



International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Serbia under article 29, paragraph 1, of the Convention*

I. General information

1. Taking into consideration the information provided in paragraph 10 of the report (CED/C/SRB/1), which makes reference to article 16 of the Constitution, please indicate what the consequences would be if the provisions of the Convention were not in accordance with the Constitution.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

2. In the absence of an autonomous crime of enforced disappearance, please specify how the “refusal to acknowledge the deprivation of liberty” or the “concealment of the fate or whereabouts of the disappeared person” would be punished under Serbian law. Please also indicate whether there are any initiatives to incorporate enforced disappearance as an autonomous crime in domestic legislation and whether the State party has engaged with civil society, in particular associations of families, in this respect. Furthermore, in relation to the information provided in annex I to the report, please clarify whether any of the victims have at any stage been disappeared and, if so, whether their fate and/or whereabouts have been ascertained (arts. 2 and 4).

3. Please indicate whether there have been complaints concerning cases of human trafficking that may fall under articles 2 and 3 of the Convention. If so, please provide disaggregated data, relating to the period since the entry into force of the Convention, about the investigations carried out and their results, including sanctions imposed on those responsible, and reparations — including rehabilitation — provided to victims (arts. 2, 3 and 12).

4. Taking into consideration the information provided in paragraphs 45 and 46 of the report, please specify how ordering the commission of an enforced disappearance which does not amount to a crime against humanity would be punished under domestic law. Furthermore, and bearing in mind article 384 of the Criminal Code, please indicate whether

* Adopted by the Committee at its seventh session (15–26 September 2014).



there are any initiatives to establish a system of superior responsibility in line with article 6, paragraph 1, subparagraph (b), of the Convention that would apply to cases of enforced disappearance that do not amount to crimes against humanity (art. 6).

5. Taking into consideration the information provided in paragraphs 134–136 of the report with regard to superior orders concerning the Military Security Agency and the Serbian Army, please indicate whether there are any equivalent provisions that would apply to other State officials. Please also provide examples, if any, of case law relating to the prohibition on invoking superior orders (arts. 6 and 23).

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

6. Please clarify whether the requirements set out in article 10 of the Criminal Code could have any implications on the obligations stemming from article 9, paragraphs 1 and 2, of the Convention, in particular when, in the State where the crime of enforced disappearance was committed, the offender was pardoned, the conduct is no longer prosecutable as a result of the term of limitation having elapsed, or enforced disappearance does not constitute an autonomous offence. With regard to article 10, paragraph 2, of the Criminal Code, please also indicate what the criteria are that are applied by the Republic Public Prosecutor to permit the exercise of jurisdiction and whether in those cases the Convention could be used as a basis to exercise jurisdiction (art. 9).

7. With regard to paragraphs 79, 80 and 134 of the report, please provide information about the actions that could be taken by authorized officials of the military police when there is suspicion that an employee of the Ministry of Defence or the Serbian Armed Forces has committed a criminal offence against those institutions or against a civilian. In this respect, please also clarify why if “military authorities have no jurisdiction to conduct investigation and criminal prosecution against persons charged with a criminal offence in connection with enforced disappearance” (para. 79 of the report), the military police can nonetheless undertake ex officio investigations when there is suspicion that an employee of the Ministry of Defence or the Serbian Armed Forces has committed a criminal offence against those institutions or a civilian (para. 80 of the report), which may potentially include a case of enforced disappearance. Please also indicate whether the military police can assist civilian authorities in investigating cases of enforced disappearance (art. 11).

8. Please indicate whether Serbian law provides for suspension from duties during an investigation when the alleged offender is a State official. Please also specify whether there are any procedural mechanisms in place to exclude a security or law enforcement force from the investigation into an enforced disappearance when one or more of its members are accused of committing the offence (art. 12).

9. Please comment on allegations indicating that witnesses in war crimes trials have been threatened by officials charged with their protection and, in this respect, indicate whether any of these cases referred to investigations of enforced disappearances. Please also provide information about the measures taken to ensure that witnesses receive effective protection and that, in the event of acts of ill-treatment or intimidation, the officials allegedly responsible are preventively suspended, prosecuted and, if relevant, sanctioned. In addition, please indicate whether the system of protection of witnesses in Serbia has sufficient human, financial and technical resources to function efficiently (art. 12).

10. Please indicate how it is guaranteed that authorities in charge of investigating potential cases of enforced disappearance have immediate access to any place of detention or any other place where there are reasonable grounds to believe that a disappeared person

may be present. In this respect, please also indicate whether domestic law provides for any limitations that may restrict such access and, if so, provide detailed information (art. 12).

11. Please clarify whether, in accordance with Serbian law, any limitations or conditions could be applied in relation to requests for judicial assistance or cooperation in the terms established by articles 14 and 15 of the Convention (arts. 14 and 15).

IV. Measures to prevent enforced disappearances (arts. 16–23)

12. Please provide detailed information about the mechanisms and criteria applied in the context of procedures of expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance. Please also indicate whether it is possible to appeal a decision on expulsion, return, surrender or extradition, and if so, please indicate before which authorities, what the applicable procedures are, and whether they have suspensive effect (art. 16).

