material. He would also like to know whether Serbia had adopted a law in response to the terrorist threat and, if so, what its implications were for the human rights provisions in force. Lastly, it would be appreciated if it could be confirmed that Serbia was a party to the Optional Protocol to the Convention.

26. Ms. BELMIR welcomed the emphasis placed by the Serbian Government on the establishment of the rule of law. It was noted, in particular, in the report (CAT/C/SRB/2) that the State party was committed to the principle of a fair trial, that judges were independent and autonomous and that they were appointed for life. According to paragraph 98 of that report, however, the rules of procedure of the courts were now defined by the Minister of Justice and must be approved by the President of the Supreme Court. It therefore appeared that the judicial authority would depend on an executive authority for the establishment of rules of procedure which would govern its activities. The Serbian delegation should clarify the situation.

27. It emerged from paragraph 240 et seq. of the report that the decree on special measures adopted on 12 March 2003 restricted certain rights and freedoms of man and the citizen guaranteed by the Constitution and assigned special powers to State organs during a state of emergency. She wished to know what steps had been taken by the State party to ensure observance of the principles relating to the state of emergency set out in the International Covenant on Civil and Political Rights.

28. Recalling that the Human Rights Committee, in its concluding observations of 14 August 2006 (CCPR/C/UNK/CO/1), had expressed concern about the absence of adequate guarantees for the independence of international judges and prosecutors, the low remuneration of local judges and prosecutors,

the low representation of ethnic minorities in the judiciary, the excessive length of civil court proceedings and court backlogs and the frequent failure to enforce judgements, she wished to know whether the State party had taken steps to improve the situation in those respects since that time.

29. Further information would be desirable on the distinction made in paragraph 217 of the report between cases of improper use of powers and cases of criminal offences including acts that could be subsumed under torture; abuse of power was a term usually used to designate acts under administrative law and not acts that violated the physical integrity of persons.

30. It was regrettable that no comprehensive strategy had been applied in the State party to prevent child trafficking and exploitation; that would account for the high number of child victims of sexual exploitation and forced labour. Lastly, it would appear that many refugees were either expelled from the country or, with no legal basis, forced out of makeshift shelters which the authorities ordered to be closed without offering alternative accommodation to the persons concerned. Additional information on the subject would be welcome.

31. Mr. GALLEGOS CHIRIBOGA said that solitary confinement, particularly for extended periods, was a human rights violation that was especially serious when the detainees were disabled. He recalled that the Republic of Serbia was a party to the Convention on the Rights of Disabled Persons with Disabilities.

32. Ms. GAER thanked the State party for its written reply to question 6 on the list of issues concerning the current situation in the various places of detention and prisons for women. She wished to know whether the Republic of Serbia had provided itself with the means of combating the sexual violence suffered by women in prison and, in particular, whether a mechanism had been established to receive their complaints; if so, whether such complaints usually led to criminal proceedings and, where appropriate, resulted in convictions; and whether victims could claim compensation and benefit from rehabilitation measures. On the general question of violence against women and girls, she agreed that the introduction into the Penal Code, in March 2002, of article 118 (a), making marital rape a criminal offence, was a decisive step forward. It would be helpful to know whether that law had already been enforced by the courts and whether complaints had been filed and investigations opened accordingly.

33. Among the problems most often brought to the notice of the Committee members who, in 2002, had undertaken a visit to the State party under article 20 was the fact that complaints against police officers and prison personnel seldom led to the opening of a judicial investigation. Additional information together with statistics on the follow-up given to such complaints, particularly those from members of the Roma community and persons living in the Sandjak region, would be useful.

34. According to numerous reports from NGOs, the thousands of individuals who had been arrested in connection with the investigation into the assassination of former Prime Minister Zoran Djindjic had not had access to a lawyer and, in some cases, had not been allowed to receive visits from

members of their families for nearly two months. The Committee would welcome statistics together with a detailed, updated report on complaints lodged during that period.

35. It had been learned from reliable sources that detainees did not always have access to a doctor to note injuries, even if they made the request, that doctors' reports did not always reflect reality and that doctors were not taken to task if they minimized the injuries noted. The Committee would like to have additional information on the procedures in place to ensure that detainees who so requested were able to see a doctor and to check the truthfulness of medical reports. It would be useful to know whether those who failed to meet such requirements were prosecuted, particularly in cases concerning individuals from the Sandjak region or members of the Roma community. Moreover, according to several sources, including Human Rights Watch, since Kosovo had proclaimed its independence, persons of Albanian origin had been subjected to intimidation, threats and other types of aggression and had received no protection from the police. The Committee would appreciate the delegation's comments on the subject.

