

Radivoje Ristic v. Yugoslavia, Communication No. 113/1998, U.N. Doc. CAT/C/26/D/113/1998 (2001).

Communication No. 113/1998

Submitted by: Radivoje Ristic [represented by counsel]

Alleged victim: Milan Ristic (deceased)

State party: Yugoslavia

Date of communication: 22 July 1998

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 11 May 2001,

Having concluded its consideration of communication No. 113/1998, submitted to the Committee against Torture 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 author of the communication, his counsel and the State party,

Adopts its Views under article 22, paragraph 7, of the Convention.

1. The author of the communication, dated 22 July 1998, is Mr. Radivoje Ristic, a citizen of Yugoslavia, currently residing in Šabac, Yugoslavia. He claims that an act of torture resulting in the death of his son, Milan Ristic, was committed by the police and that the authorities have failed to carry out a prompt and impartial investigation. The communication was transmitted to the Committee, on behalf of Mr. Ristic, by the Humanitarian Law Center, a non-governmental organization based in Belgrade.

The facts as submitted by the author

2.1 The author alleges that on 13 February 1995 three policemen (Dragan Riznic, Uglješa Ivanovic and Dragan Novakovic) arrested Milan Ristic in Šabac while looking for a murder suspect. One of the officers struck his son with a blunt object, presumably a pistol or rifle butt, behind the left ear,

killing him instantly. The officers moved the body and, with a blunt instrument, broke both thighbones. It was only then that they called an ambulance and the on-duty police investigation team, which included a forensic technician.

2.2 The policemen told the investigators that Milan Ristic had committed suicide by jumping from the roof of a nearby building and that they had an eyewitness to that effect (Dragan Markovic). The medical doctor who came with the ambulance pronounced Milan Ristic dead. The ambulance then left, leaving the body to be collected by a mortuary van. The author claims that after the departure of the ambulance the policemen struck the deceased on the chin, causing injury to his face.

2.3 The author provides a copy of the autopsy report, which concluded that the death was violent and caused by an injury to the brain as a result of a fall on a hard surface. The fall also explained the fractures described in the report. The author also provides a copy of the report by the doctor who came with the ambulance. That report says: "By exterior examination I found weak bleeding from the injury behind the left ear. Through the trousers above the right knee an open fracture of thighbone could be seen with small blood signs; around the wound there were no traces of blood."

2.4 The author contends that the medical reports do not fully tally with each other. The ambulance doctor explicitly states that he noticed no injuries on the face while the autopsy report lists a laceration and bruise on the chin. He challenges the reports, noting that it is hardly possible that a person could fall from a height of 14.65 metres without suffering any injury to the face, heels, pelvis, spine or internal organs and without internal haemorrhaging, leaving only bruises on the left elbow and behind the left ear. Moreover, he notes that there was no blood on the ground.

2.5 At the request of the parents, two forensic experts examined the autopsy report and found it superficial and contradictory, especially in the part referring to the cause of death. According to their report, the autopsy was not performed in accordance with the principles of forensic and medical science and practice and the conclusion is not in agreement with the findings. They proposed the exhumation of the remains and another autopsy by a forensic expert. The author further states that on 16 May 1995 they spoke with the pathologist who had performed the autopsy and visited the alleged scene of the incident. They noted that the autopsy report and the scene had nothing in common, which suggested that the body had been moved. In a written statement dated 18 July 1995 addressed to the Public Attorney's Office, the pathologist agreed that the remains should be exhumed for forensic examination and pointed out that, as he was not a

specialist in forensic medicine, he might have made a mistake or missed some details.

2.6 The parents of the victim filed criminal charges against a number of police officers before the Public Prosecutor in Šabac. On 19 February 1996, the Public Prosecutor dismissed the charges. Under Yugoslav law, following dismissal of a criminal complaint, the victim or the person acting on his behalf may either request the institution of investigative proceedings or file an indictment and proceed directly to trial. In the present case, the parents presented their own indictment on 25 February 1996.

2.7 The investigating judge questioned the policemen allegedly involved as well as witnesses and found no grounds for believing that the alleged criminal offence had been committed. The Criminal Bench of the Šabac District Court endorsed the investigating judge's decision. The Court did not find it necessary to hear the testimony of the two forensic experts and did not consider the possibility of ordering an exhumation and a new autopsy. Besides, the investigating judge delivered to the parents an unsigned statement which the pathologist allegedly made in court when they were not present and which contradicts the one he had made in writing on 18 July 1995. The author further explains that, in addition to the medical contradictions, there were many other conflicting facts that the judicial investigation failed to clarify.

