World Organisation Against Torture
P.O. Box 21 - 8, rue du Vieux Billard
CH-1211 Geneva 8, Switzerland

Geneva, September 2004
ISBN 2-88477-091-7

State Violence in Serbia and Montenegro

AN ALTERNATIVE REPORT
TO THE UNITED NATIONS
HUMAN RIGHTS COMMITTEE

A project presented by

and coordinated by

Foreword

Writing alternative reports is one of the main activities of the World Organisation Against Torture (OMCT) and a vital source of information for the members of the Human Rights Committee. With these reports, it is possible to see the situation as objectively as possible and take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment.

Under the aegis of the European Union and the Swiss Confederation, the "Special Procedures" programme presented this report on state violence and torture in the Republic of Serbia and Montenegro at the 81st session of the Human Rights Committee.

This report was jointly prepared by three national human rights non-governmental organisations (NGOs) in collaboration with OMCT.

• ASTRA

ASTRA is a non-governmental organisation (dedicated to preserving the human rights of women) with a stated mission of eradicating trafficking in women and girls as a specific form of violence. ASTRA's work is based on feminist principles of support, trust and belief in women, as well as the goal of forming a society free of all forms of exploitation, violence against women, gender-based discrimination and economic and social inequalities. ASTRA's main activities are: prevention and education, victim assistance research and networking.

ASTRA's methodology developed during the first three years of its independent existence through practical work. Within this period, the organisation has taken various actions concerning organisational activities, supervision, improvement of work, and evaluation of previous results. Due to the explorative (initial research) approach regarding the problem of trafficking in women, (ASTRA was the first organisation in Serbia to deal with this problem) methodology had to develop through practice, and therefore it was predisposed to improvement and broadening.

• Children Rights Centre

The Children Rights Centre (CRC) is a non-political, non-profit NGO. Its aim is the implementation of the Convention on the Rights of the Child. This means that the CRC's activities are focused on introducing such laws, policies and practice that enable the improvement of children's well being, protection of their rights and their full participation in society.

The CRC was founded in 1997 and is seated in Belgrade. It carries out its activities on the territory of Serbia and Montenegro in cooperation with other NGOs, institutions, children and youth, as well as interested individuals. As a result of wider cooperation and exchange, the CRC is a member of several regional and international networks and organisations.

• Humanitarian Law Center

A regional non-governmental human rights and humanitarian law organisation, the Humanitarian Law Center (HLC) was founded in 1992, following the outbreak of armed conflicts in the former Yugoslavia. The HLC is based in Belgrade and has regional offices in Serbia, Kosovo (at present under UN administration), and Montenegro. Since its establishment, the HLC has conducted research into killings, disappearances, concentration camps, torture of prisoners of war, and the patterns of ethnic cleansing in times of armed conflict by interviewing witnesses, perpetrators and victims. The HLC has extensively and systematically monitored the application of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights in Serbia and Montenegro, and its attorneys represent victims of unlawful police conduct before national courts and the UN Committee against Torture. The HLC documents the state of human rights with statements given to its researchers by victims, witnesses and, wherever possible, eyewitnesses, and gathers supporting evidence such as medical reports, photographs and the like. It analyses the prevailing practice on the basis of documented cases in the HLC archive, the response of the Serbian Ministry of Internal Affairs to complaints, media reports on police abuses, and court proceedings and judgments in cases of torture by the police.

Contents

PART I

STATE VIOLENCE IN SERBIA AND MONTENEGRO

11

STATE VIOLENCE IN SERBIA AND MONTENEGRO

Introduction

In power from the early 1990s to 5 October 2000, Slobodan Milojević used the law enforcement agencies (police administration) as one of his main weapons against political opponents and, in particular, in "resolving" ethnic relations. During this period, the organisation of the police force paralleled that of the armed forces and it was provided with the most up-to-date equipment and weapons: armoured vehicles; water cannons; poisonous substances; rubber and live ammunition; truncheons; etc.). Use of this equipment and weapons was made during demonstrations organised by opposition parties. The HLC has documented and reported in its publications cases of police brutality against demonstrators and citizens, political activists as well as journalists covering the protests[1]. Police officers arbitrarily detained and arrested people, thus violating their right to human dignity and physical integrity, freedom of political organisation and public assembly, and other human rights.

Police repression against ethnic minorities, especially Kosovo Albanians and Bosnians in the Sandjak region, intensified in 1993 and 1994. The actions were part of an organised nature and included arbitrary house searches and detention of a massive number of people, their physical and mental abuse, and their subjection to degrading treatment on ethnic grounds. The common denominator in all these cases was the indifference demonstrated by the institutions of the state, which failed to take any action whatsoever either against those who gave the orders or those who carried them out.

In 1995 and 1996, the HLC found that the police also resorted to brutality in the course of routine policing and irrespective of their victims' ethnicity or political affiliation.

The state of human rights in Serbia and Montenegro, especially with regard to the right to life and freedom from torture and/or ill-treatment, took a drastic turn for the worse in 1999. With the start of the NATO bombing in March that year, the HLC registered numerous cases of police and paramilitaries killing Kosovo Albanian civilians, or unlawfully detaining them after which all trace of them was lost. Albanians in prisons across Kosovo were

1 Spotlight On: Political Use of Police Violence During the 1996-1997 Protests in Serbia, HLC, 1997; Law Enforcement Abuses, HLC, 1997; Human Rights 1991-1995, HLC, 1997; Police Crackdown on Otpor, HLC, 2001.

severely abused, as were those who were detained during the NATO bombing (1,500) and those transferred from Kosovo to prisons in Serbia after the signing of the Kumanovo Agreement on 12 June 1999 when Serbian security forces withdrew from Kosovo.

In the course of 2000, the police launched a major operation against members of the Otpor (Resistance) Movement[2]. This crackdown included unlawful arrests, search and seizures, beatings and torture. The authorities first refused to register the organisation, claiming that it was working "for the forcible overthrow of the constitutional order." The operation against Otpor was conducted throughout the territory of Serbia, with top officials giving orders for actions that constituted a violation of human rights. With no probable cause, Otpor activists, mainly young people, were taken to police stations where they were detained for varying periods of time, photographed and fingerprinted, and files opened on them.

In April 2004, the HLC issued a public protest against the appointment of Zvezdan Radojković as Chief Police officer in Pančevo after he had been found guilty of interrogating Otpor members without legal grounds during 2000.[3]

The greatest threat to human rights in Serbia, including the right to freedom from torture and/or ill-treatment, comes from the fact that the Special Police Forces (PJP), a unit organised along military lines whose members were implicated in the armed conflicts in Bosnia-Herzegovina and Kosovo, remains a part of the police force. Following the overthrow of Milojević in October 2000, the PJP was renamed and is now known as the Gendarmerie. But it retained its organisational and personnel structure, including its commanding officer, General Goran "Guri" Radosavljević. The Gendarmerie is a specialised unit within the Serbian Ministry of the Interior. It has competency over combating terrorism, and actions in high-risk situations and state of emergencies.

Recent examples include a basketball game on 4 June 2004 in Vršac after a fight broke out between two spectators. Members of the Gendarmerie indiscriminately beat spectators with their nightsticks who were not involved in this fight and were seated in a separate section. After this intervention, 16

2 In 2001 HLC published "Police Crackdown on Otpor"

3 Judgment No. 2173/2000, 20 April 2001, Municipal Court, Pančevo.

spectators sought medical assistance, among these was twelve-year-old Goran Radovanović from Vršac. He stated on TV B92 that he was thrashed with nightsticks for no reason, and subsequently he lost consciousness and was hospitalised. The police stated that the incident did not reach an excessive use of force and that the injury was incurred through "being crushed by the movements of the crowd".

Serbia has had two governments since October 2000. The first took office in January 2001 and was headed by Prime Minister Zoran Djindjić until his assassination on 12 March 2003. Zoran Zivković took over until March 2004 when the new government of Prime Minister Vojislav Koštunica was installed as the result of the early parliamentary election. After the fall of Milojević, sharp divisions and antagonism became evident within the bloc that had opposed him. Two different political groupings emerged: one that supported Djindjić and another that favoured Koštunica. All this slowed down the process of social reform and of international integration and, hence, the development of democratic institutions and mechanisms for the protection of human rights.

1. The right to Life

The Charter on Human and Minority Rights of Serbia and Montenegro, and the constitutions of the two republics making up the state union (Article 14, Para. 1, Serbian Constitution; Article 21, Para. 1, Montenegrin Constitution) guarantee the inviolability of human life as a fundamental human right.

The case of Milan Ristić

According to the official report, Milan Ristić (20), a student from Sabac, committed suicide on 13 February 1995 by leaping from the roof of an apartment building. Suspecting that their son had been murdered, his parents filed a criminal complaint against three police officers with the Sabac Public Prosecutor's Office. The parents maintained that these officers had detained their son in the mistaken belief that he was a person for whom an arrest warrant had been issued, that they beat him and inflicted a hard blow

to his head behind the left ear, most probably with the butt of a pistol or rifle, and that this injury was the cause of death. According to the parents, the officers then broke their son's thighbones, both at the same level, in an attempt to substantiate their claim that the young man had jumped to his death from the roof.

After exhausting all available domestic legal remedy, the parents turned to turn the United Nations Committee against Torture. On their behalf, the HLC submitted an application on 22 July 1998 asking the Committee to determine whether the competent Yugoslav authorities had failed to conduct an impartial investigation, and thereby deprived the plaintiffs of their right to compensation.

In its decision of May 2001,[4] the Committee found Yugoslavia in violation of its obligations under Articles 12 and 13 of the Convention and called on it to conduct without delay another investigation into the death of Milan Ristić, and report back to it on the findings. In spite of numerous requests by the Ristić's and the HLC, the Serbian and state-union authorities failed to comply with the Committee's decision for more than two years. In September 2003, the then Serbian Justice Minister, Vladan Batić, wrote to the Serbian Public Prosecutor with regard to this case, pointing out that the Committee's decision was legally binding. The District Prosecutor on 4 November 2003 instructed the investigating judge of the Sabac District Court to have the remains of Milan Ristić exhumed for another autopsy, which was done on 20 April 2004, three years after the Committee handed down its decision. The investigating judge is currently awaiting the new autopsy report.

The Death of Dejan Petrović

Dejan Petrović (29) from Belgrade was taken by police from his parents' apartment at 10 p.m. on 16 January 2002 to the local police station on suspicion of theft. The next day the police told his parents that Dejan had jumped from a second-floor window at the station, and that he had been hospitalised at the Emergency Treatment Centre.

