



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

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COMMITTEE AGAINST TORTURE

Forty-second session  
(27 April – 15 May 2009)

**DECISION**

**Communication No. 261/2005**

<u>Submitted by:</u>	Mr. Besim Osmani (represented by counsel, the Humanitarian Law Center, Minority Rights Center and the European Roma Rights Center)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Republic of Serbia <sup>1</sup>
<u>Date of complaint:</u>	17 December 2004 (initial submission)

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\* Made public by decision of the Committee against Torture.

<sup>1</sup> On 17 December 2004, the complaint was submitted against Serbia and Montenegro as a State party to the Convention. The National Assembly of the Republic of Montenegro adopted its Declaration of Independence on 3 June 2006, following the referendum carried out in the Republic of Montenegro on 21 May 2006, which took place pursuant to Article 60 of the Constitutional Charter of Serbia and Montenegro. In a letter dated 16 June 2006, the Minister for Foreign Affairs of the Republic of Serbia informed the Secretary-General that "the Republic of Serbia continues to exercise its rights and honour its commitments deriving from international treaties concluded by Serbia and Montenegro. Therefore, the Ministry of Foreign Affairs requests that the Republic of Serbia be considered a party to all international agreements in force, instead of Serbia and Montenegro. In a letter dated 30 June 2006, the Minister for Foreign Affairs of the Republic of Serbia confirmed that "all treaty actions undertaken by Serbia and Montenegro will continue in force with respect to the Republic of Serbia with effect from 3 June 2006. Therefore, all declarations, reservations and notifications made by Serbia and Montenegro will be maintained by the Republic of Serbia until the Secretary-General, as depositary, is duly notified otherwise."

Date of present decision: 8 May 2009

Subject matter: Ill-treatment of the complainant by police officials in the course of the execution of an eviction order and subsequent failure to obtain redress and compensation.

Procedural issues: article 22, paragraph 5 (b)

Substantive issues: Cruel, inhuman or degrading treatment or punishment; the right to a prompt and impartial investigation, wherever there is reasonable ground to believe that cruel, inhuman or degrading treatment or punishment has been committed; the right to complain to, and to have a case promptly and impartially examined by the competent authorities; the right to fair and adequate compensation.

Articles of the Convention: article 16, paragraph 1, read separately or in conjunction with articles 12 and 13, and article 14, read separately or in conjunction with article 16, paragraph 1.

[ANNEX]

**ANNEX**

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

Forty-second session

Concerning

**Communication No. 261/2005**

<u>Submitted by:</u>	Mr. Besim Osmani (represented by counsel, the Humanitarian Law Center, Minority Rights Center and the European Roma Rights Center)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Republic of Serbia
<u>Date of complaint:</u>	17 December 2004 (initial submission)

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

*Meeting* on 8 May 2009,

*Having concluded* its consideration of complaint No. 261/2005, submitted to the Committee against Torture on behalf of Mr. Besim Osmani 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 complainants,

*Adopts* the following decision under article 22, paragraph 7, of the Convention against Torture.

1. The complainant is Mr. Besim Osmani, a citizen of the Republic of Serbia of Roma origin, born in 1967, and residing in the Republic of Serbia. He claims to be a victim of violations of article 16, paragraph 1, read separately or in conjunction with articles 12 and 13, and article 14, read separately or in conjunction with article 16, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Republic of Serbia. He is represented by three non-governmental organizations: the Humanitarian Law Center (HLC), Minority Rights Center (MRC), both based in Belgrade and by the European Roma Rights Center (ERRC), based in Budapest.

**Factual background**

2.1 The complainant was one of the 107 Roma inhabitants of the “Antena” Roma settlement situated in New Belgrade (Novi Beograd) Municipality of Belgrade. The settlement existed since

1962. Four families resided there permanently, while the majority of its inhabitants were displaced Roma from Kosovo, who moved into the settlement in 1999 after their property in Kosovo was destroyed. On 6 June 2000, the “Antena” inhabitants were notified in writing by the Municipality of New Belgrade of its decision of 29 May 2000 to demolish the settlement, and that they should vacate the area by the following evening.<sup>2</sup> The inhabitants did not contest the Municipality’s decision but being very poor and unable to find another place to live at short notice, they did not leave. On 8 June 2000, at approximately 10 a.m., representatives of the Municipality of New Belgrade and a group of some ten uniformed policemen arrived at the settlement in order to execute the eviction order. Shortly after the bulldozers started demolishing the settlement, a group of five-six plainclothes policemen, all of whom, with the exception of the van driver who wore a white suit, were dressed in black, arrived at the scene in a blue Iveco cargo van with a police license plate number BG 611-542.<sup>3</sup> They did not produce any identification documents and were not wearing any insignias. In the course of the eviction, the plainclothes policemen hit a number of the Roma while the uniformed policemen abused them with racist language. The complainant was twice slapped and hit with fists in the head and in the kidneys by a plainclothes officer who was gripping the complainant’s left arm, while the latter was holding his 4 year old son with the right arm. The child was also hit but did not sustain serious injury. The complainant fled the settlement and sought medical treatment for his injuries. The medical certificates of 12 June 2000 stated that he had a haematoma under his left arm and he was advised to see a specialist for an examination of his abdomen.

2.2 As a result of this operation, the complainant’s home and personal belongings, including a mini van, were completely destroyed and he was left homeless together with his wife and three minor children. The first six months after the incident, the complainant and his family lived in a tent on the site of the destroyed settlement. As of 2002, they have lived in the basement of a building where the complainant works on the heating system and maintenance.

2.3 On 12 August 2000, the HLC filed a complaint supported, among others, by five witness statements with the Fourth Municipal Public Prosecutor of Belgrade claiming that the complainant’s mistreatment by unidentified perpetrators and the conduct of the police in the course of the settlement’s demolition breached article 54 (causing light bodily injury) and article 66 (abuse of authority) of the Criminal Code.

2.4 According to article 19, paragraph 1, of the Criminal Procedure Code of the Republic of Serbia (CPC), formal criminal proceedings can be instituted at the request of an authorized prosecutor, that is, either the public prosecutor or the victim. All criminal offences established by law are prosecuted *ex officio* by the state through the public prosecutor service, unless the law explicitly states otherwise, which is not the case as far as articles 54 and 66 of the Criminal Code are concerned. According to articles 241, paragraph 1, and 242, paragraph 3, of the CPC, a formal judicial investigation can only be undertaken against an individual, whose identity has been established. When the identity of the alleged perpetrator of a criminal offence is unknown,

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<sup>2</sup> The explanation given for the adoption of the decision was that the settlement has been situated on state-owned land and its inhabitants did not have legal title to reside there at the time in question.