2.8 The parents appealed the decision of the District Court to the Serbian Supreme Court, which on 29 October 1996 dismissed the appeal as unfounded. According to the ruling, the testimony of Dragan Markovic showed without any doubt that Milan Ristic was alive at the time when police officers Sinisa Isailovic and Zoran Jeftic appeared in front of the building in which Mr. Markovic lived. They were responding to a telephone call from a person named Zoran Markovic who had noticed a man at the edge of the terrace from whose behaviour it could be concluded that he was about to commit suicide. Dragan Markovic and the two policemen actually saw Milan Ristic jump from the terrace. There was nothing they could do to stop him.

2.9 The parents again tried to bring the case before the judiciary, but on 10 February 1997 the Šabac District Court ruled that prosecution was no longer possible in view of the decision of the Supreme Court of Serbia. On 18 March 1997, the Supreme Court dismissed their further appeal and confirmed the District Court's ruling.

The complaint

3.1 The author considers that first the police and, subsequently, the judicial authorities failed to ensure a prompt and impartial investigation. All domestic remedies were exhausted without the court ever having ordered or formally instituted proper investigative proceedings. The preliminary investigation by the investigating judge, which consisted of questioning of the accused and some witnesses, did not produce sufficient information to clarify the circumstances of the death and the court never ordered a forensic examination. The court did not order either the hearing of other witnesses, such as the employees of the funeral home, whose testimony could have been relevant to establish the chronology of events. The author further contends that the investigation was not carried out in accordance with the provisions of the Criminal Procedure Code. For instance, the police failed to inform the investigating judge immediately of the incident, although obliged to do so by article 154. The entire on-site investigation was therefore conducted by the police without the presence of a judge. The author further contends that every action aimed at clarifying the incident was initiated by the parents of Milan Ristic and that the competent government bodies failed to take any effective steps to that end.

3.2 On the basis of the above, the author claims that the State party has violated several articles of the Convention, in particular articles 12, 13 and 14. He states that although the parents had the possibility of seeking compensation, the prospect of their being awarded damages was de facto non-existent in the absence of a criminal court judgement.

Observations by the State party

4. On 26 October 1998 the State party informed the Committee that, although all domestic remedies had been exhausted, the communication does not fulfil other necessary conditions provided for by the Convention. It stated, in particular, that no act of torture had been committed, since the deceased did not have any contact at all with State authorities - the police. Accordingly, the communication was not admissible.

The Committee's decision on admissibility

6. At its twenty-second session, in April-May 1999, the Committee considered the question of the admissibility of the communication and ascertained that the same matter had not been and was not being examined under another procedure of international investigation or settlement. The Committee noted the State party's statement that all domestic remedies had been exhausted, and considered that the communication was not an abuse of the right of submission or incompatible with the provisions of the Convention. The Committee therefore decided, on 30 April 1999, that the communication was admissible.

The State party's observations on the merits

7.1 In a submission dated 15 December 1999, the State party gave to the Committee its observations on the merits of the communication.

7.2 The State party reiterates its opinion that the alleged victim was not subjected to torture because he had at no time been in contact with the law enforcement officers, i.e. the police officers. It therefore considers that there is no violation of the Convention whatsoever.

7.3 The State party also underlines that the courts of its country operate independently and have concluded rightfully and in accordance with the law that no investigation should be initiated against the alleged authors of the acts of torture. It points in this regard to the fact that the author of the communication has not submitted all the court decisions and other judicial documents that may bring some additional light to the Committee's consideration of the communication. The said documents were submitted to that effect by the State party.

7.4 The State party then gave its version of the facts. First, it alleges that the alleged victim took alcohol and drugs (Bromazepan) and had already tried to commit suicide some time before. During the afternoon preceding his death, on 12 February 1995, the alleged victim had taken some drugs (in the form of pills) and was in a very bad mood because of an argument he had had with his mother. These elements were, according to the State party, confirmed by four of his friends who spent the afternoon of 12 February 1995 with the alleged victim. The State party also notes that the parents and girlfriend of the alleged victim stated exactly the contrary.

7.5 With respect to the events surrounding the death of the alleged victim, the State party refers to the statement made by the eyewitness, Dragan Markovic, who explained that he had seen the victim standing on the edge of the terrace, 15 metres from the ground and immediately called the police. When the police arrived, the victim jumped from the terrace and neither Dragan Markovic nor the police could prevent it. The State party notes also that the three policemen who are accused of the alleged murder of the victim arrived on the premises after the victim had jumped and therefore concludes that none of them could have taken any action.

7.6 The above elements demonstrate, according to the State party, that the death of the alleged victim was the result of a suicide and that no acts of torture had therefore been committed.