4 Communication No 113/1998: Yugoslavia 11/05/2001; CAT/C/26/D/113/1998 (Jurisprudence).

A drug addict, Petrović was in a detoxification programme, and his parents closely monitored his movements, especially in the period immediately preceding his detention. On the evening in question, he had left the apartment to walk his girlfriend home and was absent from 6.50 to 7.20 p.m.

At the station, Dejan Petrović spent the night in a holding cell. At about 9 a.m. the next day, three police inspectors, Nešić, Kojić and a blond woman who did not give her name, came to the family's apartment with a warrant to search Dejan's room. When they found nothing, Inspector Kojić told his colleagues to bring Dejan to the apartment. Mr. Petrović, who had warned the police that his son was in therapy when they came for him the day before, recounted to the HLC what happened next:

"They brought Dejan in with his hands cuffed. His lips were blue, as if something wasn't right. I didn't notice any injuries on his face. However, Dejan didn't say a word the whole time. They searched the room again in his presence and asked him where the money was, adding that they would let him go as soon as he told them. When Dejan replied he didn't know, Kojić said, 'Let's go.' As they were leading him out, Dejan said, 'Mom, I didn't do anything. Get me a lawyer.' That was about half past ten."

At noon that day, Mr. and Mrs. Petrović received a phone call from the police station and were told their son had jumped from a second-floor window and was at the Emergency Treatment Centre. At the Centre, medical staff told them an unidentified person had been admitted and, after seeing him, the parents identified him as their son. From the Centre, they went to the police station. In his account, Mr. Petrović said:

"My wife and I went to the police station in Božidara Adčije Street and up to the second floor. We heard a policeman say, 'These are Dejan's parents. Keep your mouths shut.' The inspectors said they had treated Dejan correctly and that he jumped out the window when he was alone in the room. I said it was impossible for a young man who was 180 centimetres tall to jump through the one-by-one meter double window. To that, one of them said, 'What? Do you think we threw him out?' I said we would see about that and insisted that they show us the room in which Dejan had been held. They said this was not possible until the investigating judge had finished at the scene."

Mr. Petrović was eventually able to see the room and window from which his son had allegedly jumped:

"An Inspector Kocić was there. It was a small room, four meters by four, with an easy chair standing near the window. According to Kocić, Dejan made a running start, jumped on the chair and out the window. I asked how he knew that when he was not present; he replied that he assumed that was the way it happened."

Dejan Petrović was in a coma for two weeks and was unable to speak when he regained consciousness. For a month, doctors did everything they could to save Petrović's life, but his injuries proved fatal, his spleen and gall bladder had been ruptured, and his liver and pancreas were severely damaged, all his left ribs and left femur fractured, and he had a large haematoma on his head. Dejan Petrović died at the Emergency Treatment Centre on 15 February.

Shortly after their son's alleged suicide attempt, his parents retained an attorney who filed a criminal complaint against the police. However, for some reason, the attorney avoided all contact with the Petrovićs following their son's death.

A report by the Criminal Investigations Division of the Belgrade Police Department dated 17 January 2002 states that Dejan Petrović, "at a time when his hands were handcuffed behind his back, made a running start and jumped through a double window measuring 50 x 55 cm on the inside and 40 x 45 cm on the outside, and at a height of about one meter from the floor". The report also says, "Inspector Kocić was the first to enter office No. 24 on the second floor in which the incident in question occurred, followed by Dejan Petrović and, after him, Inspectors Sladjan Kostić and Nataša Kovašević. Immediately upon entering, Petrović made a running start and, breaking the inside and outside panes, leaped into the yard outside the building".

This report is inconsistent with what Inspector Kocić had told Mr. Petrović when he spoke with him at the police station, namely that Dejan was alone in the room when he allegedly jumped.

Three days after Dejan Petrović's death, an autopsy was performed at the Institute of Forensic Medicine. The pathologists established that death was due to violence and caused by damage to vital brain centres and ensuing complications. They also found that the brain damage, fractures and other internal and external injuries Dejan had sustained, were due to blunt force trauma.

A criminal complaint was first filed with the Third Municipal Prosecutor's Office and, in April 2002, the District Prosecutor's Office. However, in spite of the evidence and grounds to believe that Dejan Petrović was the victim of torture by the police, the prosecutor has still not asked for an investigation. But nor has he dismissed the complaint as unfounded, which would have enabled the parents to proceed as private prosecutors. At the request of the HLC, the medical records were transferred to the Belgrade Institute of Forensic Medicine on 12 September 2003 for an expert opinion on the injuries sustained by the deceased Petrović. The findings were not known at the time of writing.

The case of Milan Jezdović

At 8 p.m. on 4 December 2003, police inspectors "Lambe", Karajović, Kostić, "Miča" and others stormed into the Belgrade apartment rented by Milan Jezdović and his friends. The officers, from Division 4 of the Belgrade Police Department, first handcuffed Milan Tomović and his girlfriend Milica Babin and, without a warrant, searched the apartment. They found one gram of heroin and a pistol. They pulled Milica Babin's hair and hurled sexual insults at her.

Jezdović and his friends were ordered to lie face down on the floor with their hands cuffed behind their backs while the apartment was searched. They were then driven to the Belgrade Police Department and put into a room where they were beaten, their legs bound together with tape and plastic bags were pulled over their heads. Radoje Tomović testified to the HLC about the torture he and his friends had been subjected to:

"They took us out one by one, and shouts and loud noises were heard - 'You're suffocating me, suffocating me!' The police taped their legs together so that they couldn't struggle. There were cries, screams and lots of noise. I saw them [police] with the bags. They threatened us, saying we should confess or we would die there. 'We're Division 4, you've heard of us. You've come to hell!' I saw them bring out the mangled Drašković, with blood running from his nose and unable to stand on his feet. I saw that his shoes had been taken off, and the tape was around his legs. I saw Inspector Pečić cutting the tape to free his legs. Then they took Novaković and after him Jezdović. I never saw him again after that. I heard only screams and cries for help."

Dejan Novaković described the same event to the HLC:

"They suffocated me with the bag, hit me with nightsticks all over the body. They put towels over my knees and hit me on them and the shins with nightsticks. When they took me out of that room they put me together with Tomović and Aleksandar "Buca" Drašković. They let me go about 1.40 a.m. and kept the others. Drašković was all beaten up, bleeding from the nose and with clotted blood on his face. He asked for some water but they didn't give him any. They told him he could die. Tomović was beaten savagely."

Milan Jezdović died in the Police Department. According to the autopsy report, the immediate cause was a "sudden irregularity in the work of the heart," and the abrasions and bruises on his body were inflicted with a blunt instrument. A toxicological test revealed the presence of a narcotic drug in his blood. The police stated that Jezdović died of a heart attack.

Death Penalty

The Charter on Human and Minority Rights explicitly prohibits capital punishment,[5] while the republican constitutions of Serbia and Montenegro allow it only in exceptional cases. The process of abolishing the death penalty started in June 2001 when Yugoslavia ratified the II Optional Protocol to the Covenant.[6] This was followed by amendment of the Yugoslav Criminal Code (*Sl. list SRJ* No. 61/01), and its Serbian and Montenegrin counterparts (*Sl. glasnik RS* 10/02; *Sl. list RCG* No. 30/02). No death sentences have been handed down in either Serbia or Montenegro since 2002. Capital punishment has effectively been replaced with the maximum term of imprisonment of 40 years.

5 Article 11, Charter on Human and Minority Rights.

6 *Sl. List SRJ* (Official Gazette) - International Treaties No. 4/01.

2. The Practice of Torture

The HLC has not registered any serious incidents of police misconduct against members of ethnic communities since the fall of Milojević, whereas such incidents were commonplace while he was in power, especially in Kosovo and the Sandžak. Nor have there been incidents of violence against political opponents. However, the HLC is concerned by the frequency with which police officers continue to use excessive force during identity checks, arrests, detention in police stations, and investigation interrogations.

The cases investigated by the HLC indicate that the police resort to physical abuse primarily because of the absence of proper police work in collecting material evidence. Confident that the issue of their accountability will not be raised, officers instead resort to extracting confessions even though court decisions cannot be based on them. Other reasons underlying police brutality are poor training and/or racial or ethnic prejudices. According to our information some NGOs have organised courses for the police, although no results are visible. The most frequent kinds of abuse are physical force (kicking, punching and beating with nightsticks), though cases of electric shocks and hindering the breathing of victims by placing plastic bags over their heads have also been registered.

The case of Jovan Nikolić

Jovan Nikolić, a Roma man, responded to a summons for an investigatory interrogation on 6 November 2002. At the police station in the town of Ruma, he was taken to an office in which there were two inspectors. He told the HLC how the inspectors treated him:

"They both yelled at me and slapped me, saying I was to admit to stealing. One of them hit me several times on the shoulder with a nightstick. Then they took me to another office and told me to stretch out my arms with the palms up. They balanced a thick book on my hands and hit me with a wooden club on the back. All the time, they kept insulting me and cursing my Gypsy mother and saying I had to confess to some kind of robbery. They took the book away and put a black plastic bag over my head. One of them pulled the bag tight around my neck and shouted that he would strangle me if I didn't confess. I said I hadn't done anything and, when they

saw they couldn't make me confess to something I hadn't done, they decided to let me go."

The case of Bojan Milojevi

Acting on a report that currency notes were being counterfeited in his apartment, officers of the Pančevo and Kovin police stations searched the home of Bojan Milojević and then took him to the Pančevo police station and handed him over to three inspectors from Belgrade. Milojević later learned the name of one of them: Darko Senić. Two inspectors handcuffed him, ordered him to kneel and started kicking and punching him in the head, back, ribs, and arms. The oldest of the three officers stood by in silence. Milojević was then taken to the Belgrade Police Department where a plastic bag was wrapped around his head to the eyebrows, causing him to sweat profusely. He spent almost two hours with the bag on his head and his hands cuffed behind the chair in which he was sitting. During that time he was beaten by Senić and another inspector, who repeatedly kicked and punched him. At one point, they ordered him to spread his legs and hit him with a nightstick on the inside of his thighs, after which they made him kneel and beat him with a nightstick on the stomach. They forced him to hold his arms with the palms up and struck them with a nightstick. When Milojević continued to insist that he did not know what he was supposed to confess to, they took a device slightly larger than a pack of cigarettes, which generated electric shocks. In his statement to the HLC, Milojević described the apparatus:

"It had a small point. When you touch the body with the point and press a button on the box, it makes electric shocks. They pricked me all over the body with that thing - on the legs, over the heart, arms, back, wherever they could reach. They were very strong shocks."