<sup>3</sup> According to the testimony of another witness, one M., the number of the van’s license plate is BG 611-549.

the public prosecutor can request the necessary information and/or take the necessary steps in order to identify the individual(s) at issue. According to article 239, paragraph 1, of the CPC, the prosecutor may exercise this authority through the law enforcement agencies or with the assistance of the investigating judge. If the public prosecutor finds, based on the totality of evidence, that there is reasonable doubt that a certain person has committed a criminal offence prosecuted *ex officio*, he requests the investigating judge to institute a formal judicial investigation in accordance with articles 241 and 242 of the CPC. On the other hand, if the public prosecutor decides that there is no basis for the institution of a formal judicial investigation, he must inform the complainant/victim of this decision, who can then exercise his/her prerogative to take over the prosecution of the case on his/her own behalf – that is, in the capacity of a “private prosecutor” as provided by article 61, paragraphs 1 and 2, and article 235, paragraph 1, of the CPC.

2.5 On 10 April 2001, in the absence of a reply from the Public Prosecutor’s Office, HLC sent a request for information concerning the investigation to the Fourth Municipal Public Prosecutor. In a letter dated 19 April 2001 and received on 16 May 2001, HLC was informed that the complaint had been rejected, as there was no reasonable doubt that any criminal acts subject to official prosecution had been committed. No information was provided about the steps taken by the Public Prosecutor’s Office to investigate the complaint. The victim’s representative was advised, in accordance with article 60, paragraph 2,<sup>4</sup> of the CPC, to take over the prosecution of the case before the Municipal Court of Belgrade within eight days. To that end, the victim’s representative was invited to submit either a proposal to the investigating judge to conduct the investigation against an unidentified perpetrator or a personal indictment against the officials for the crimes proscribed by articles 54 and 66 of the Serbian Criminal Code. The Deputy Public Prosecutor listed the names of four members of the Department of Internal Affairs of New Belgrade who provided assistance to the Department of Civil Engineering and Communal Housing Affairs in carrying out the eviction and demolition: Sergeant Major B., Staff Sergeants A. and N., and Master Sergeant J.. However, the letter did not mention the names of the plainclothes policemen who participated in the eviction, thus preventing the complainant from formally taking over the prosecution of the case.

2.6 On 23 May 2001, HLC filed a request before the Fourth Municipal Court of Belgrade to reopen the investigation into the matter. To help identify the perpetrators, HLC requested the Court to hear, in addition to the Roma witnesses, the policemen named in the Deputy Public Prosecutor’s letter of 19 April 2001, as well as the representatives of the Department of Civil Engineering and Communal Housing Affairs who had been present on 8 June 2000.

2.7 Between 25 December 2001 and 10 April 2002, the four uniformed policemen were heard by the investigating judge, making contradictory statements regarding the police’s participation in the demolition of the “Antena” settlement. Master Sergeant J. stated that due to the number of the settlement’s inhabitants and their reluctance to vacate the settlement, the group of policemen called for additional assistance and soon a vehicle with five or six colleagues in plainclothes

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<sup>4</sup> As of 29 March 2002, when a new Criminal Procedure Code entered into force, the number of the article in the new Code is 61, paragraph 1. The substance of the provision remained the same.

from the Police Station of New Belgrade arrived at the scene.<sup>5</sup> Sergeant Major B., who was the commander of the Bezanija Police Department,<sup>6</sup> stated that police support was provided at two locations in the settlement and that no plainclothes policemen were present at his location. Sergeant A. declared that he was present at the destruction of the settlement but did not see any violence taking place. He did not recall whether the other Ministry of Internal Affairs' officers, other than those from the Bezanija Police Department, were present at the scene and stated that, as a rule, assistance is provided by the uniformed rather than by plainclothes policemen. Sergeant N. stated that he did not participate in this operation. None of the policemen who were present during the eviction and demolition of the "Antena" settlement, could remember the names of the colleagues or subordinates who also took part in it.

2.8 On 17 May 2002, the investigating judge heard the complainant. His testimony was supported by the statements of the other two inhabitants of the settlement who were also heard as witnesses by the investigating judge. All of them stated that they would be able to recognize the plainclothes policemen who hit them.

2.9 On 4 June 2002, in reply to the investigating judge's request for information on the policemen present at the eviction and demolition of the "Antena" settlement, the Department of Internal Affairs of New Belgrade stated that the execution of the decision of the New Belgrade Municipality started on 7 June 2000. On that day, police officials J., O. and T. visited the settlement and requested the inhabitants to start evacuating their homes. The operation continued the next day by the Sergeants A. and N. together with the Commander B.

2.10 On 17 July 2002, the investigating judge interviewed P., one of the Building Construction inspectors present during the operation. He stated that the "Antena" inhabitants had been aware of the plan to demolish their settlement a month before the actual demolition was to take place and that on 7 June 2000 they had been given a last 24 hours vacation notice. On 8 June 2000, the "Antena" inhabitants gathered at the settlement and it seemed to him that they had brought Roma from other settlements to prevent the demolition. Building Construction inspectors requested assistance from the Bezanija Police Department, which sent to the settlement uniformed and plainclothes policemen. The witness confirmed that a few kicks and slaps in the faces of the Roma inhabitants had taken place but stated that he did not recall that truncheons were used on them. He declared, however, that the plainclothes policemen did not interfere in the conflict; they were taking a Roma resisting the settlement's demolition into police custody. He further stated that the demolition did not proceed before the inhabitants took their belongings out of the barracks.<sup>7</sup>

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<sup>5</sup> In his testimony before the court, Master Sergeant J. stated that 'the force and clubs were used by officers and colleagues in plainclothes from the Department of Internal Affairs of New Belgrade', whereas his colleagues and him 'did not use force on that occasion'. For a part of Master Sergeant J.'s testimony referred to by the State party in support of its arguments, see paragraph 4.7 below.

<sup>6</sup> Bezanija Police Department is a sub-department of the Department of Internal Affairs of New Belgrade.

<sup>7</sup> For a part of P.'s testimony referred to by the State party in support of its arguments, see paragraph 4.7 below.

2.11 On 12 September 2002, the Fourth Municipal Court of Belgrade informed the HLC<sup>8</sup> that the investigation had been concluded and that, according to the provisions of Article 259, paragraph 3, of the CPC, the victims' representative could lodge an indictment in the case<sup>9</sup> within 15 days or otherwise it would be deemed that they have waived the prosecution.

2.12 On 2 October 2002, the complainant's and the other victims' representative filed a new request to supplement the investigation with the Fourth Municipal Court of Belgrade, in accordance with the procedure established by article 259, paragraph 1, of the CPC. The motion stated that, in breach of article 255 of the CPC, the investigating judge did not provide the parties with the names of the plainclothes policemen and therefore, they were unable to formally take over the prosecution of the case. It was proposed, *inter alia*, that the court conduct a new hearing of Master Sergeant J. and that it resend a request to the Department of Internal Affairs of New Belgrade to provide information on the identity of the plainclothes policeman involved in the incident.