7.7 Moreover, the State party notes that the impartiality of witness Dragan Markovic, as well as of S. Isailovic and Z. Jetvic, the two police officers

who arrived first on the scene, is indisputable and confirmed by the fact that the request for an investigation filed by the author of the communication was directed not against these persons but others.

7.8 Concerning the judicial proceedings that followed the death of the victim, the State party recalls the various steps of the procedure and notes that the main reason that an investigation had not been ordered was the lack of strong evidence to prove a causal link between the behaviour of the three defendant police officers and the death of the victim. The State party contends that the procedure has been scrupulously respected at all steps and that the complaint has been carefully considered by all the magistrates who have had to deal with the case.

7.9 Finally, the State party emphasizes that certain omissions that may have occurred during the events immediately following the death of the alleged victim and that have been referred to by the author of the communication were not important because they do not prove that the alleged victim died as a result of torture.

Comments submitted by the author on the merits

8.1 In a submission dated 4 January 1999, the author refers to relevant jurisprudence of the European Court of Human Rights. In a further submission dated 19 April 2000, the author confirmed the assertions he had made in his communication and gave to the Committee additional observations on the merits of the communication.

8.2 The author first makes some remarks on specific issues raised or ignored by the State party in its observations. In this regard, the author mainly points to the fact that the State party limited itself to arguing that the three police officers allegedly responsible for the murder were not involved in the death of the alleged victim and fails to address the main issue of the communication, which is the failure to carry out a prompt, impartial and comprehensive investigation.

8.3 The author focuses on the following factual elements supporting his claim:

- (a) The inspector in charge of the case took three months to collect the information needed for the investigation;
- (b) The District Court was only requested to initiate an investigation seven months after the death of the alleged victim;

- (c) The District Court failed to take as a starting point for establishing the relevant facts the police report that had been made at the time of the death;
- (d) The eyewitness Dragan Markovic did mention in his only statement the presence at the scene of police officers Z. Jeftic and S. Isailovic and not the presence of the three defendant police officers;
- (e) The Šabac Police Department failed to provide the photographs taken at the scene of the incident, as a result of which the investigating judge transmitted incomplete documentation to the public prosecutor;
- (f) When the parents of the alleged victim proceeded in the capacity of private prosecutor, the investigating judge failed to order the exhumation of the body of the alleged victim and a new autopsy, at the same time agreeing that the original autopsy "had not been performed in line with all the rules of forensic medicine";
- (g) Yugoslav prosecuting authorities failed to hear numerous other witnesses proposed by the author.

8.4 Regarding the State party's contention that the alleged victim had previously attempted to commit suicide, the author indicates that the State party does not substantiate its claim with medical records or police reports, which are usually available in such cases. With regard to other rumours concerning the alleged victim, inter alia that he was addicted to drugs, the author notes that they have always been denied by the family. The author does not know when or whether the four friends of his son were interrogated and neither he nor his lawyer was ever notified of such an interrogation. Moreover, the author notes that three of these witnesses may have been subjected to pressure and influenced for various reasons.

8.5 Concerning the obligation to investigate incidents of torture and cruel, inhuman or degrading treatment or punishment, the author refers to the jurisprudence of the Committee in the case Encarnación Blanco Abad v. Spain (CAT/C/20/D/59/1996), where the Committee observed that "under article 12 of the Convention, the authorities have the obligation to proceed to an investigation ex officio, wherever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed and whatever the origin of the suspicion". He also refers to the decision in the case Henri Unai Parot v. Spain (CAT/C/14/D/6/1990), according to which the obligation of a prompt and impartial investigation exists even when torture has merely been alleged by the victim, without the existence of a formal complaint. The same jurisprudence is confirmed by the European Court of Human Rights (Assenov and Others v. Bulgaria (90/1997/874/1086)).

8.6 Concerning the principle of prompt investigation of incidents of alleged torture or other ill-treatment, the author refers to the Committee's jurisprudence stating that a delay of 15 months before the initiation of an investigation is unreasonable and contrary to article 12 of the Convention (Qani Halimi-Nedzibi v. Austria, CAT/C/11/D/8/1991).

8.7 Concerning the principle of the impartiality of the judicial authorities, the author states that a body cannot be impartial if it is not sufficiently independent. He refers to the case-law of the European Court of Human Rights to define both the impartiality and the independence of a judicial body in accordance with article 6 (1) and 13 of the European Convention on Human Rights and underlines that the authority capable of providing a remedy should be "sufficiently independent" from the alleged responsible author of the violation.

8.8 Concerning the existence of reasonable grounds to believe that an act of torture or other ill-treatment has been committed, the author, again relying on the jurisprudence of the European Court of Human Rights, points to "the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence".