The officers then pulled the plastic bag completely over his head and pulled it tight around his neck so that he could not breathe. They kept threatening to kill him if he did not confess and throw his body off a bridge, saying they would claim he had tried to escape. Milojević had asked for a lawyer when he was taken in and the next morning, but was told he did not need one until he was remanded in custody. Shortly afterwards, he was released and, two months later, charged with forging a document. Fearing reprisals, Milojević refused to file a criminal complaint against the Belgrade Police Department officers.

The case of Vladimir Radojčić

Vladimir Radojčić was taken into custody as a suspected car thief by three plainclothes officers on 26 February 2002 as he was leaving a Belgrade restaurant. He was beaten before being bundled into a car and driven to the police station at Smederevo, a town not far from Belgrade. Held at the station until 28 February, Radojčić was subjected to brutal psychological and physical abuse by criminal investigations inspectors to force him to confess to stealing cars.

Radojčić described the treatment he received at the hands of the police to the HLC:

"In the office, they first made me take off my shoes and then said I was to lie on the desk on my stomach. They pulled me forward so that my head hung over the side of the desk. They taped my arms at the wrists and elbows to the legs of the desk, and strapped my legs with more tape. Then they pulled up my sweat shirt, took off my socks, turned on some music very loud, put a bag over my head and started touching me all over the body with something that felt like live wires. They put the wires on my genitals too. The pain was unbearable - I would have jumped out the window if only I had had a chance.

"I blacked out several times and wet my pants. I remember them splashing me with water a couple of times and the feeling of waking up from a dream. They kept asking me who was stealing the cars. I denied everything in the beginning, but when I realised they were going to ruin my health, I started making up things to tell them."

Radojčić was left taped to the desk until 6 a.m. the next day when he was untied and handcuffed to the desk. The officers came into the office again at 10 a.m. and resumed beating him, this time with nightsticks on the soles of his feet. Later that day, the officers drove Radojčić to Belgrade to show them where he lived. When they arrived, one of the officers went inside, told the family that he was a friend of Radojčić, and took a cellular phone from his sister-in-law. He also warned Mrs. Radojčić not to report her son's disappearance or he would end up dead.

Radojčić was then driven back to Smederevo and returned to Belgrade the next day. When they left him some 300 meters from his house, the police told Radojčić to say nothing about what had happened to him. That same

evening, Radojčić went to the Belgrade Emergency Treatment Centre where he obtained a doctor's certificate on the serious bodily injuries he had sustained.

On 5 March, the HLC issued a press release on the incident. The Ministry of Internal Affairs reacted on 7 March by issuing its own release in which it denied the HLC's allegations and said no force was used against Radojčić in the police station:

"The working group established that Radojčić sustained his injuries at the time he was taken into custody when he resisted arrest and tried to escape. The officers used physical force and handcuffs to prevent him escaping and to overcome his resistance.

The working group further established that Radojčić came to the Belgrade Emergency Treatment Centre at 11.05 that evening. He asked a doctor he knew, who was not on duty at the time, to examine him. The doctor did so and wrote up a 'Report by Medical Specialist' and had it entered in the logbook as No. 23336. He then took the report to the on-duty doctor, who signed it without even examining Radojčić."

The Ministry added that two criminal investigations inspectors, Saša Djordjević and Perica Milovanović, had been suspended from active duty but only for detaining Radojčić for more than 24 hours. "The Smederevo police are taking steps to solve a felony and to arrest another two persons with whom Radojčić committed the felony, after which criminal charges will be preferred", the Ministry's release concluded.

The report the medical specialist wrote on 28 February 2002 is unequivocal that, injuries of the nature of those sustained by Radojčić could not have been inflicted by police in preventing the escape of a suspect and overcoming his resistance. It described these injuries as bruises on the head, chest, both knees and both ankles, parallel bruises on the neck, elbow and back, swellings on both knees, burns and swellings on both ankles, and swollen soles.

In a letter to the HLC dated 8 March 2002, the District Prosecutor's Office requested more information on persons who claimed to have been tortured at the Smederevo police station. The HLC responded and provided the prosecutor with all the information it had on these cases.

Acting on behalf of Vladimir Radojčić, the HLC filed a criminal complaint with the Smederevo Public Prosecutor's Office on 22 March 2002 charging Officers Djordjević and Milovanović with aggravated assault with the intention of extracting a statement (Article 65 (2)), Serbian Criminal Code).

3. Administrative, Judicial and Criminal Structure

Victims of police misconduct in Serbia and Montenegro may file criminal complaints and lawsuits for compensation with courts of general jurisdiction. Depending on the seriousness of the offence, the competent courts are the municipal or district courts in Serbia and their counterparts in Montenegro (basic and high courts).

Under the Serbian Law on Internal Affairs, officers who break the law face disciplinary action and may be fined, reassigned, or dismissed from the force.[7]

While Serbia has not, to date, adopted legislation to set up an ombudsmen office, its province of Vojvodina has. However, the ombudsperson's mandate is limited to issues of gender equality, the rights of the child, and minority rights. An ombudsmen office was established in Montenegro in late 2003 and, in addition to the issues dealt with by the Vojvodina ombudsperson, also has the authority to investigate law enforcement conduct.

In addition to the disciplinary committees already present, on 12 June 2003 the Serbian government established the post of General Inspector at the Ministry of Internal Affairs as a mechanism of internal control. The General

7 Article 50, Para 1 (7,13), Serbian Law on Internal Affairs: Besides the serious infractions of duty established by law, the following shall also be considered serious infractions: ... (7) conduct which harms the reputation of the force or interpersonal relations in the Ministry of Internal Affairs;... (13) any action which constitutes a criminal offense committed in the course of duty or in connection with duty. Article 52 of the Law: The following sanctions shall be imposed for serious infractions of duty: 1) fine; 2) reassignment to another post; 3) dismissal from the force. Fines shall amount from 20% to 30% of the salary the employee received in the month preceding the month in which the sanction was pronounced. Reassignment to another post shall be for a period of six months to two years; the employee may be reassigned to a position for which the same or immediately lower professional qualifications are required.

Inspector is responsible directly to the Minister and his mandate includes receiving and investigating complaints against police misconduct.

In April 2003, the Serbian Minister of Internal Affairs issued Instructions on Police Ethics and Policing, which obliges the members of the police force to demonstrate respect for human dignity, human rights and the freedoms guaranteed by the European Convention on Human Rights.

This was followed by the appointment of a new General Inspector, who has publicly stated that he will investigate all allegations of police abuse made in the past.

In the period from July to December 2003, the HLC submitted to the then General Inspector six complaints for police misconduct. He responded to five. Three of the replies stated that the complaints were unfounded, one confirmed the police's guilt and disciplinary action was taken, and one reply failed to give an answer either way. There was no response to the remaining complaint. The remaining complaint concerns a case in which two men were assaulted and beaten by policemen on 4 July 2003 in Ruma, Vojvodina.

Rather than endeavouring to create effective mechanisms to prevent police abuse and to punish the perpetrators, the authorities generally try to present a better image of the police to the public. Though Ministry officials are far more responsive to the views of human rights organisations than was the case during the Milojević regime, they mainly attempt to deny that any instances of torture occurred or, if that is not possible in view of the evidence (medical reports, photographs, eyewitnesses), they assure the public that investigations will be launched and the perpetrators punished. Even in cases of severe police brutality, disciplinary committees almost always choose to believe the accused police officers rather than the complainants, in spite of evidence to the contrary. Very often criminal charges are brought against victims of torture in order to protect law enforcement officers.

a) Relevant Legal Structure - general provisions and ratified international treaties

In its Charter on Human and Minority Rights, Serbia and Montenegro guarantee the inviolability of the person's physical and psychological integrity, and prohibit any form of torture, inhuman or degrading treatment.[8] The Constitutional Charter is the highest legal act for the State Union of Serbia and Montenegro. An integral part of the Constitutional Charter is the Charter on Human and Minority Rights. However, each member (Serbia *and* Montenegro) has its own constitution which, according to the Constitutional Charter (Article 65), must be changed in accordance with the Constitutional Charter within 6 months of the adoption of the Constitutional Charter (4 February 2003). This has still not occurred.

The constitutions of Serbia and Montenegro guarantee respect and dignity to all in criminal and all other proceedings, when a person is deprived of freedom or his movement is restricted, during the serving of sentences, and state that no one may be subjected to torture, inhuman or degrading treatment or punishment.[9]

Serbia and Montenegro have an obligation to comply with all international treaties ratified by the former Socialist Federal Republic of Yugoslavia (SFRY) and Federal Republic of Yugoslavia (FRY). SFRY formally ceased to exist on 27 April 1992, the date of the promulgation of the FRY Constitution, which declares the "uninterrupted" status of SFRY as a personality under international law.

The state-union of Serbia and Montenegro came into being with the adoption of the Constitutional Charter on 4 February 2003. Since then, most powers, which are regulated by law, have been transferred to the constituent republics of the union. The Constitutional Charter envisages the immediate application of ratified international instruments and generally recognized rules of international law, and their primacy over the law of the state union and the constituent republics.[10]

8 Article 12, Charter on Human and Minority Rights: Everyone has the right to the inviolability of his physical and psychological integrity. No one may be subjected to torture, inhumane or degrading treatment or punishment. No one may be subjected to medical or scientific experiments unless he has freely given his consent.

9 Article 26, Serbian Constitution; Article 24 Montenegrin Constitution.

10 Articles 10 and 16, Constitutional Charter of Serbia and Montenegro.

Serbia and Montenegro are bound by the most important UN human rights instruments: the International Covenant on Civil and Political Rights (*Sl. list SFRY*, No. 7/71); the International Covenant on Economic, Social and Cultural Rights (*Sl. list SFRY* No. 7/71); the Convention on the Elimination of All Forms of Discrimination against Women (*Sl. list SFRY* No. 11/81); the Convention on the Rights of the Child (*Sl. list SFRY* - International Treaties, No. 15/90, *Sl. list FRY* Nos. 4/96 and 2/97); the Convention on the Elimination of Racial Discrimination (*Sl. list SFRY* No. 6/67); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Sl. list SFRY* - International Treaties, No. 9/91).

In late 2003, Serbia and Montenegro signed the Optional Protocol to the Torture Convention, but this instrument has not yet been ratified by the Assembly of the state-union. The European Conventions for the Protection of Human Rights and Fundamental Freedoms (entered into force on 3 March 2004) and Prevention of Torture and Inhuman Treatment or Punishment were ratified toward the end of that year. On 26 December 2003, the parliament of the state union of Serbia and Montenegro ratified both conventions.