2.13 On 6 November 2002, in response to this request, the Fourth Municipal Court of Belgrade sent an inquiry to the Department of Internal Affairs of New Belgrade regarding the names of the Department's officers who provided assistance to the Municipality of New Belgrade and to the Bezanija Police Department but indicated by mistake an erroneous date for the incident, that is, 8 June 2002. As a result, the Department of Internal Affairs replied on 20 November 2002 that it had not provided any assistance to the abovementioned bodies on the said date. On 22 November 2002, a second similar request was sent to the Department of Internal Affairs by the Fourth Municipal Court of Belgrade. This time, the letter did not mention the date of the incident but required the names of the plainclothes policemen who had assisted the policemen from the Bezanija Police Department during the destruction of the "Antena" settlement. On 4 December 2002, Master Sergeant J. replied that he did not know the names of the plainclothes policemen who intervened during the destruction of the "Antena" settlement but he did not deny that such intervention occurred. Also, on 13 November 2002, Master Sergeant J. was re-interviewed by the Court. He repeated his previous statement adding that "[...] if necessary, I could try to find out precisely which police officers were present and inform the court about it".

2.14 On 26 December 2002, the Fourth Municipal Court of Belgrade informed the victims' representative that the investigation has been concluded and recalled that, according to the provisions of Article 259, paragraph 3, of the CPC, the victims' representative could lodge an indictment in the case within 15 days. Otherwise it would be deemed that they had waived the prosecution.

2.15 On 10 January 2003, the victims' representative notified the Court that the involvement of the plainclothes policemen in the physical abuse of Roma on 8 June 2000 was clearly supported by the victims' statements, as well as by the witnesses P. and Master Sergeant J. and requested the Court to continue its investigation until the perpetrators had been identified. On 6 February 2003, the Department of Internal Affairs of New Belgrade, in response to a third request from the Court dated 30 January 2003, sent a letter providing the names of two officers G. and A., who had provided assistance during the incident of 8 June 2000.

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<sup>8</sup> The Court's letter was received on 18 September 2002.

<sup>9</sup> See paragraph 2.5 above.

2.16 On 25 March 2003, HLC sent a letter of concern to the Minister of Internal Affairs, complaining about the lack of cooperation of the Department of Internal Affairs of New Belgrade in the investigation and asking the Minister to disclose the names of the plainclothes policemen who provided assistance during the incident of 8 June 2000 at the “Antena” settlement in New Belgrade.

2.17 On 8 April 2003, the Court interviewed policemen G., who stated that he was not present at the destruction of “Antena” settlement and had no direct knowledge of the incident of 8 June 2000. He confirmed that, as a rule, assistance in such situations was provided by the uniformed rather than by plainclothes policemen but, in emergencies, policemen in plainclothes could be dispatched. He further stated that the names of the policemen assigned to different tasks were kept in a registry in the police department. Should the Court require such information, it would receive a report based on the information contained in the registry.

2.18 By letter dated 6 May 2003,<sup>10</sup> the victims’ representative was again informed that the investigation has been terminated by the Fourth Municipal Court of Belgrade and that he could lodge an indictment within 15 days to proceed with the criminal prosecution in the case. However, once again, the perpetrators were not identified by name. On 27 May 2003, the representative requested the Court not to finalize the investigation in the case until the Ministry of Internal Affairs had sent its response to HLC’s request that it provide the names of the plainclothes policemen involved in the incident. On 3 June 2003, HLC sent a reminder to the Ministry of Internal Affairs. On 20 June 2003, an adviser to the Minister of Interior informed HLC that the criminal investigation conducted by the Fourth Municipal Court of Belgrade was not able to confirm the participation of plainclothes policemen in the incident of 8 June 2000. The letter concluded that, upon the request of the Court, the Secretariat of Belgrade<sup>11</sup> should present all required information regarding the conduct of the policemen.

2.19 On 20 December 2003, the victims’ representative was notified for the fourth time that the Court had concluded the investigation in the case and was invited to lodge the indictment within 15 days. As before, the names of the perpetrators were not identified, thus making it impossible for the victims to formally take over the prosecution of the case.

2.20 Pursuant to domestic law, the complainant had two different procedures for seeking compensation: (1) criminal proceedings, under Article 201 of the CPC, which should have been instituted on the basis of his criminal complaint, or (2) a civil action for damages under Articles 154 and 200 of the Serbian Law on Obligations. Since the prosecutor failed to identify the perpetrators and no formal criminal proceedings were instituted by Fourth Municipal Public Prosecutor of Belgrade, the first avenue remained closed. Concerning the second avenue, the complainant did not file a civil action for compensation given that it is standard practice of the Serbian courts to suspend civil cases for damages arising out of criminal offences until prior completion of the respective criminal proceedings.

2.21 Had the complainant decided to sue for damages immediately following the incident, he would have faced another procedural impediment. Articles 186 and 106 of the CPC require that

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<sup>10</sup> The letter was received by the victims’ representative on 12 May 2003.

<sup>11</sup> Police Headquarters in Belgrade.



both parties to a civil action – the plaintiff and the respondent alike – be identified by name, address and other relevant personal data. Since the complainant was unable to provide this information, instituting civil action for compensation would clearly have been procedurally impossible and would have been rejected by the civil court out of hand.

### **The Complaint**

3.1 The complainant submits that the State party has violated article 16, paragraph 1, read separately or in conjunction with articles 12 and 13; and article 14, read separately or in conjunction with article 16, paragraph 1, of the Convention.

3.2 With regard to exhaustion of domestic remedies, the complainant submits that international law does not require that a victim pursue more than one of a number of remedies which may be capable of redressing the violations alleged. Where there is a choice of effective and sufficient remedies, it is up to the complainant to select one. Thus, having unsuccessfully exhausted one remedy, a complainant "cannot be criticised for not having had recourse to legal remedies which would have been directed essentially to the same end and would in any case not have offered better chances of success".<sup>12</sup> The complainant refers to the jurisprudence of the European Commission which held that where domestic law affords both civil and criminal remedies for treatment allegedly contrary to article 3 of the European Convention on Human Rights, a complainant who initiated criminal proceedings against a police officer allegedly responsible need not also have filed a civil action for compensation.<sup>13</sup> Moreover, the complainant submits that only a criminal remedy would be effective in the instant case; civil and/or administrative remedies do not provide sufficient redress.

3.3 The complainant claims that he was subjected to acts of cruel, inhuman and degrading treatment and punishment by state officials, in violation of article 16. He submits that the assessment of the level of ill-treatment depends, *inter alia*, on the vulnerability of the victim and should thus also take into account the sex, age, state of health or ethnicity of the victim. The level of ill-treatment required to be "degrading" depends, in part, on the vulnerability of the victim to physical or emotional suffering. The complainant's association with a minority group historically subjected to discrimination and prejudice<sup>14</sup> renders the victim more vulnerable to ill-treatment for the purposes of article 16, paragraph 1, particularly where, as in the Republic of Serbia, law enforcement bodies have consistently failed to address systematic patterns of violence and discrimination against Roma. He suggests that a "given level of physical abuse is

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<sup>12</sup> See A v. France, Judgment of 23 November 1993, Series A no. 277-B; Mialhe v. France, Judgment of 25 February 1993, Series A no. 256-C.

<sup>13</sup> See Bethlen v. Hungary, Application 26692/95, admissibility decision of 10 April 1997.