8.9 Concerning the principle of compensation and rehabilitation for an act of torture or other ill-treatment, the author mentions that an effective remedy entails also the payment of compensation.

8.10 The author stresses that, at the time of his submission, five years had already elapsed since his son's death. He contends that, notwithstanding strong indication that grave police brutality had caused the death of Milan Ristic, the Yugoslav authorities have failed to conduct a prompt, impartial and comprehensive investigation able to lead to the identification and punishment of those responsible, and have thus failed to provide the author with any redress.

8.11 Relying on a significant amount of sources, the author explains that police brutality in Yugoslavia is systematic and considers that public prosecutors are not independent and rarely institute criminal proceedings against police officers accused of violence and/or misconduct towards citizens. In such cases, the action is very often limited to a request for information directed to the police authorities alone and the use of dilatory tactics is common.

8.12 Finally, the author specifically refers to the most recent examination of the periodic report submitted by Yugoslavia to the Committee and the latter's subsequent concluding observations, in which it stated that it was "extremely concerned over the numerous accounts of the use of torture by

the State police forces that it has received from non-governmental organizations" (A/54/44, para. 46) and "gravely concerned over the lack of sufficient investigation, prosecution and punishment by the competent authorities ... of suspected torturers or those breaching article 16 of the Convention, as well as with the insufficient reaction to the complaints of such abused persons, resulting in the de facto impunity of the perpetrators of acts of torture" (ibid., para. 47).

Issues and proceedings before the Committee

9.1 The Committee has considered the communication in the light of all information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention. It regrets in this regard that the State party has only provided the Committee with a different account of the event, and notes that more precise information concerning the conduct of the investigation was necessary, including an explanation of why a new autopsy was not carried out.

9.2 It also notes that the author of the communication claims that the State party has violated articles 2, 12, 13, 14 and 16 of the Convention.

9.3 With regard to articles 2 and 16, the Committee first considers that it does not fall under its mandate to assess the guilt of persons who have allegedly committed acts of torture or police brutality. Its competence is limited to considering whether the State party has failed to comply with any of the provisions of the Convention. In the present case, the Committee will therefore not pronounce itself on the existence of torture or ill-treatment.

9.4 With regard to articles 12 and 13 of the Convention, the Committee notes the following elements, on which both parties have been able to submit observations:

(a) There are apparent differences and inconsistencies between the statement made on 18 August 1995 by the doctor who came with the ambulance as to the premise of the cause of death of the alleged victim, the autopsy report of 13 February 1995 and the report made on 20 March 1995 by two forensic experts at the request of the parents of the alleged victim;

(b) Although the investigating judge in charge of the case when the parents of the alleged victim proceeded in the capacity of private prosecutor stated that the autopsy "had not been performed in line with all the rules of forensic medicine", there was no order of exhumation of the body for a new forensic examination;

(c) There is a difference between the statement made on 13 February 1995 by one of the three police officers allegedly responsible for the death of the alleged victim according to which the Police Department had been called for a person who *had committed* suicide and the statements made by another of the above-mentioned police officers, as well as by two other police officers and the witness D. Markovic, according to which the Police Department had been called for a person who *might jump* from the roof of a building;

(d) The police did not immediately inform the investigating judge on duty of the incident in order for him to oversee the on-site investigation in compliance with article 154 of the Code of Criminal Procedure of the State party.

9.5 Moreover, the Committee is especially concerned by the fact that the doctor who carried out the autopsy admitted in a statement dated 18 July 1995 that he was not a specialist in forensic medicine.

9.6 Noting the above elements, the Committee considers that the investigation that was conducted by the State party's authorities was neither effective nor thorough. A proper investigation would indeed have entailed an exhumation and a new autopsy, which would in turn have allowed the cause of death to be medically established with a satisfactory degree of certainty.

9.7 Moreover, the Committee notes that six years have elapsed since the incident took place. The State party has had ample time to conduct a proper investigation.

9.8 In the circumstances, the Committee finds that the State party has violated its obligations under articles 12 and 13 of the Convention to investigate promptly and effectively allegations of torture or severe police brutality.

9.9 With regard to allegations of a violation of article 14, the Committee finds that in the absence of proper criminal investigation, it is not possible to determine whether the rights to compensation of the alleged victim or his family have been violated. Such an assessment can only be made after the conclusion of proper investigations. The Committee therefore urges the State party to carry out such investigations without delay.

10. In pursuance of rule 111, paragraph 5, of its rules of procedure, the Committee urges the State party to provide the author of the communication with an appropriate remedy, and to inform it, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the observations made above.