Citizens of Serbia and Montenegro may submit individual petitions to the following UN bodies: Committee against Torture (since 1991)[11]; Human Rights Committee (since 2001),[12] and the Committee against Racial Discrimination (since 2001).[13]

With the entry into force of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the territory of Serbia and Montenegro on 3 March 2004, its citizens may, with some provisions, submit individual petitions to the European Court of Human Rights in Strasbourg.

11 SFRY signed the UN Torture Convention on 18 April 1989 and ratified it on 20 June 1991. It also made a declaration under Article 22 recognizing the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals who claim to be victims of a violation by a state party of the provisions of the Convention.

12 By ratifying the Optional Protocol to the Covenant on 22 June 2001, FRY made it possible to its citizens to submit individual communications to the Human Rights Committee.

13 The FRY federal government made a declaration recognizing the competence of the Committee against Racial Discrimination to receive and consider individual communications from citizens of Serbia and Montenegro.

On behalf of citizens of Serbia and Montenegro, the HLC has thus far submitted six communications to the UN Committee against Torture. In two of these cases, the Committee found state bodies in violation of the rights guaranteed by the Convention (*Ristić v Yugoslavia*, *Džemajl Hajrizi et al v Yugoslavia*[14]). The remaining four were also found admissible and proceedings are under way.

In its 21 November 2002 decision in *Džemajl Hajrizi et al v Yugoslavia*, the Committee found that the pogrom of Roma in the Montenegrin town of Danilovgrad constituted an act of cruel, inhuman or degrading treatment. In addition, the Committee found that the police, although present at the scene, failed to take any measures to prevent the violence and destruction, thus implying their acquiescence. It stressed that none of the several hundred non-Roma or police officers at the scene was brought to trial, and urged the authorities to conduct a proper investigation, prosecute and punish those responsible, and provide redress to the victims. In March 2004, the Montenegrin authorities paid the Roma 980,000 Euros in compensation, thereby partly complying with the Committee's decision. However, there has been no investigation and no one has been prosecuted or punished to date.

The case of Nikola Nikolić

Nikola Nikolić died in unclear circumstances on 19 April 1994. His parents allege that one or more members of a police patrol who were searching the family's apartment beat him to death and, to cover up the murder, threw his body from the window.

On behalf of Nikolić's parents, the HLC submitted a communication to the Committee (CAT) on 18 March 1999. In November 2000, the Committee sent the communication to the FRY government, giving it six months to say if all possible legal remedy had been exhausted and whether or not the case had been or was being considered by some other international body.[15] Though it was three years before the Serbia and Montenegro authorities responded, they still failed to state their opinion on admissibility so that proceedings are still under way.

14 Communication No. 161/2000, 21 November 2002, CAT/C/29/D/161/2000 (Jurisprudence).

15 Article 22(5), Convention.

The case of Jovica Dimitrov

Jovica Dimitrov, a Roma man, was taken into custody by police in Novi Sad on 5 February 1996. During questioning at the police station, one officer first made verbal threats and then struck Dimitrov repeatedly with a baseball bat and steel wire and punched and kicked him. The blows were so severe that Dimitrov briefly lost consciousness. With breaks, the questioning lasted from 6.30 a.m. to 7.30 p.m.

On 7 November 1996, Dimitrov filed a criminal complaint with the Novi Sad Municipal Prosecutor's Office, charging an unidentified police officer with attempting to extract a statement.[16] He also provided photographs and a medical report on his injuries. Although on several occasions he insisted that the police officer who abused him be identified by name, it was only on 17 September 1999 - four years after the event - that the Prosecutor's Office instructed the investigating judge to take some investigatory steps[17] Although eight years have passed since the incident, the investigating judge has not yet identified the police officer concerned.

The HLC and the Budapest-based European Roma Rights Center (ERRC) jointly submitted a communication on 29 August 2000, asking the Committee (CAT) to find that the FRY authorities, though aware that Dimitrov was subjected to torture, had failed to conduct an impartial investigation within a reasonable period, thereby making it impossible for Dimitrov to proceed with a civil action seeking compensation. On 12 October 2000, the Committee requested the FRY authorities to comment on whether all domestic remedy had been exhausted and whether the case had been or was being considered by another international body. In spite of several requests for expedition, the authorities did not respond until 2003. The HLC and ERRC commented on this response of the Serbia and Montenegro authorities on 25 November 2003, and the proceedings are still under way.

16 Article 65, Serbian Criminal Code.

17 If the perpetrator of a criminal offense is unknown, the prosecutor does not have the possibility of requesting a full judicial investigation. However, Article 239 of the Criminal Procedure Code authorizes him to order the investigating judge to gather immediately after the commission of a crime evidence which might be lost or destroyed with the passage of time (e.g. examination of witnesses).

The case of Danilo Dimitrijević

Danilo Dimitrijević, also a Roma man, was brought in to the Novi Sad Police Department on 14 November 1997. A plain-clothes officer ordered him to strip to his underwear. He then cuffed Dimitrijević to a metal bar attached to the wall. For approximately one hour, the officer struck him with a long bat, demanding that he confess to stealing.

On 24 November 1997, Dimitrijević filed a criminal complaint against an unidentified police officer for attempting to extract a confession by force. On his behalf, the HLC and ERRC submitted a communication to the Committee (CAT) on 7 August 2000, stating that the competent authorities had failed to launch an impartial investigation even though they were aware that the victim had been subjected to torture. It took the Serbia and Montenegro authorities until 2003 to inform the Committee that they were gathering information on the case in order to state an opinion on its admissibility. The HLC and ERRC commented on this reply in November 2003, and the case is still under way.

The case of Dragan Dimitrejević

Dragan Dimitrijević, a Roma man, was beaten up in a Kragujevac police station on 27 October 1999 by officers to extract a confession of theft from him. Dimitrijević was tied to a radiator and struck with a nightstick and metal bar on the back and arms. On 31 January 2000, he filed a criminal complaint charging unidentified police officers with causing him slight bodily harm. From 26 July 2000, the HLC on four occasions requested the Kragujevac Prosecutor's Office to expedite the matter but no action on the complaint was taken.

The HLC and ERRC on 20 December 2001 submitted a communication to the Committee (CAT), citing violation of the Convention's provisions. In October 2003, the Committee informed the HLC and ERRC that it had received a letter from the Permanent Mission of Serbia and Montenegro to the UN Office in Geneva saying information on the case was being gathered from the competent bodies. In their comments to the Committee, the HLC and ERRC pointed out that the competent bodies had had ample time to state an opinion on admissibility. The proceedings are still under way.

b) Restrictive Legislation

Article 5 of the Serbia and Montenegro Charter on Human and Minority Rights lays down that these rights may be restricted "only to the extent necessary in an open and democratic society to achieve the purpose for which the restrictions are permitted."

When a state of emergency or state of war is declared, human and minority rights may be restricted to the extent necessary in the given situation. But in no way may such restrictions impinge on the right to the inviolability of a person's physical and psychological integrity.[18]

The Constitution and Criminal Procedure Code explicitly prohibit any kind of violence against persons who have been deprived by police of their liberty. Nonetheless, protecting detainees from torture and other forms of abuse became topical during the state of emergency declared in Serbia following the assassination of Prime Minister Djindjić in March 2003. For the duration of the emergency, police were able to take in and detain people for up to 30 days without a court warrant and without the detainees having the benefit of legal counsel.

Concurrently with the imposition of the state of emergency, the Ministry of Internal Affairs launched Operation Saber,[19] whose main objective was uncovering and apprehending the Prime Minister's killers. Over 11,000 people were arrested or detained in the course of the operation. A large number of individuals contacted the HLC to complain about the violation of the rights of their family members, stating that excessive force was being used both during arrests and interrogations, that they had no information on where the detainees were being held, and that the detainees were being denied any contact with the outside world, including with their families and attorneys.

The families of several persons who were taken into custody asked the HLC for assistance in locating them. The police authorities, however, failed to reply to the HLC's requests for information on the whereabouts of these people. Also, a number of people who were held for ten days or more turned to the HLC for help, saying they believed they were taken in only because of

18 Article 6, Charter on Human and Minority Rights.

19 Operation Saber lasted from 12 March to 22 April 2003.

their prior criminal records. Since they were never questioned, they did not know the specific grounds on which they were detained. Many were held in the basements of police stations in unsanitary conditions.

Among the cases registered by the HLC was that of a young woman who was taken in on 11 April as a suspected drug dealer. A few days later, her parents contacted the HLC and said a lawyer from another city had called them to say he was at the interrogation of their daughter by the investigating judge. The HLC reached this lawyer and learned that he had been appointed by the court to be present during the interrogation. He said he was not allowed to confer with the suspect, and that she merely reiterated a statement that had already been typed up. She did manage, however, to tell him that her thighs, soles and buttocks were bruised from the beating she had received. The lawyer was not permitted to see her afterwards, nor was he given access to her file.

The HLC also spoke with a young man who was held by the police for one month. He was first questioned two weeks after being detained. He was led out of the cell, handcuffed, a woollen cap was pulled over his head and face, and he was put into a police van. After quite a long drive, the van stopped and he was ordered to get out and kneel on the ground. The police officers then beat him on the soles of his feet, thighs, and arms, and demanded to know how he made his living.

Prompted by the numerous complaints, the HLC requested permission from the Ministry of Justice to visit those detained and arrested during Operation Saber. The Ministry, however, turned a deaf ear to the repeated requests of the HLC as well as Human Rights Watch and the Helsinki Committee for Human Rights in Serbia.

Credible reports on many instances of unlawful police conduct notwithstanding, redress is in numerous cases impossible to obtain because of the lack of material and other evidence of the physical abuse and even torture of detainees. Since the victims were denied contact with the outside world, there are no witnesses to corroborate their allegations. Nor is there any medical documentation on the injuries they sustained as they were treated only by in-house medical personnel.

20 *Sly. gaskin RS*, No. 42/02; Amendments 27/03.

Amendments to the Law on the Organisation and Competence of State Agencies in Combating Organised Crime[20] of 11 April 2003 allow police detention of up to 30 days.[21] The provision is in contravention of the Serbian Constitution and has no comparison in the law of other countries. The lawmaker did, however, provide for a review of the provision in 90 days of its entry into force.