<sup>14</sup> Reference is made, *inter alia*, to the United Nations Human Rights Committee's Concluding Observations on Serbia and Montenegro in 2004, Human Rights Watch's World Report of 2003-2004, the International Helsinki Federation Annual Report on Serbia and Montenegro of 2004, Amnesty International's report "Serbia and Montenegro: Amnesty International's concerns in Serbia and Montenegro" of 2003, 2003 Global Survey on Forced Evictions of the Centre on Housing Rights and Evictions, 2003 report on human rights in Serbia and Montenegro of the Belgrade centre for Human Rights and the HLC's report "Roma in Serbia (1998-2003)".

more likely to constitute ‘degrading or inhuman treatment or punishment’ when motivated by racial animus and/or coupled with racial epithets”.

3.4 The complainant submits that in violation of article 12, read in conjunction with article 16, paragraph 1, of the Convention, the Serbian authorities failed to conduct a prompt, impartial, and comprehensive investigation into the incident at issue, capable of leading to the identification and punishment of those responsible, despite reasonable grounds to believe that an act of cruel, inhuman and degrading treatment or punishment had been. He refers to the Committee’s findings in Abad v. Spain 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.” The Committee also found that “a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein”.<sup>15</sup> In order to comply with the requirements of article 12, read in conjunction with article 16, paragraph 1, the State party’s authorities had to conduct not a pro forma investigation but an investigation capable of leading to the identification and punishment of those responsible. Following the Deputy Public Prosecutor’s decision of 19 April 2001 to terminate the investigation, as prescribed by law, the victim had the right to take over the prosecution of the case and finally lodge the indictment. However, the failure of the prosecutor and the investigating judge to identify the perpetrators prevented the complainant from exercising this right.

3.5 The complainant also alleges a violation of article 13, read in conjunction with article 16, paragraph 1, because his right to complain and to have his case promptly and impartially examined by the competent authorities was violated. He submits that the ‘right to complain’ implies not just a legal possibility to do so but also the right to an effective remedy for the harm suffered.

3.6 The complainant finally invokes a violation of article 14, read together with article 16, paragraph 1, because of the absence of redress and of fair and adequate compensation. He refers to the European Court of Human Rights jurisprudence on the interpretation of the term “effective remedies” that should be afforded at the domestic level, stating that whenever an individual has an arguable claim that he has been subjected to inhuman or degrading treatment by the police or such agents of the state, the notion of an effective remedy entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible.<sup>16</sup>

#### **The State party’s observations on admissibility and merits**

4.1 In a submission dated 23 May 2005, the State party challenged the complainant’s claim that the Fourth Municipal Public Prosecutor did not take any steps in response to the complaint submitted by the HLC on 12 August 2000 until 19 April 2001. The State party submitted that

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<sup>15</sup> Encarnación Blanco Abad v. Spain, Communication No. 59/1996, Views adopted on 14 May 1998, paras. 8.2 and 8.8. See also, Assenov and Others v. Bulgaria, Judgment of 28 October 1998, para.102.

<sup>16</sup> Assenov v. Bulgaria, supra note 15, para.102.

according to the case file available with the Fourth Municipal Public Prosecutor and an interview with the Deputy Case prosecutor, HLC's complaint was received on 15 August 2000. On 18 August 2000, the Prosecutor requested the Department of Internal Affairs of New Belgrade to provide information "on persons who assisted the Department of Civil Engineering and Communal Housing Affairs of New Belgrade in the demolition, on whether force was used, including which type and manner and for what reasons it was used, whether residents resisted the implementation of the decision of the Department".

4.2 On 9 November 2000, the Prosecutor received a report from the Secretariat of Internal Affairs of Belgrade, Internal Affairs Control Section. On 23 November 2000, the Prosecutor requested the Secretariat to return to him the original complaint, which was forwarded by the former on 13 February 2001. According to the report, on 7 June 2000, officers of the Bezanija Police Department visited the settlement and noted that the inhabitants were packing up slowly, dismantling their dwellings and looking for a new place to live. Accordingly, there was no police intervention against the inhabitants on that date. On 8 June 2000, the municipal administration authorities "demolished illegally built dwellings [...] which took place without disturbance of public peace and order. The police provided assistance, [...] but the assistance consisted of physical presence, short of taking any measure or form of intervention, either before or after the demolition of the dwellings".

4.3 On 19 February 2001, the Prosecutor decided to reject the complaint under article 153, paragraph 4, in connection with paragraph 2 of the Criminal Procedure Law (CPL). According to article 45, paragraph 2, subparagraph 1, of the CPL that was in force at that time, the Prosecutor was empowered to take the necessary measures to uncover criminal offences and to identify alleged perpetrators. Article 46, paragraph 2, sub paragraph 1, of the CPC that subsequently entered into force makes the Prosecutor responsible for pre-trial procedure. The State party concludes that under the CPL, the Prosecutor had very limited powers in the pre-trial procedure and had to rely on the Ministry of Internal Affairs. According to the Ministry's report, there were no illegal activities in the case in question and taking into account the procedure for obtaining the evidence under the CPL, the Prosecutor correctly found that there was no reasonable doubt that a criminal offence under article 66 of the CPL, or any other offence prosecuted *ex officio* had been committed.

4.4 On 19 April 2001, the above decision with a remedy in the sense of article 60, paragraph 2, of the CPL was forwarded to the HLC. In this regard, the State party submits that the CPL and the CPC clearly distinguish between the complainant and the injured party. Only the injured party has the right, in the sense of article 60, paragraph 2, of the CPL and article 61, paragraph 2, of the CPC to take over criminal prosecution if the Prosecutor rejects the complaint. In this situation, the injured party has the right of the Prosecutor and not that of a private complainant. Since the HLC filed the complaint without submitting the full powers of attorney of the injured party represented in this case, the Prosecutor could not inform the HLC of the rejection of the complaint. Moreover, the injured party, the complainant, could not be informed either, since after the settlement's demolition, his address was no longer valid and no alternative address was provided. It was only after the HLC submitted the full powers on 13 April 2001 that the Prosecutor informed the organization, within the shortest possible time, of the rejection of the complaint and rendered detailed advice on the remedy.

4.5 In 2000 and 2001, the only independent authority to control the legality of the work of the Ministry of Internal Affairs was the Internal Affairs Control Section. It investigated all cases in which force was used and carried out internal control on the basis of complaints of serious misconduct and /or reports of excessive use of force. This Section has been transformed in the meantime into the post of the General Inspector of the Public Security Department.

4.6 With regard to the complainant's and other victims' statement that they would be able to recognize the plainclothes policemen who hit them should they be given this opportunity, the State party submits that "while a witness statement constitutes evidence, identification is only one measure to establish its authenticity." Since the Internal Affairs Control Section concluded that the Ministry of Internal Affairs officers acted in full compliance with the law, the Prosecutor could not request identity parade as it would have been superfluous. In any event, the injured party taking over the prosecution has the right to request action to determine identification during the proceedings.