13. Please indicate whether there are any States that are considered to be safe in relation to procedures of expulsion, return, surrender or extradition of persons. If so, please indicate on the basis of what criteria a State is considered safe; how often these criteria are reviewed; and whether, before proceeding to the expulsion, return, surrender or extradition of a person to a State considered safe, a thorough individual assessment is made of whether the person concerned is at risk of being subjected to enforced disappearance (art. 16).

14. Please specify whether the competence of the Protector of Citizens in its capacity as national mechanism for the prevention of torture extends to all places of deprivation of liberty, irrespective of their nature. Please also provide information about the existing guarantees to ensure that the Protector of Citizens has immediate and unrestricted access to all places of deprivation of liberty and indicate whether it possesses sufficient financial, human and technical resources to enable it to carry out its functions, both as the national human rights institution and the national mechanism for the prevention of torture, effectively and independently (art. 17).

15. Taking into consideration the information provided in paragraph 114 of the report, concerning official records on the detention of persons to be kept by the police, please detail the information that is to be contained in the official records maintained in other facilities where persons deprived of liberty are held, such as prisons. Please also provide information on the measures taken to ensure that all records of persons deprived of liberty are properly and immediately completed and kept up to date. In addition, please indicate whether there have been any complaints concerning failure by officials to record a deprivation of liberty or any other pertinent information in registers concerning persons deprived of liberty and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed and the measures taken to ensure that such omissions are not repeated, including training imparted to the personnel in question (arts. 17 and 22).

16. In relation to paragraphs 106 and 117 of the report, please clarify whether any conditions and/or restrictions could be applied to the prompt notification of family members, counsel, consular representatives in the case of foreign nationals and any other person chosen by the individual deprived of liberty. Please also indicate how these rights are guaranteed in practice. In addition, please indicate whether there have been any complaints concerning the failure to promptly notify the person chosen by the individual deprived of liberty and, if so, please provide information about the proceedings initiated and, if relevant, the sanctions imposed (arts. 17 and 18).

17. Please provide further information about the content of the law on the DNA register that is being drafted (para. 122 of the report) and update the Committee on its current status, including the timetable envisaged for its adoption and entry into force (art. 19).

18. With regard to paragraphs 130 and 131 of the report, please provide detailed information about the sanctions, whether criminal, administrative or disciplinary, to be applied in relation to each of the conducts described in article 22 of the Convention (art. 22).

19. While taking note of the information provided in paragraphs 132–134 of the report and paragraphs 158–161 of the State party's core document (HRI/CORE/SRB/2010), the Committee would appreciate the State party indicating whether it provides, or envisages providing, specific training on the Convention, in the terms set out in article 23 thereof, to civil or military law enforcement personnel, medical personnel, public servants, and any other persons who intervene in the custody or treatment of persons deprived of their liberty, such as judges, prosecutors and migration authorities (art. 23).

V. Measures for reparation and the protection of children against enforced disappearance (arts. 24 and 25)

20. Taking into consideration that, as recognized in paragraph 138 of the report, the notion of damaged party according to Serbian law may be narrower than the notion of victim under article 24, paragraph 1, of the Convention, please indicate whether it is envisaged to incorporate into domestic law a definition of victim that is in accordance with the said treaty provision (art. 24).

21. Please indicate who would be responsible for compensation under domestic law in the event of an enforced disappearance, including where the person responsible is, or persons responsible are, not identified. Furthermore, and taking into consideration the information provided in paragraphs 138–145 of the report, please indicate whether the State party envisages adopting legislative or other measures in order to guarantee that all persons who have suffered harm as a direct result of an enforced disappearance are entitled to adequate reparation and compensation, in conformity with article 24, paragraphs 4 and 5, of the Convention (art. 24).

22. In relation to paragraph 144 of the report, which indicates that no special rehabilitation programmes for the families of victims of enforced disappearance have been enacted, please indicate whether persons who have suffered harm as a direct result of enforced disappearances that may have been perpetrated in the past benefit from rehabilitation measures of any sort. Furthermore, please provide information about the steps taken, or envisaged, to ensure that all persons who have suffered harm as a direct result of enforced disappearances that may have been perpetrated in the past by Serbian officials or by persons or groups of persons acting with their authorization, support or acquiescence, receive adequate reparation in conformity with article 24, paragraphs 4 and 5, of the Convention and other relevant international standards (art. 24).

23. Taking into consideration the information provided in paragraphs 144 and 145 of the report, please indicate whether the State party envisages adopting legislation that addresses the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, without having to declare the disappeared person dead, such as a procedure to obtain a declaration of absence by reason of enforced disappearance (art. 24).

24. Please provide information on the legislation applicable to the acts described in article 25, paragraph 1, of the Convention (art. 25).

25. With regard to paragraph 147 of the report, please provide further information about the procedures in place to review and, if necessary, annul an adoption, including conditions for an adoption to be valid; whether there is a specific time frame for an adoption to be reviewed and/or annulled; persons entitled to start a procedure of this nature, including when the adopted child is younger than 15 years of age; authorities in charge of the proceedings; how it is guaranteed in these procedures that the best interests of the child are the primary consideration and that the views of the child are given due weight in accordance with his/her age and maturity (art. 25).