On 5 June 2003, the Serbian Constitutional Court ruled that the provision was not to be applied pending its final decision on the matter. On 1st July 2003, the Serbian Parliament *annulled* the provision so that police detention is now limited to 24 hours at the most.[22]

c) The definition of Torture Under Criminal Law

Serbia has not yet amended its criminal law in accordance with the recommendation made by the CAT on 11 and 16 November 1998 to define torture as a separate criminal offence.[23]

21 Article 15 (a, c, d, e), Law on the Organization and Competence of State Agencies in Combating Organized Crime.

22 Article 15 (b), Law on the Organization and Competence of State Agencies in Combating Organized Crime: To gather information and evidence on organized crime, a law enforcement official may bring in without a court warrant and hold in preventive custody a person who can give such information or point to evidence. Preventive custody may last up to 24 hours at the most.

23 At its session 348, 349 and 354 held on 11 and 16 November 1998 (CAT/C/SR, 348, 349, 354), the Committee considered the initial FRY report (CAT/C/16/Add. 2) and made recommendations that were conveyed to the competent FRY state bodies.

Extraction of statements[24] and civil injury[25] are in the group of criminal offences against human and civil rights and liberties. Compared, however, to the definition in the Convention, they only partly punish torture, inhuman or degrading treatment or punishment since, under domestic law, these acts can be committed only by a person acting in an official capacity. This excludes the responsibility of a third person who commits an act of torture at the incitement or with the acquiescence of an official.

The criminal offence of extraction of statements consists of obtaining a written or oral statement from a person with the use of force, threats or other proscribed means. Again, the perpetrator can only be a person acting in an official capacity and in the performance of duty. If the act is accompanied by severe violence or if it results in consequences of a serious nature for a defendant in criminal proceedings, it constitutes an aggravated form of the offence. The simple form carries a sentence of at least three months to five years' imprisonment, while a minimum sentence of three years for the aggravated form is laid down.

Civil injury is ill-treating or insulting a person and other conduct (derision and the like) which violates the human dignity. Once again, the act can only be committed in the performance of duty and by a person acting in an official capacity. If the act results in slight or serious bodily harm, the two cases will be joined. The sentence envisaged by law is a minimum of three months to a maximum of three years in prison.

The general statutes of limitations (absolute and relative) are applied to this class of criminal offences. Specifically, the relative limitation for acts of torture is from three to 15 years, depending on the form and severity of the offence. The time period starts running from the day the crime was

24 Article 65, Serbian Criminal Code "Extraction of Statements": (1) A person acting in an official capacity who uses force or threats or other proscribed or impermissible means with the intent of extracting a confession or other statement from a suspect, witness, expert witness or other persons, shall be punished with a term of imprisonment of three months to five years. (2) If the extraction of a confession or other statement is accompanied by severe violence or if it results in consequences of a serious nature for a defendant in criminal proceedings, the perpetrator shall be punished with a minimum term of imprisonment of three years.

25 Article 66, Serbian Criminal Code "Civil Injury": (1) A person acting in an official capacity who ill-treats, insults or treats another in a manner degrading to his human dignity shall be punished with a term of imprisonment of three months to three years.

committed. Under the law, there is no possibility of prosecution or other legal action when double the time period envisaged for relative limitation has expired (absolute). Running of the period can, however, be suspended under conditions envisaged by law.[26]

In December 2003, the Montenegrin Parliament passed a new Criminal Code which defines ill-treatment and torture as a separate criminal offence.[27] The provision, however, does not conform entirely with Article 1 of the Convention since it does not envisage the responsibility of a third person committing an act of torture at the incitement or with the acquiescence of a person acting in an official capacity.

Under Montenegrin law, the punishment for extraction of statements is 3 months to 5 years for the simple form, and a minimum of 2 to a maximum of 10 years in prison for the aggravated form. The statute of limitations is from 5 to 10 years, depending on the form. Where ill-treatment and torture is concerned, the statute of limitations is from 5 to 10 years, depending on the form. The general rules of absolute limitation are applied to these criminal offences.

26 Article 96, Basic Criminal Code: (1) The limitation time period for criminal prosecution shall start on the day the criminal offense was committed. (2) The limitation period shall not run in the period during which the law does now allow prosecution to be instituted or to continue. (3) The limitation period shall be interrupted by any procedural action taken to prosecute a perpetrator for a criminal offense committed. (4) The limitation period shall also be interrupted when the perpetrator commits another grave or more serious criminal offense while the period is running. (5) The limitation period shall start running again after every interruption. (6) The limitation period expires in any case when double the maximum time period during which criminal prosecution can be brought has expired.

27 27 Article 167, Montenegrin Criminal Code: "Who abuses another or treats him in a manner violating human dignity shall be fined or imprisoned for a term of up to one year. (2) Who inflicts major suffering on another with the intent of obtaining from him or a third person information or a confession, or to intimidate him or a third person, or to place pressure on them, or commits the act for any other reason based on any form of discrimination, shall be punished with a term of imprisonment of up to three years. (3) If the act referred to in paragraphs 1 and 2 of the present Article is committed by a person in the performance of duty, he shall be punished with a term of imprisonment of up to three years for the act referred to in paragraph 1, and a term of one to five years for the act referred to in paragraph 2.

d) Detention

Though the majority of torture and/or ill-treatment cases registered by the HLC occurred before the new Criminal Procedure Code entered into effect,[28] there have been numerous instances of violation of the right to freedom from torture since then.

The previous Code allowed police to hold people in detention for up to 72 hours without a court order and the right to an attorney, which created a major potential for abuse during the period of police custody. The provisions of the new Code relating to law enforcement conduct in the pre-trial period are a good basis for the prevention of and protection from torture: The most important of these are:

- The presence of an attorney is required at the first questioning;[29]
- Limitation of investigatory interrogation to a maximum of four hours;[30]
- If police are collecting information from a suspect in a criminal case, the suspect must be notified in the summons of his right to have an attorney present;[31]
- A person who is detained without a court order must be taken before the competent investigating judge immediately;[32]

28 March 2002.

29 Article 5, Criminal Procedure Code: (1)A person deprived of liberty shall be immediately informed in his language or in a language that he understands, of the reasons for deprivation of liberty, that he is under no obligation to make a statement, that he is entitled to a defense counsel of his own choice, and that he is entitled to request his family or his other close persons to be informed of his deprivation of liberty.

30 Article 226 (3) Criminal Procedure Code: Collecting of information from one person may last as long as necessary to obtain the information, but no longer than four hours.

31 Article 226(7), Criminal Procedure Code: If a law enforcement agency is collecting information from a person suspected of committing a criminal offense, or institutes pre-trial proceedings against that person pursuant to the Code, the person may be summoned in the capacity of a suspect. The suspect shall be notified in the summons of his right to retain an attorney.

32 Article 5 (2), Criminal Procedure Code: A person deprived of liberty without a court order shall be brought immediately before the competent investigating judge.

- Only in exceptional cases can the police detain a person for the purpose of collecting information or interrogating him, but for no longer than 48 hours.[33]

Even after the new Code went into effect, the HLC has registered several cases in which officers at the Belgrade Police Department failed to caution suspects that anything they said could be used against them. At local police stations, officers did not inform suspects of their rights, e.g. that they could defend themselves as they thought best, that they could exercise their right to remain silent, that they had the right to an attorney, and the like. Since this constitutes a violation of due process, courts cannot base their decisions on statements taken in such conditions. Another kind of violation noted by the HLC is collusion between the police and attorneys appointed from a list kept at police stations. In a number of cases, these attorneys were not present when statements were taken but signed them subsequently, thus making it possible for the police to claim that they had fully adhered to the rules.

The case of M.P.

Three minors were drinking beer outside a shop in the Cukarica district of Belgrade on 14 May 2004. A police car pulled up, checked their identities and, upon searching them, found a quantity of marijuana. The officers took the minors to the local police station where they were questioned in separate offices. M.P. (17) described to the HLC his treatment at the hands of the police:

"There were two or three police officers inside, one in uniform and the other, a younger one, was an inspector. The uniformed one slapped me, kicked me in the back of the thigh and gave me another slap. Then he stopped. I didn't say anything. They took me outside again. The oldest inspector came up to me and when I again denied that DJ had sold me the marijuana, first went out and then came back and twisted my ear. He called me an animal and peasant and slapped me."

33 Article 229 (1), Criminal Procedure Code: A person deprived of liberty under Article 227 (1) or a suspect referred to in Article 226 (7,8) may exceptionally be detained in order to collect information (Article226 (1) or questioned for a period not exceeding 48 hours from the time he was deprived of liberty or responded to a summons.

M.P.'s father had in the meantime been notified that his son was at the police station. He told the HLC that the 17-year-old had made a statement without a lawyer whereas the police report on his son's detention stated that an attorney had been present.

Police also violate Article 229 (1) of the Criminal Procedure Code, which regulates the matters of detention or interrogation for a period of 48 hours. The lawmaker intended this provision to be applied only exceptionally, when the objective cannot be achieved through other means. But police frequently delay writing up a detention report, fail to note the exact time a person was taken into custody and how long he spent in the police station. Detention reports are as a rule written up only when the attorney appears and the 48-hour detention period is calculated from that point. When it expires, the detainee is taken to an investigating judge and sometimes waits for hours before he is finally questioned. The legally set 48-hour detention period is often exceeded in this way.

e) Inadmissibility of Evidence Obtained by Torture

Article 12 of the Criminal Procedure Code explicitly prohibits any kind of violence against a person who has been deprived of his liberty or whose liberty is restricted, and the extraction by force or other proscribed means of confessions or other statements, and makes such acts punishable.

These new provisions go a long way toward preventing the use in court of evidence obtained by torture. The problem, however, is that the victims do not know enough about their rights. Hence the possibility still exists of a court basing its ruling on a coerced statement if the victim has failed to report to the judicial authorities misconduct on the part of the police or that his statement was obtained by unlawful means.