4.7 The State party further submitted that the Court had difficulties in subpoenaing the injured parties, since the HLC failed to provide their proper addresses. As a result, the Court was able to subpoena the witnesses only on 7 May 2002 and so heard them almost a year after the prosecution was taken over by the injured party. The State party referred to the statement made by one of the "Antena" inhabitants, before the investigating judge of the Fourth Municipal Court of Belgrade where he indicated, *inter alia*, that "these individuals did not have any insignia and wore civilian clothes and used only their arms and legs during the attack on the settlement's residents." He added that his son was pushed by a truncheon when the latter bowed to pick up his cell phone from the ground and that "the police officer did it to move him away from the melee, as my son risked to be hit, felled and run over." Sergeant Major B., an officer of the Department of Internal Affairs of New Belgrade testified in January 2002 that "the residents [...] booed us and protested the demolition [...]." In addition to Sergeant J.'s testimony of 10 April 2002 quoted by the complainant,<sup>17</sup> the State party referred to a part of his statement where he explained that several attempts have been made to serve demolition decisions on the settlement's residents. On 8 June 2000, the residents "refused to move, the police tried to talk them into it but they would not listen." He recalled that the plainclothes policemen who arrived at the scene used the truncheons on the most reluctant inhabitants who had lain down in front of the bulldozers to prevent the demolition, but did not remember who was using the truncheons and on whom. He further recalled that no one insulted, kicked or hit the Roma with the fists. The physical contact was limited to holding the inhabitants by the arm to drag them away from the area; one or two of them were ultimately arrested and taken into custody to the Bezanija Police Department. As for the Building Construction inspector's testimony referred to by the complainant,<sup>18</sup> the State party refers to a part of his statement where he mentioned that "[...] the police officer from the Bezanija Police Station that assisted us tried to solve the problem with the Roma peacefully and, really I cannot remember now if insults were exchanged between them."

4.8 The State party concluded that the facts mentioned above prove that on the day in question the police tried to act in accordance with the standards governing the intervention against a large number of people and endeavoured to apply force discriminately. In particular, they tried to use a

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<sup>17</sup> See paragraph 2.7 above.

<sup>18</sup> See paragraph 2.10 above.

two-pronged approach to protesters: the policemen showed maximum respect towards those who offered passive resistance and carried them away, while a number of protesters offered active resistance to policemen in implementing the planned intervention and encouraged individual Roma to oppose the police, provoking physical contact with the police in which the policemen were compelled to apply physical force by using truncheon and by hitting and kicking protesters in order to remove them.

4.9 Further, the State party provided extensive information on existing legal avenues available to the injured party to exercise its right to compensation through the institution of criminal, civil and administrative proceedings. It claims that by filing a claim for compensation under article 172 of the Contracts and Torts Law, the complainant could have prosecuted the Republic of Serbia and the Ministry of Internal Affairs in a civil lawsuit. It is not necessary to establish the names of all individuals who caused the damage in order to institute and conduct these proceedings. Because the legal person (the Republic of Serbia) is responsible for the damage caused by its agencies to third persons in the discharge or in connection with the discharge of their functions, it suffices to establish that the employees of the Ministry of Internal Affairs have been involved. In deciding on the lawsuit, the court would have had to determine whether the intervention of the Ministry of Internal Affairs' officers was justified or not. If the court finds that the intervention was not justified, it would have accepted the request and ordered the State to compensate the injured party. If the intervention was considered justified, the court would have assessed whether excessive force was used and if, in the court's opinion, it was – the request would have been accepted and the State would have been ordered to compensate the injured party.

4.10 Finally, the State party claimed that the complainant had not exhausted all domestic remedies, as the civil lawsuit described above under the objective responsibility provision is a more effective procedure to obtain redress and stands a better chance of success than the criminal procedure. It further noted that the injured party's request to institute criminal proceedings under article 66 of the Criminal Law against policemen involved in the operation on 8 June 2000 would come under the statute of limitations on 8 June 2006.

### **Complainants' comments on the State party's observations**

5.1 On 6 July 2005, the complainant submitted his comments in which he maintained all his initial claims and stressed that the State party has failed to respond to all aspects of the communication on the alleged breaches of articles 13 and 14 and to certain aspects of article 12. He further stated that the State party's silence could be taken to mean that it has no objections on these points.

5.2 As to the alleged failure to exhaust domestic remedies, the complainant contended that the State party's arguments on the theoretical availability of a separate law suit were unfounded. As implicitly supported by the Committee's jurisprudence, there is no requirement for a victim to pursue multiple avenues of redress<sup>19</sup> – criminal, civil and administrative – in order to be deemed to have exhausted domestic remedies. Moreover, given that the wrong suffered by the

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<sup>19</sup> Henri Unai Parot v. Spain, Communication No. 6/1990, Views adopted on 2 May 1995, para. 10.4 and Encarnación Blanco Abad v. Spain, supra n.15, para. 8.6.

complainant clearly falls under article 16 of the Convention, which requires criminal redress, civil and administrative remedies alone<sup>20</sup> would not have provided sufficient redress. Finally, criminal proceedings in the Republic of Serbia are generally quicker and more efficient than civil proceedings.

5.3 The complainant further submitted that the authorities are bound *ex officio* to investigate and punish ill treatment when they have knowledge of it. Both under the CPL and under its successor, the CPC, public prosecutors are obliged to take all steps and to adopt all necessary measures in order to uncover relevant evidence and investigate a case thoroughly. It is irrelevant whether the complainant initiated separate civil proceedings, since the State party is obliged to investigate and to prosecute, as the evidence clearly indicated there had been an abuse.

5.4 The complainant challenged the State party's claim that the law in force at the relevant time limited the public prosecutor's powers in the conduct of criminal proceedings, particularly regarding the police. The public prosecutor was and is empowered with specific competences and powers throughout the entire criminal procedure. He could take over prosecution from the injured party as the prosecutor where, as in the present case, the criminal offences involved are prosecuted *ex officio*. The complainant submitted that under article 155 of the CPL, the public prosecutor had power to instruct both the police and the investigating judge, whereas under article 239 of the CPC, the public prosecutor's power extends only to the investigating judge in this respect. Both laws empower the investigating judge to take actions on his own motion and upon the motion of the public prosecutor. Proper examination of the allegations of mistreatment at the hands of the police would mean, *inter alia*, ordering the identification of the police officers dressed in civilian clothes through conducting an identity parade for the victim. Various State party bodies could have ordered the police to provide this information through the Ministry of Internal Affairs, the investigating judge or the public prosecutor. The complainant concluded that any differences between the CPC and the CPL have no bearing on the arguments in the present case, especially concerning the State party's obligations under articles 12, 13 and 14 of the Convention.

5.5 The complainant questioned the State party's assertion that during 2000 and 2001 the only independent authority with the powers to regulate police conduct was the Internal Affairs Control Section. The fundamental principle of the division of powers vests the judiciary with this authority.