36. The Committee was also curious about the role of the Supreme Court, which clearly did not systematically quash decisions handed down by courts of first instance in cases relating to large-scale war crimes tried in the Republic of Serbia. Up-to-date information would therefore be welcome on the action taken following the events in Ovčara related to the Vukovar massacre.

37. Lastly, it would be appreciated if the delegation could say whether the State party had followed the recommendations of the Special Rapporteur on the situation of human rights defenders who, following her visit to the Republic of Serbia, had invited the authorities to express publicly their support for human rights defenders, reported to be often denounced as traitors or even enemies of the State.

38. The CHAIRPERSON said that it was very important that States should recognize the competence of the Committee to receive and consider communications submitted by or on behalf of individuals subject to its jurisdiction who claimed to be victims of a violation of the provisions of the Convention and that that complaint mechanism was effective only if States followed up on the findings of the Committee. However, that had not been so in cases involving the Republic of Serbia of which the Committee had been seized (*Hajrizi Dzemajl et al. v. Serbia and Montenegro*, *Dimitrov v. Serbia and Montenegro*, *Nikolic v. Serbia and Montenegro*, *Dimitrijevic v. Serbia and Montenegro*). It would therefore be useful to know what legal mechanisms had been put in place by the State party to fulfil the obligations it had freely assumed when it had made the declarations provided for in articles 21 and 22 of the Convention.

39. It would be important to know how much time could elapse between the moment when a person stopped by the police was taken to the police station and the moment when he or she had the right to have access to a lawyer; and also whether the Code of Criminal Procedure allowed persons placed in detention to be assisted by a lawyer and to notify their family. He referred in particular to an NGO report relating the case of Zoran Katić who, although

held for six days for a highway offence, had not been allowed to notify his family for the entire period of his detention.

40. Mention had already been made of the possibility in the Republic of Serbia of restricting certain basic rights during a state of emergency; it should be recalled that certain rights and principles of international law were non-derogable, like the prohibition of torture. It would therefore be important to know what legislative provisions laid down the principle that certain rights admitted no exception.

41. He inquired about the outcome of the case of Milan Petrovič, who had died in suspicious circumstances in Požarevac prison on 17 July 2006. He also wished to know when the Supreme Court was expecting to reach a decision in the Antun Siladev case, pending since 2004, in which the defence had invoked a statutory limitation. He recalled in that connection that the case concerned an act of torture, to which, by definition, no statutory limitation was applicable. Furthermore, he asked whether measures had been taken in women's prisons to ensure adequate care for pregnant detainees and young mothers and whether, in general, those prisons employed female staff. Lastly, it would be useful if the Serbian delegation could provide statistics on undocumented persons present in the territory of the Republic of Serbia and on asylum-seekers without identity papers or on those who had been expelled for that reason.

42. Recalling that, under article 2 of the Convention, an order from a superior officer could not be invoked as a justification of torture, he said that one way of making sure that that provision would be properly applied was to establish training programmes based on concrete cases, in order to make low-ranking soldiers aware that there were orders that they were not required to carry out.

43. In the case of *Cvetković v. Serbia*, the European Court of Human Rights had handed down a judgment dated 10 June 2008 in which it had concluded that the Republic of Serbia had violated article 6 of the Convention by keeping the person concerned in detention for a period exceeding the time requirement for instituting criminal proceedings. It would be interesting to know what measures had been taken by the State party to give effect to that judgment. In another case, dating from 2003, concerning a beating inflicted by police officers on a woman participating in a demonstration, it was gratifying to note that the Belgrade court had ordered the State party to compensate the victim for the after-effects from which she had continued to suffer. That decision marked a significant advance in the operation of the judicial system. It would, moreover, be useful to know whether, under Serbian law, the State was held responsible for injury caused by one of its agents and, more specifically, whether the State or the official who had caused the injury was held to be primarily responsible. He wished to know, lastly, whether the State party had taken measures to bring up to standard the electrical fittings in the Curug psychiatric facility, whose poor state of repair was a source of concern to its director and where a fire would have particularly serious consequences since most of the residents were unable to move around unaided.

The first part (public) of the meeting rose at 12.15 p.m.