The Criminal Procedure Code lays down that judicial decisions may not be based on evidence obtained through violation of due process, the Constitution and international law.[34] It specifies that force, threats, deception, promises, coercion, deprivation and similar means may not be used to obtain a statement or confession that could be used as evidence. And, if

34 Article 18 (2), Criminal Procedure Code.

these provisions are violated, the Code states in Article 89 (10) that the court cannot base its ruling on such a statement or on police reports made during the pre-trial period. Upon completing the investigation, the investigating judge must exclude all unlawfully obtained information and evidence.[35] The excluded portions of the record are kept in a separate folder apart from the record of the case. Thus, with the exceptions specifically envisaged by the Code, court rulings cannot be based on statements made to the police.[36] But in practice and almost as a rule, investigating judges do not exclude such documents, which can strongly influence the trial judges when rendering their decisions even though no mention of them is ever made in the judgments.

f) Complaints and Investigation

Civil injury and extraction of statements are offences that are prosecuted by the state. In practice, however, prosecutors do not bring cases against perpetrators of torture by virtue of office as they are duty bound to do,[37] nor do

35 Article 178, Criminal Procedure Code: Where this Code provides that the judicial decision cannot be based on the statement of the defendant, witness or expert witness, the investigating judge shall by virtue of the office or upon the motion of parties render a ruling on the exclusion of these statements from the file immediately, or at the conclusion of the investigation at the latest, or before he gives consent for the indictment to be preferred without investigation (Article 244 paragraph 1) at the latest. This ruling is subject to appellate review.

36 Article 226 (9), Criminal Procedure Code: If the suspect in the presence of his defense counsel agrees to give a statement, the law enforcement officers shall interrogate him pursuant to the provisions of this Code which relate to interrogation of defendants. The competent public prosecutor shall be informed on the interrogation of the suspect by the police, and may be present during interrogation. The record made on this interrogation shall not be separated from the files and may be used as evidence in criminal proceedings.

37 Article 222, Criminal Procedure Code: (1) All state authorities, territorial autonomy and local government authorities, public companies and institutions have a duty to report criminal offenses subject to prosecution by the state on which they have been informed or have learned about in other ways. (2) The submitters of criminal complaints referred to in paragraph 1 of this Article shall cite the evidence known to them and take measures to preserve traces of the criminal offense, the objects upon which or by means of which the criminal offense was committed as well as other evidence.

they dismiss the criminal complaints filed by the victims. A prosecutor's lack of action blocks all possibilities of instituting criminal proceedings.[38]

Law enforcement officials frequently bring pressure to bear on injured parties, trying to convince them not to file a complaint and threatening to file charges of obstructing a police officer in the performance of duty[39] against them. In a large number of cases, such charges have been brought against complainants, sometimes even pre-emptively before any kind of action has been initiated against a police officer. Many torture and/or ill-treatment victims choose not to file a complaint for fear of reprisals or because they believe, mistakenly, that abuse, especially if it does not result in serious injury, is a routine part of policing.

g) Competent Agencies

Investigations are conducted by the investigating judge at the request of the state prosecutor. An investigation may be instituted only against a known person and if there are grounds to suspect that he has committed a criminal offence. This often represents a problem in torture and/or ill-treatment cases since it is the police who have to provide information on the identity of officers against whom complaints have been filed.

38 Under the Criminal Procedure Code, if the prosecutor decides to dismiss a criminal complaint or to drop a case after initiating proceedings, the injured party can assume the capacity of private prosecutor. He must, however, initiate proceedings within eight days of receiving written notice from the prosecutor of his decision. In the absence of receiving such notice, the injured party may under Article 61 (4) assume the capacity of private prosecutor within three months at the most of the decision by the prosecutor. If the three-month period is exceeded, he loses all possibility of himself prosecuting his case. The time limit effectively makes it possible for the prosecutor to deprive the victim of his right to proceed simply by failing to act on a criminal complaint or failing to inform the court of his decision to drop a case once it has been initiated (the decision is actually taken by the prosecutor but notifying the injured party is the responsibility of the court).

39 Article 23, Serbian Law on Public Peace and Order.

The Case of the Roma Settlement

A 30-year-old Roma settlement in the Novi Beograd district of Belgrade had 126 inhabitants up to 8 June 2000, mainly displaced Kosovo Roma. Two days previously, the Roma received written notification that their homes were to be demolished because the settlement was in defiance of zoning regulations. They were given one day to move out.

Their request to the municipal authorities for more time was flatly denied and, on 8 June, a demolition team accompanied by police arrived and razed the settlement. Furniture and home appliances were smashed by the bulldozers, and several cars were damaged. Bekim Mujoli described the events of that day to the HLC:

"A police team with Bulatović in charge arrived at 10 in the morning on 8 June. There were about 10 policemen in uniform. They did not attack us. One of them said, 'Hey, Gypsies, you have no right to live here on government land.' Then they called the plainclothes police who arrived at 10.40. There were about 10 of them. They drove a van straight at us, as if they were going to run us down. Nobody got hurt that time. When they got out of the van, they hit and cuffed me, then punched me in the back and head. They cursed my Gypsy and Shiptar[40] mother as they beat me. They kept me in the van for about an hour while they tore down the houses, and then drove me to the police station at Bežanijska Kosa. They kept me there until 1 p.m."

Ivan Stevanović (12) was also physically abused by police when he paused to pick up a toy: "A police van came into the settlement driving very fast. I scrambled out of the way so I wouldn't be run over. Four men got out and one hit me on the head. I ran away from him but dropped a toy and stopped to pick it up. That's when he caught up to me and kicked me in the back."

Fahri Osmani recounted to the HLC that the police beat everyone they were able to catch, and that he begged them not to wreck his furniture and appliances: "One of the policemen in *civvies* hit my brother Besim, punching him in the right arm even though Besim was carrying a three-year-old child. Besim said to him, 'Man, why are you hitting me? Can't you see I'm holding a child?' I went up to Besim and told him to run. Then the same policeman

40 Derogatory term for Kosovo Albanians.

kicked me in the right leg so hard that I couldn't move. After that he hit my wife Hata on the back. She was four months with child at the time and Iseni begged them not to beat a pregnant woman. So, instead of hitting her, the policeman hit Iseni on the back and kicked him in the thigh. That's when we all ran away. I wanted to get my things out of the house. I managed to pull some of them out, but the bulldozer ran over them even though I pleaded with the police to leave my things alone. Only a few people in the settlement didn't get slapped by the police that day."

On 12 August 2000, the HLC filed a criminal complaint against several unknown police officers, charging them with civil injury and infliction of slight bodily harm. When the prosecutor dismissed the complaint on 7 June 2001, the injured parties asked the HLC to proceed with the case on their behalf. Several police officers and witnesses were questioned during the ensuing investigation. But even though the officers themselves stated that they were backed by plainclothes police who came in a white van, state agencies and the Ministry of Internal Affairs did not disclose the names of the suspects. Responding to HLC letters, the Ministry on several occasions denied that any plainclothes police had been on the scene on the day in question. The HLC is unable to proceed with the case since the next stage would be the filing of a bill of indictment, which is impossible as the law requires that the suspects be identified by name.[41]

h) Investigatory Proceedings

In the event that the state prosecutor decides not to prosecute, investigatory proceedings can be instituted at the request of the injured party. Upon the decision to conduct an investigation, the investigating judge can proceed by conducting an on-site investigation, searching homes and persons, confiscating objects, examining suspects, witnesses, expert witness and the like, and can order the suspect to be held in custody. When the investigation is completed and there are grounds to believe that a criminal offence has been

41 Article 266 (1), Criminal Procedure Code: (1) The indictment shall contain the first and last names of the suspect with other particulars...

committed, the state prosecutor brings an indictment.[42] The problem here is that allegations of torture and/or ill-treatment are not promptly and effectively investigated, and that no impartial body exists which, at the order of the court, would ensure that the required information is provided.

i) Trial Stage

After an indictment has been brought, either by the prosecutor or at the request of the injured party, the court sets a trial date. Trials are as a rule public though the court may, as an exception, order the public to be removed from the whole or part of the trial. This is done when required by the interests of public order or morals, to protect a secret, when it is in the best interests of a juvenile, or to protect the privacy of a defendant or injured party. Both the prosecution and defence may request to present new evidence. This can be done also in the appeal stage, in which case an explanation must be given to the court why the evidence was not presented earlier. After the evidential process has been completed and the prosecution and defence have delivered their final arguments, the trial is concluded with the rendering of a decision to either dismiss the case or find the defendant guilty.

j) Trial Practice

Trials can take several years. Defendants charged with acts of torture and/or ill-treatment most frequently challenge the credibility of medical reports, deny any physical contact with the victims, and claim that their injuries were inflicted by third persons. Another common line of defence is the claim that police officers had to use force because the victims were resisting arrest and obstructing them in the performance of their duty. In a number

42 Article 265, Criminal Procedure Code: After the investigation is completed, or when pursuant to this Code an indictment may be brought without an investigation (Article 244), the proceedings before the court may be conducted only on the basis of the indictment brought by the State Attorney or the subsidiary prosecutor. The provisions dealing with indictments and motions against them shall be shall be applied to an indictment brought by a subsidiary prosecutor except if the indictment is preferred for a criminal offense dealt with in summary proceedings.

of cases, police officers presented in court medical documents on injuries allegedly inflicted on them by their victims.

Before 2000, judicial proceedings against abusive police were the exception, with prosecutors generally failing to deal with criminal complaints submitted by private citizens and non-governmental organisations. After the ousting of the Milojević regime, prosecutors started bringing criminal charges against officers accused of human rights violations, and there have even been a number of convictions. The sentences handed down, however, were not in proportion to the severity of the abuse, being mainly suspended or amounting to less than six months in prison, which makes it possible for police officers to retain their jobs. Namely, under the Serbian Law on Basic Labour Relations, an employee's job is terminated if he receives a sentence of over six months and will therefore be absent from work during that time.

On the other hand, the Law on Internal Affairs lays down that a member of the police force must be dismissed if criminal proceedings for a certain class of offences are instituted against him.[43] These, however, do not include violation of human and civil rights, i.e. abuse and torture and/or ill-treatment - in this particular context extraction of statements and civil injury. As a result, abusive officers continue in their jobs although they are defendants answering charges of torture and/or ill-treatment.

The Case of Dragan Jovanović

Provoked by the inappropriate behaviour of a policeman, Dragan Jovanović slapped him back and inflicted a slight injury. He was found guilty of obstructing a police officer in the performance of his duty under Article 23 (3) of the Law on Public Peace and Order and sentenced to one year in prison. His criminal complaint against the officer was dismissed as unfounded by the Novi Sad Municipal Prosecutor's Office.

43 Article 34, Law on Internal Affairs lists the following criminal offenses: acts against the constitutional order and national security, against the armed forces, the economy and property, violation of duty, and crimes committed for personal gain and with dishonorable motives.