5.6 The complainant noted the State party's confirmation that there were plainclothes officers on duty and its argument that they used only police truncheons in a legal fashion (no use of fists, kicking, etc.).<sup>21</sup> This assertion does not correspond to the testimonial evidence of abuse corroborated by medical reports and photographs. At the same time, no competent state authority revealed the identity of these plainclothes officers to the complainant, thus absolutely and definitively preventing him from exercising his right to take over the prosecution and ultimately bringing the perpetrators to justice. Even if the identity of the plainclothes officers was not contained in the report, there were numerous ways through which the authorities could have requested this information.

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<sup>20</sup> See paragraphs 4.9 and 4.10.

<sup>21</sup> See paragraph 4.7 above.

5.7 With regard to the duty to investigate under article 12, the complainant submitted that no internal report by the State party's organs and bodies describing an investigation of the events of 8 June 2000 had been made available to the complainant at any point during the domestic proceedings. As such, he had no input in this internal investigation, no ability to examine testimonial or other evidence provided by the police, no opportunity to confront the plainclothes officers who might have been interviewed nor ensure that all the implicated officers were interviewed. Lastly, the complainant noted that the State party continued to withhold the report of the Internal Affairs Control Section from him and the Committee. He referred to the Committee's jurisprudence recognizing that the state's failure to inform the complainant about whether an internal investigation was being conducted and of its results effectively prevents the complainant from pursuing a private prosecution and thus violates the State party's obligations under article 12.<sup>22</sup>

### **Supplementary submissions from the State party**

6. In a further submission dated 16 November 2005, the State party transmitted a note from the Public Prosecutor's Office, containing similar arguments to those submitted in the State party's observations of 23 May 2005. In addition, the State party challenged the complainant's allegation that a civil lawsuit would not have had a deterrent effect on the perpetration of the criminal offence of abuse of authority.<sup>23</sup> The publication in the media of a court's judgement directing the State to compensate for the acts that had been committed by the officers of the Ministry of Internal Affairs would have probably led the Ministry to take internal disciplinary sanctions. The State party also disagreed with the complainant's statement that civil proceedings take longer than criminal proceedings. The State party cited the example of the case of Milan Ristic<sup>24</sup> where a civil action was initiated after a criminal action and the court ordered the State to compensate the family of the victim while the criminal investigation was still pending. The State party concluded that the judicial authorities acted in accordance with domestic legislation and the Convention. Nothing more could be done without a more active collaboration of the complainant or his counsel with the public prosecutor.

### **Decision of the Committee on admissibility**

7.1 On 23 November 2006 the Committee considered the admissibility of the communication. It took note of the arguments advanced by the complainant and his assertion that he had exhausted domestic remedies. The Committee also noted that the State party had disputed this fact and provided a detailed description of the legal avenues available to the injured party to exercise its right to compensation through the institution of criminal, civil and administrative proceedings. It also took note of the State party's argument that the civil lawsuit filed under the objective responsibility provision of the Contracts and Torts Law was a more effective procedure to obtain redress than the criminal procedure. In this regard, the Committee considered that the State party's failure to initiate *ex officio* an investigation into the complainant's allegations and to reveal the identity of the plainclothes officers present during the incident, thus permitting the

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<sup>22</sup> Dragan Dimitrijevic v. Serbia and Montenegro, Communication No. 207/2002, Views adopted on 24 November 2004, paragraph 5.4.

<sup>23</sup> See paragraph 5.2 above.

<sup>24</sup> Milan Ristic v. Yugoslavia, Communication No. 113/1998, Views adopted on 11 May 2001.

complainant to take over the prosecution, rendered the application of a remedy that may bring, in the particular circumstances of the present case, effective and sufficient redress to the complainant effectively impossible. Moreover, having unsuccessfully exhausted one remedy one should not be required, for the purposes of the article 22, paragraph 5 (b) of the Convention, to exhaust alternative legal avenues that would have been directed essentially to the same end and would in any case not have offered better chances of success. In these circumstances, the Committee concluded that it was not precluded by the requirements of article 22, paragraph 5 (b), of the Convention, from considering the communication.

7.2 The Committee noted the complainant's allegations that the plainclothes policemen used disproportionate force, resulting in light personal injury, and that subsequently he had been unable to obtain redress. The State party contended that the policemen tried to act in accordance with the standards governing the intervention against a large number of people and endeavoured to apply force discriminately. The Committee considered, however, that this claim had been sufficiently substantiated, for purposes of admissibility and should be considered on its merits.

7.3 The Committee against Torture therefore decided that the communication was admissible as far as it raised issues under articles 12, 13, 14 and 16 of the Convention.

#### **State party's merits observations**

8.1 On 19 June 2008, the State party submitted that the Criminal Code of the Republic of Serbia, the CPC, the Code of Obligations and the Manual on Methods of Assistance Provided by the Ministry of Internal Affairs of 2 December 1997 (Manual) were applicable to the present case. In particular:

(a) Under article 153 of the CPC, in force when the events in question took place, the Public Prosecutor rejects the criminal offence report if there is no basis for the institution of a formal judicial investigation. If the Public Prosecutor is unable to assess from the criminal offence report whether the charges contained therein are probable, or if the data from the criminal offence report or police notification do not provide sufficient grounds for issuing a ruling on the opening of the investigation, the Public Prosecutor requests the police to gather necessary information and undertake other measures, if he is unable to undertake the necessary measures *proprio motu* or through other government authorities. If he concludes that the reported offence is not a criminal offence subject to formal judicial investigation, the Public Prosecutor rejects the criminal offence report. The CPL and the CPC allow the injured party to take over criminal prosecution if the Public Prosecutor rejects the complaint. Furthermore, under article 259, paragraph 3, of the CPC, if the investigating judge decides that the investigation is concluded, he informs the injured party, as prosecutor or private prosecutor, of this fact and notifies the injured party that it may file an indictment with the court, i.e. a private suit, otherwise it would be deemed that the injured party has waived prosecution.

(b) Under article 103, section 6 and 7 (limitations on criminal prosecution), of the Criminal Code, criminal prosecution may not be instituted after three years from the time of committing a criminal offence punishable by more than one year's imprisonment; and of two years from the time of committing a criminal offence punishable by less than one year's imprisonment or fine. Under article 104, section 6 (course and suspension of



limitations on criminal prosecution), of the Criminal Code, absolute limitations on criminal prosecution become effective after expiry of twice the time period required by law for limitation of criminal prosecution. At any time after the submission of the criminal offence report, the injured party or its representative have the right to be informed of what the prosecutor has done on the report.

(c) Under article 154 and article 200 of the Serbian Law on Obligations, the complainant had a right to seek compensation through civil action.<sup>25</sup>

(d) According to the Manual, civil servants do not take part in eviction procedures. Evictions are carried out by uniformed officers of the Ministry of Internal Affairs.

8.2 The State party submits that on 10 April and 17 July 2002, the policeman and Construction inspector, respectively, confirmed that “certain civilians” participated in the dispersal of settlement residents who protested against the demolition, without asserting, however, that “these civilians were police officers”.