The Case of Dragan Sijački

As a victim of police brutality, Dragan Sijački suffered a broken jaw in two places. In this case, officers of the Srbobran police station were found guilty and sentenced to eight months in prison suspended for one year.[44]

k) Compensation

Under the law, victims of human rights abuses, including violations of a person's right to physical and psychological integrity, are entitled to compensation from the state. Actions for compensation may be filed pursuant to Article 25 of the Serbian Constitution, Article 172 (2), Articles 193 through 197, and Article 200 of the Law on Obligations. Article 25 of the Constitution and Article 172 of the Law on Obligations lay down the liability of an artificial person, including the state, for harm caused to a third party by persons in their employ acting in the performance of duty or in connection with their duty. Articles 193 through 197 regulate compensation in the event of death, physical injury or impairment of health. Article 200 deals with the right to compensation as a form of satisfaction for physical and/or mental pain suffered in consequence of the violation of a person's right to physical and psychological integrity.

Neither the state-union nor its constituent republics have, however, set up an effective system of legal and other mechanisms to enable victims to obtain timely redress and compensation. The civil actions they file wind their way through the courts for years and, in their unequal legal battles with the state, the victims are again victimized and their rights as spelled out by law made meaningless. Although the Civil Procedure Code envisages the adjournment of civil proceedings for compensation until final disposition of the related criminal case only as an exception, this has become virtually the rule in the courts.

44 Novi Sad District Court Judgment No. K 121/2000 was upheld by the Serbian Supreme Court on 4 October 2001 (Kž I 254/01).

The Serbian Constitution provides for the possibility of compensation for harm caused by the negligence or improper work of a person acting in an official capacity.[45] A claim for compensation, restitution of property or annulment of a legal transaction may be filed as part of a criminal proceeding, but will be considered by the court only if that would not unduly prolong the criminal case. Such a claim must be filed before the end of a trial before a lower court, and the court hands down its decision on it as part of its ruling finding the defendant guilty. The compensation sought may be granted in full or in part, in which case the court instructs the injured party that he may seek the remainder by filing a civil action. If the facts established at trial are insufficient or an unreliable basis upon which to reach a decision on either full or partial compensation, the court instructs the injured party to seek full compensation in civil proceedings, which most often happens. If the defendant is acquitted, or the proceedings against him are terminated for any other reason, the court will again instruct the injured party to file a civil action.[46]

A victim of torture and/or ill-treatment may seek both pecuniary damages[47] (e.g. costs of medical treatment, loss of earnings) and non-pecuniary damages[48] (physical pain, mental suffering, disfigurement, injury to reputation,

45 Article 25, Serbian Constitution: "Everyone shall have the right to compensation for pecuniary and non-pecuniary damage caused to him by the unlawful or improper actions of a person acting in an official capacity or a government agency which exercises public authority in accordance with law. Compensation shall be paid by the Republic of Serbia or an organisation exercising public authority."

46 Article 206, Criminal Procedure Code.

47 Article 195, FRY Law on Obligations: "Who inflicts bodily harm on or impairs the health of another shall pay compensation for the costs of his medical treatment and other costs, and for loss of earnings in the period of incapacitation for work during medical treatment. If the injured party suffers loss of earnings due to a full or partial incapacity to work, or his needs are durably increased, or the possibilities of his further advancement are lost or reduced, the person found liable shall pay him a fixed annuity in compensation for the loss suffered."

48 Article 200, FRY Law on Obligations: "In considering claims for physical pain suffered, for mental pain caused by a reduction of vital activities, disfigurement, injury to reputation, honor, or personal rights and liberties, the death of a close person, and fear, the Court, if it finds that the circumstance of the case, in particular the level of pain and fear suffered and its duration, warrant it, shall award just monetary compensation, regardless of the amount of pecuniary damage or absence of the same. When deciding on a claim for non-pecuniary damages and its amount, the Court shall take into account the import of the good damaged and the purpose of the compensation, as well that it does not facilitate goals incompatible with its nature and social intention."

fear, death of a close person). To exercise his right to compensation, a torture and/or ill-treatment victim must within three years (after which the statute of limitations expires) file an action with the court that has subject-matter or territorial jurisdiction. Where territorial jurisdiction is concerned, it is determined either according to the residence of the defendant or the location at which the harm was suffered (Article 52 (1), Law on Obligations). The lawsuit may be against the liable individual or the state, or both. For the victim, it is usually best if he sues the Republic of Serbia. The plaintiff need not wait for final disposition of the criminal proceedings against the liable person. Civil liability is broader than criminal liability, i.e. civil liability is not necessarily contingent on proven criminal liability.[49] Nonetheless, as noted above, it is the practice of courts to adjourn civil proceedings pending final disposition of the related criminal case.

The burden of proof in civil cases is on the plaintiff, which means that he must bear the expense of his lawsuit (court fees, costs of experts and the like) since the court cannot proceed until these are paid. When filing his action, the plaintiff must state what evidence he will ask the court to consider and explain which of his allegations will be corroborated by this evidence. The plaintiff may also propose new evidence in the course of the proceedings, or waive presentation of evidence he has already proposed. The defendant and the court are also entitled to propose evidence and seek to exclude evidence they consider irrelevant.

When deciding on a claim for non-pecuniary damages and its amount, the court is bound to consider the "import of the good damaged and the purpose of the compensation, as well as that it does not facilitate goals incompatible with its nature and social intention." It must also consider the circumstances in which the injured party lives, primarily with regard to his occupation, and the living conditions of his family. There is no ceiling on the amount that the court may award, but it must be mindful of its purpose and "that it does not facilitate goals which are incompatible with its nature. "Monetary compensation is designed to provide "psychological satisfaction."

49 Article 154, FRY Law on Obligations: "Who causes harm to another shall pay compensation for that harm unless he proves that it occurred without fault of his own. Liability for harm caused by objects or activities which pose a hazard for the environment shall exist regardless of fault. Liability without fault shall exist also in other cases envisaged by law."

"The political context in Serbia for the past ten years has had a great impact on the increase of violence against women and girls. Wars and armed conflicts, international isolation, political and economic crises, the destruction of legal and social systems and, in particular, the constant fear of life, children, the family and the home mainly contributed to the most problems faced by society for the last decade. Any human rights issue that could raise public awareness and mobilize the community has been underestimated, dismissed and perceived as a threat to the regime."[50]

PART II

STATE VIOLENCE AGAINST WOMEN IN SERBIA AND MONTENEGRO

50 Federal Republic of Yugoslavia (Kosovo and Serbia), p. 531, available on www.womensnetwork.org/english/pdf/ihf_women.pdf.

Introduction

In March 2000, the Human Rights Committee adopted a comprehensive general comment, No 28, on equality of rights between men and women, which explains what Article 3 of the International Covenant on Civil and Political Rights involves and spells out what information State Parties are expected to provide in their periodic reports.

As women are particularly vulnerable in times of internal and international armed conflicts, in 2000, the Human Rights Committee requested State Parties in its General Comment No 28 on equality of rights between men and women to "inform the Committee of all measures taken during theses situations to protect women from rape, abduction and other forms of gender based violence".[51]

However, it appears that no in-depth research has really been carried out to analyse the consequences of the war on the situation of women in Serbia and Montenegro. The soldiers used sexual violence in order to destroy the Muslim population and to eradicate the ethnic community. The Serbian security authority systematically tortured, used beatings in detention, and other forms of abuse against citizens, especially the ethnic Albanian population in Kosovo, and women in particular.[52] These acts were severely condemned by the General Assembly of the United Nations in several resolutions, of which resolution A/RES/50/192 particularly insisted on the fact that rape and other violent acts constitute grave breaches of the Fourth Geneva Conventions and of customary humanitarian law.[53]

However, no programme exists for women affected by war. There are a small number of NGO initiatives and programmes dealing mostly with humanitarian aid and physiological support for refugees and displaced persons, but none of them specifically deals with women and children."[54]

51 Human Rights Committee, General Comment No 28, CCPR/C/21/Rev.1/Add.10, March 2000, available on www.unhchr.ch.

52 Serbia-Montenegro, 1999 Country Reports on Human Rights Practices, Released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, February 25, 2000.

53 Rape and Abuse of Women in the Areas of Armed Conflict in the former Yugolsavia, GA, UN. Doc. A/RES/50/192 (1995).

54 Federal Republic of Yugoslavia (Kosovo and Serbia), p. 535, available on www.womensnetwork.org/english/pdf/ihf_women.pdf.

In May 2004, the Human Rights Committee prepared a list of issues to be taken up in connection with the consideration of the initial report of Serbia and Montenegro.[55] The Committee asked *inter alia*:

- to provide examples particularly of cases in which provisions of the Covenant were directly invoked before the courts, including the Court of Serbia and Montenegro, and what were the results;

- to explain progress in ensuring that allegations of human rights violations committed within the States were investigated promptly, thoroughly and effectively through independent and impartial bodies and to ensure criminal accountability for past human rights violations from 1992 to 2002, including disappearances, arbitrary killings and torture, as well as the provision of appropriate compensation to victim.

Regarding more specifically the conditions of women in Serbia and Montenegro, the Committee requested:

- information on the measures taken or envisaged to guarantee equal treatment of men and women and to provide legal remedies in cases of discrimination against women;

- information on the measures taken to implement the conclusions of UN human rights treaty bodies with regard to the numerous allegations of torture and other acts of cruel, inhuman or degrading treatment or punishment by law-enforcement agents, in particular the delegation of the Committee against Torture. The Committee insisted to know if prompt, impartial and full investigations were conducted into such allegations, and in the affirmative, if perpetrators were prosecuted and punished, and the victims or their families compensated;

- measures, existing or proposed, to combat and eliminate violence against women, including domestic violence, both as a matter of practice as well as in terms of special legislation, and measures taken to increase public awareness of this issue and assistance available to victims;

- information on the measures taken to protect the human rights of victims of trafficking as well as witnesses, the measures to raise public awareness of the issue, and the information to know if the victim of trafficking are treated as illegal immigrants for purposes of deportation.

55 Serbia and Montenegro, 01/05/2004, CCPR/C/81/L/SEMO, *op. cit.*

Despite the statement of Serbia and Montenegro proclaiming that the freedoms and the rights of women are protected by the incrimination of all forms of violence against women and that this problem is not particularly pronounced in the territory of the republic of Serbia[56], women face discrimination, including violence, in various spheres of life. Women suffer from violence in the domestic sphere. Trafficking in women and children has been on the increase since the war in Former Yugoslavia. The provisions on rape and other forms of sexual violence are discriminatory. The conditions of women in detention are poor.

Regarding the Convention on the Elimination of All Forms of Discrimination against Women, Serbia and Montenegro is a State Party by succession since March 2001.[57] They acceded to the Optional Protocol on 31 July 2003.