8.3 The State party recalls that, as required by article 12 of the Convention, it conducted a prompt and impartial investigation, and carried out supplementary investigations at the HLC’s request on several occasions. The complainant’s allegation that plainclothes policemen took part in the event was not proven by the investigation and such presumption “is not in conformity with the applicable regulations of the Republic of Serbia”.

8.4 The State party regrets that the absolute statute of limitations for criminal prosecution in the present case has expired on 8 June 2006<sup>26</sup> and stresses that the complainant himself has partly contributed to the slowing down of the investigation. Specifically, the HLC submitted the power of attorney to represent the complainant before the Fourth Municipal Public Prosecutor of Belgrade only seven months the criminal offence report was filed. It also failed to provide the investigating authorities with proper addresses for the complainant and witnesses.

8.5 Irrespective of the absolute statute of limitations for criminal prosecution in the present case, the State party denies that it violated article 14 of the Convention, because the complainant had numerous opportunities to obtain fair compensation for the damages sustained by initiating a civil action.<sup>27</sup> Even if criminal proceedings had been initiated, the court would have directed the complainant, upon the completion of the proceedings, to establish his claim in a civil action. That is, in criminal proceedings the court would have had to ask for expert opinions of economic and medical experts, which would have resulted in longer proceedings and in a substantial increase in costs. Moreover, under the Serbian law, criminal and civil proceedings may be conducted in parallel. The complainant was entitled to claim compensation for all types of damage (reimbursement of medical care costs, physical pain and suffering, etc.) but he failed to avail himself of such possibility. The State party reiterates that the complainant has not exhausted all available domestic remedies.

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<sup>25</sup> See also paragraph 4.9 above.

<sup>26</sup> See also paragraph 4.10 above.

<sup>27</sup> See paragraph 8.1 (a) above.

8.6 The State party ends by stating that it will take measures, if the Committee were to conclude that an absolute statute of limitations for criminal prosecution amounts to a violation of article 13 of the Convention, for adequate compensation of non-pecuniary damages in the amount offered to be paid to the complainant *ex gratia*. This compensation should be in conformity with the practice of domestic and international courts in similar cases.

### **Complainant's comments on the State party's observations on the merits**

9.1 On 12 September 2008, the complainant noted that the State party has changed its argumentation in important respects. Specifically, it now recognises that the CPC was also applicable in the present case, as the complainant had considered from the outset, and accepted his argument that both under the CPL and its successor from March 2002 onwards, the CPC did entrust the prosecutor with the competence and the mandate to fully investigate police ill-treatment allegations.

9.2 The complainant agrees that he had the *right* but not the obligation to initiate a civil action. He reiterates that civil remedies were not too considered as adequate or effective in his case and hence did not have to be exhausted. He also notes that the Committee has already addressed this issue in its admissibility decision, where the Committee held that this alleged "failure" to have recourse to civil remedies did not amount to non-exhaustion.<sup>28</sup>

9.3 The complainant further notes that, by referring to the Manual<sup>29</sup> the State party effectively implies that plainclothes policemen could not have taken part in the police operation. Furthermore, the State party argued, for the first time throughout the proceedings both before the domestic courts and the Committee, that the perpetrators of the complainant's ill-treatment were not in fact policemen but rather civilians.<sup>30</sup> The complainant notes that until now, the State party has not referred to a group of "civilians" being present during the eviction and conceded that police officers did indeed resort to the use of legitimate force against Roma. The complainant refers to the same testimony of Sergeant J. and Construction inspector of, respectively, 10 April and 17 July 2002, which was quoted by the State party, but concludes that it is replete with reference to plainclothes policemen.<sup>31</sup> The complainant therefore dismisses the State party's argument to the effect that under the applicable legal framework, only uniformed police officers could take part in an eviction. In this respect, the complainant submits that state authorities are responsible in cases where their agents acted *ultra vires*.

9.4 The complainant notes that even if, hypothetically, the new version of events as formulated by the State party is accepted, then the State's responsibility remains engaged. Under article 16 of the Convention, "[e]ach State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent *or acquiescence of a public official or other person acting in an official capacity* (emphasis added)." The complainant points out that the State party did not produce

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<sup>28</sup> See paragraph 7.1 above.

<sup>29</sup> See paragraph 8.1 (d) above.

<sup>30</sup> See paragraph 8.2 above.

<sup>31</sup> See, for example, paragraphs 2.7, 2.10, 2.13.

evidence as to whether the uniformed policemen who were present undertook any actions in order to protect the Roma from the assault of these “civilians”. Neither did it produce any evidence about measures it took to identify these “civilians” and to provide their names to the complainant.

9.5 The complainant concludes that the burden rests on the State party to prove either under which circumstances the complainant was injured by policemen (in accordance with the original version of the events) or how these “civilians” managed to penetrate into the settlement undetected and assault the Roma inhabitants, as the State party currently suggests. The complainant stresses that the police operation launched on that day was mounted following careful preparation and planning, i.e. it was not a “spontaneous” police operation. Therefore, the police authorities had ample time to prepare themselves and take all the necessary measures in order to minimize any kind of threat to the Roma.

9.6 For the complainant reiterates, the State party failed to advance new arguments regarding the adequacy of the investigation launched into his allegations of ill-treatment and recalls that this “is not an obligation of result, but of means”. Any investigation should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those held responsible. In the present case, the Prosecutor based his decision not to open the investigation into the HLC’s criminal offence report on the report received from the Secretariat of Internal Affairs of Belgrade, Internal Affairs Control Section, dated 9 November 2000.<sup>32</sup> The State party continues to withhold this report from him and the Committee.<sup>33</sup> The complainant further notes that the State party itself questions the validity of this report by supporting three mutually exclusive versions of the events that took place on 8 June 2000.<sup>34</sup>

9.7 The complainant further submits, *inter alia*, that the State party’s authorities have failed to establish how many uniformed (not to mention plainclothes) policemen and from what departments were present on 8 June 2000; to investigate whether any of its agencies uses a vehicle with the license plate number that had been provided by the complainant and other witnesses; and to request a copy of the registry of the Department of Internal Affairs of New Belgrade.<sup>35</sup> He adds that starting from 25 December 2001, there was concrete evidence<sup>36</sup> that policemen from yet another police agency, in addition to the Bezanija Police Department, had been involved in the demolition of the “Antena” settlement and that the Prosecutor should have been aware that the information provided by the Department of Internal Affairs of New Belgrade in its letter of 6 February 2003 was inaccurate.<sup>37</sup> Nevertheless, the complainant’s case was closed pursuant to article 257 of the CPC. The complainant argues that the fact that all his requests to supplement the investigation were granted by the investigating judge amounts to a concession of the inadequacy of the investigation measures taken until then.

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<sup>32</sup> See paragraphs 4.2 and 4.6 above.

<sup>33</sup> See paragraph 5.7 above.

<sup>34</sup> See paragraphs 4.2 and 8.2 above.

<sup>35</sup> See paragraph 2.17 above.

<sup>36</sup> See paragraph 2.7 above.

<sup>37</sup> See paragraphs 2.15 and 2.17 above.

9.8 As to the State party's claim that the prosecution in the case is now time-barred and that the complainant has partly contributed to the slowdown of the investigation, the complainant submits that:

(a) The delay by the HLC to submit the power of attorney to the Fourth Municipal Public Prosecutor of Belgrade should not have had any impact on the investigation, as the authorities should have taken all measures required to investigate the complainant's allegations *proprio motu*. In any event, the only delay that can be attributed to the complainant is three and not seven months, as claimed by the State party.<sup>38</sup> Even taking into account this delay, the State party had 2 years and 9 months to conduct an effective investigation before the institution of criminal proceedings became time-barred, and 5 years and 9 months before the absolute time-bar to any proceedings.

(b) As to the alleged delay caused by the complainant's failure to provide the prosecuting authorities with the exact addresses of witnesses, the complainant submits that the State party itself had admitted that locating the Roma witnesses was difficult because after the eviction the authorities were not aware of their whereabouts and the authorities failed to immediately contact the HLC and request its help in locating the relevant witnesses. In addition, the complainant notes that his and the other "Antena" residents' eviction on 8 June 2000 violated relevant human rights standards.<sup>39</sup>

### **Consideration of the merits**

10.1 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.

10.2 The Committee takes note of the State party's observations of 19 June 2008 challenging the admissibility of the complaint and finds that the points raised by the State party are not such as to require the Committee to review its decision on admissibility, owing in particular to the State party's failure either to initiate *ex officio* an investigation into the complainant's allegations or to reveal the identity of the persons who caused bodily injury and verbally abused the complainant, thus preventing him from taking over the prosecution. Consequently, there was no domestic remedy left for the complainant that would enable him to take over the prosecution and to claim effective and sufficient redress for the treatment to which he was subjected to on 8 June 2000. The Committee therefore sees no reason to reverse its decision on admissibility.

10.3 The Committee proceeds to a consideration on the merits and notes that the complainant alleges violations by the State party of article 16, paragraph 1, read separately or in conjunction with articles 12 and 13, and article 14, read separately or in conjunction with article 16, paragraph 1, of the Convention.

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<sup>38</sup> The three months between the rejection of the complaint by the Prosecutor (on 19 February 2001) and the date when the HLC was informed of this decision (19 April 2001).

<sup>39</sup> Reference is made to the Committee on Economic, Social and Cultural Rights, General comment No. 7: The right to adequate housing (Article 11 (1)): forced evictions, 1997 (HRI/GEN/1/Rev.8), paragraphs 13, 15 and 16.

10.4 As to the legal qualification of the treatment to which the complainant was subjected to on 8 June 2000, the Committee considers that the infliction of physical and mental suffering aggravated by the complainant's particular vulnerability, due to his Roma ethnic origin and unavoidable association with a minority historically subjected to discrimination and prejudice, reaches the threshold of cruel, inhuman or degrading treatment or punishment. The Committee notes that the complainant and the State party are at odds as to the identity of the persons who caused bodily injury to the complainant and verbally abused him but the parties concur in as much as the presence of the State party's uniformed policemen (public officials) in the place and at the time in question are concerned. The Committee further notes that the State party did not contest that the complainant has indeed sustained bodily injury and was verbally abused. The Committee recalls that the State party did not claim that the uniformed policemen who were present at the "Antena" settlement at the time when the treatment contrary to article 16 occurred, took steps to protect the complainant and other inhabitants from the abuse and did not produce any evidence that would allow the Committee to deduce that this was the case.

10.5 The Committee considers that, irrespective of whether the persons who had caused bodily injury to the complainant and verbally abused him were or were not public officials, the State party's authorities who witnessed the events and failed to intervene to prevent the abuse have, at the very least "consented or acquiesced" to it, in the sense of article 16 of the Convention. In this respect, the Committee has reiterated on many occasions its concerns about "inaction by police and law-enforcement officials who fail to provide adequate protection against racially motivated attacks when such groups have been threatened".<sup>40</sup> The Committee concludes that there was a violation of article 16, paragraph 1, of the Convention by the State party.

10.6 Having considered that the facts on which the complaint is based constitute acts within the meaning of article 16, paragraph 1 of the Convention, the Committee must analyse other allegations of violations of the Convention in the light of that finding.

10.7 Concerning the alleged violation of article 12, the Committee recalls its jurisprudence<sup>41</sup> that a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein. In the present case, the Committee notes that, despite the presence of a high number of Roma during the events of 8 June 2000 and the participation of a number of uniformed policemen and of a public works inspector, the exact factual circumstances of the case remain unclear. The Committee is of the view that the State party's failure to inform the complainant of the results of the investigation for almost six years by, *inter alia*, not providing him with the report of the Internal Affairs Control Section of 2000, nor with names of the persons who caused bodily injury to the complainant and verbally abused him, effectively prevented him from assuming "private prosecution" of his case prior to the expiry of the absolute statute of limitations for

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<sup>40</sup> See, *inter alia*, concluding observations on the initial report of Slovakia, CAT A/56/44 (2001), paragraph 104; concluding observations on the second periodic report of the Czech Republic, CAT A/56/44 (2001), paragraph 113 and concluding observations on the second periodic report of Georgia, CAT A/56/44 (2001), paragraph 81.

<sup>41</sup> See, *inter alia*, Encarnacion Blanco Abad v. Spain, Communication No. 59/1996, Views adopted on 14 May 1998, paragraph 8.8.

criminal prosecution. In these circumstances, the Committee finds that the investigation conducted by the authorities of the State party did not satisfy the requirements of article 12 of the Convention. Nor has the State party fulfilled its obligation under article 13 of the Convention to ensure that the complainant has the right to complain to, and to have his case promptly and impartially investigated by its competent authorities.

10.8 Concerning the alleged violation of article 14 of the Convention, the Committee notes that the scope of application of the said provision only refers to torture in the sense of article 1 of the Convention and does not cover other forms of ill-treatment. Moreover, article 16, paragraph 1, of the Convention while specifically referring to articles 10, 11, 12, and 13, does not mention article 14 of the Convention. Nevertheless, article 14 of the Convention does not mean that the State party is not obliged to grant redress and fair and adequate compensation to the victim of an act in breach of article 16 of the Convention. The positive obligations that flow from the first sentence of article 16 of the Convention include an obligation to grant redress and compensate the victims of an act in breach of that provision.<sup>42</sup> The Committee is therefore of the view that the State party has failed to observe its obligations under article 16 of the Convention by failing to enable the complainant to obtain redress and to provide him with fair and adequate compensation.

11. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it disclose a violation of article 16, paragraph 1; article 12; and article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

12. In pursuance of rule 111, paragraph 5, of its rules of procedure, the Committee urges the State party to conduct a proper investigation into the facts that occurred on 8 June 2000, prosecute and punish the persons responsible for those acts and provide the complainant with redress, including fair and adequate compensation 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 Views expressed above.

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

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<sup>42</sup> Hajrizi Dzemajl et al. v. Yugoslavia, Communication No. 161/2000, Views adopted on 21 November 2002, paragraph 9.6.