Finally, on 6 September 2001, Serbia and Montenegro ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime.

1. Legal and Institutional Issues with regard to sexual violence

According to reliable reports, both in Serbia or in Montenegro, rape is considered as a serious problem, but is largely unreported due to cultural acceptance and a traditional stigma associated with victims and their families.

Serbia :

One of the amendments to the Criminal Law of the Republic of Serbia concerns the introduction of the criminal offence sexual harassment Article 102a, with the punishment ranging from a fine to imprisonment of up to six

56 Office of the High Commissioner for Human Rights, Human Right Committee, List of issues: Serbia and Montenegro, 01/05/2004, CCPR/C/81/L/SEMO.

57 The Former Yugoslavia ratified it in February 1982.

months, i.e. up to one year in prison when it concerns qualified offence, i.e. when the offence involves the abuse of position. This offence is subject to private prosecution.

"Regarding the definition of incest in Serbian law, there is no specific difference between voluntary and forced sexual intercourse, or between blood relatives, regardless of whether they are adults or minors. The issue of incest is therefore left primarily to court practice and interpretation."[58]

Under national law, Article 103 of the Criminal Code punishes rape, categorised as a crime against the "Dignity of a person and Public Morals." It is defined as

> *sexual intercourse by force or threat against a female person or someone close to her.*

Serbian legislation establishes rape as a serious criminal offence[59]. However, rape is only established if there is vaginal penetration. All other forms of sexual violence are considered lesser crimes, labelled with euphemistic definitions such as "unnatural sexual intercourse", and punished with milder penalties.

Three elements are essential to constitute the crime of rape:

- sexual intercourse by force or threat;
- vaginal penetration;
- against a female person or someone close to her.

The punishment is one to ten years' imprisonment. Aggravated circumstances are also described in the same Article, under different paragraphs. In practice, rape in Serbia is extremely difficult to prove. In order to convict a person for the crime of rape, it is necessary to prove real and serious resistance to the sexual relations, during entire time of use of force. This condition is extremely restrictive, as it is often not possible to prove such circumstances. It has been reported that if a victim is considered as having only resisted at the beginning

58 Integration of the Human Rights of Women and the Gender Perspective Violence Against Women, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coosmaraswamy, submitted in accordance with Commission on Human Rights, resolution 2002/52, Addendum 1, UN. E/CN.4/2003/75/Add.1, 27 February 2003, Para. 2089.

59 Criminal Law of the Republic of Serbia, Article 103.

of the intercourse, and as having given it up afterward, her statement cannot be taken into consideration in order to condemn the culprit of rape.[60]

The procedures before the Court concerning women victims of violence is overtly discriminatory:

- As a rule, women victims of sexual violence are submitted to expert testimony concerning their mental health with a special emphasis on their ability to speak the truth (the issue is whether they are "pathological liars" or not?). Male perpetrators are not regularly submitted to this kind of examination;

- Women victims of violence are regularly asked to provide evidence on the lack of "provocation" on their part. The issues they should give evidence on are how they were clothed at the time of the violent act, what did they say, did they use obscene language, did they anyhow "invite" perpetrators to commit violent crime against them, etc.;

- The age of women victims of violence is regularly tacitly taken against her if a victim is not a girl or a grandmother. In practice usually victims need to persuade a judge that they did not provoke their perpetrators;

- Women victims of violence are rarely protected during the criminal proceedings from various kinds of threats by the perpetrators or their friends and relatives, even if the threats are serious.[61]

Article 104 of the Criminal Code criminalizes forced sexual intercourse by threatening to disclose something that might be harmful to the honour or reputation of the victim or a person close to her, or by other forms of cruelty. The punishment is one to ten years imprisonment. As for the rape, aggravated circumstances are described in paragraphs 2 and 3 of the same Article.

Article 105 refers to sexual intercourse with a helpless person, or someone suffering of mental illness, temporary mental derangement, infirmity or lack of

60 60 Federal Republic of Yugoslavia (Kosovo and Serbia, available on www.womensnetwork.org/english/pdf/ihf_women.pdf, p. 533.

61 SEELINE, South Eastern European Women's Legal Initiative, Criminal Code Report: Yugoslavia, by Zorica Mršević, LEGAL MECHANISMS REGARDING VIOLENCE AGAINST WOMEN, available on http://www.seeline-project.net/CCR/YugoslaviaCCR.htm.

ability to offer resistance. The sentence foreseen is one to eight years imprisonment.

Article 106 concerns the age of statutory rape. Punishment is also one to ten years of jail when there is evidence of a sexual intercourse or unnatural lechery with a person under 14 years of age.

Montenegro :

All the Articles regarding sexual offences are partly equal to those of the Republic of Serbia, except for punishment. Punishment is not as severe as that described in the Serbian Code.

Apart from Article 204 about rape, which is similar to Article 103 of the Criminal Code of the Republic of Serbia, all dispositions dealing with sexual violence are concerned:

Article 205- Sexual intercourse with the person incapable of consenting due to mental disability or mental incapacity - similar to Serbian Article 105, stipulates the sentence of one to ten years in prison, i.e. up to 18 years for qualified forms of offence.

Article 206- Sexual intercourse with a child- reads that the person who commits this offence or an offence equalized to this offence over a child shall be punished with the term of imprisonment from one to 10 years.

Article 207- Sexual intercourse in the abuse of position- reads that the person who commits the offence through the abuse of his/her position over a person in a subordinated or dependent position, shall be punished with imprisonment from three months to three years, i.e. with the maximum sentence of 18 years in prison for the qualified form of the offence.

No special programmes exist for victims of rape and sexual violence, except legal assistance and help provided by some local Serbian and Montenegrin NGOs.

2. Trafficking in Women[62]

2.1 Trafficking in Women in Serbia

In paragraph 12 of its General Comment 28, the Human Rights Committee requests State Parties to inform it of measures taken to eliminate trafficking in women and children, within the country or across borders, and forced prostitution.[63]

a) General Background

In practice, trafficking in women and children is mostly studied through a migration or law enforcement approach, and, except for NGOs, rarely through a (drastic) violation of a human rights approach.

Trafficking in women is the most extreme form of the violation of the human rights of women. Victims suffer complex psychological and physical trauma, which unfortunately does not end once a woman has escaped from a trafficking chain. Attempts to recognize trafficking through a violence perspective are rare, and thus this report can be considered explorative. Victims of trafficking go through multiple forms of violence and ill-treatment, including physical, mental, and sexual. Authorities often fail to treat the rape of trafficking victims in the same way as they would in ordinary circumstances, as victims of trafficking are treated as prostitutes, and deem an alleged rape as a risk of the profession.

Trafficking in human beings is a global phenomenon. It affects countries undergoing political and economic transition and post-conflict countries, which are usually the main countries of origin of victims, as well as more economically developed countries, which are both countries of destination and transit. According to available evidence, the majority of trafficked persons are women and girls. They are usually trafficked for the purpose of sexual exploitation and exploitative employment, including domestic work or forced marriage. As a result of poverty and limited work opportunities, young women from the developing world, and increasingly from Eastern Europe,

62 As ASTRA is mainly focusing on Serbia, the part on trafficking in woman will be specifically on the situation in Serbia.

63 Human Rights Committee, General Comment No 28, CCPR/C/21/Rev.1/Add.10, March 2000, available on www.unhchr.ch.

leave their countries in search of work. These women become prey to traffickers who promise them jobs as dancers or hostesses. They are often recruited by means of coercion or threats, and are subjected to violence or forced to engage in and continue services and employment which are exploitative and slavery-like, thereby violating their guaranteed human rights.

Serbia and Montenegro is a transit country and, to a lesser extent, a country of origin and destination for women and girls trafficked for sexual exploitation. It took a long time for the authorities to realize that Serbia is both a country of origin and destination, and not only a transit country, and that trafficking concerns more than just "some Moldavian and Ukrainian girls" but also domestic citizens, as well as to accept that trafficking in human beings is a very profitable activity widely present inside the borders of Serbia and Montenegro. Victims, mostly from Moldova, Romania, Ukraine, and Bulgaria, end up in Kosovo, Bosnia, Albania, and Western Europe. Children are trafficked across Serbia and Montenegro for begging and theft in Western Europe. War conflicts and the boom of organised crime in Serbian society during the last decade of the 20th century created conditions for the strengthening of organised crime, and among others, groups that organize trafficking in human beings.

Due to positive political changes in Serbia in 2000, including support and pressure from high level international bodies such as the Stability Pact Task Force, the Council of Europe, the Organisation for Security and Cooperation in Europe (OSCE) and the United Nations, the authorities in Serbia and Montenegro placed the problem of trafficking in human beings on the political agenda. In May 2001, the Yugoslav Team for Combating Trafficking in Human Beings was established at the federal level after the first *Roundtable on Trafficking in Humans* organised by the OSCE Office in Belgrade, ODIHR-Warsaw and Stability Pact for Southern Eastern Europe Task Force on Trafficking in Women.

Because of political changes in the country (uncertain status of the Federation), activities in the field of combating trafficking in human beings were transferred from the federal level to the level of the Republics. In the Republic of Serbia, a National Coordinator was appointed in April 2002.[64]

64 Under the decision of the Minister of the Interior and Deputy Prime Minister of the Government of the Republic of Serbia, Mr. Dusan Mihajlovic, Mr. Dusan Zlokas was appointed as the coordinator of the National Team for Combating Trafficking in Human Beings.

Shortly after that, the National Team to Combat Trafficking in Human Beings was formed to operate at the level of Serbia.[65] Today, this Team gathers representatives of relevant government ministries and judicial bodies (10), non-governmental organisations (5), and international organisations (5).

The activities of the individual Team members are streamed through the work of its four Working Groups, which are:[66]

1. Working Group for Combating Trafficking in Children (Chaired by domestic NGO "Beosupport")

2. Working Group for Prevention and Education (Chaired by domestic NGO "ASTRA")

3. Working Group for Assistance and Protection of Victims (Chaired by Ministry of Labour, Employment and Social Policy)

4. Working Group for Prosecution (Chaired by the Ministry of Justice).

Representatives of government authorities in the National team are: Ministry of Foreign Affairs of Serbia and Montenegro; National office of the Interpol in Belgrade; Republican Public Prosecutors Office; Ministry of the Interior of the Republic of Serbia; Ministry of Finance and Economy – Anti-Corruption Initiative; Ministry of Social Affairs; Ministry of Justice; Ministry of Health and Protection of the Environment; and the Ministry of Labour and Employment.

Representatives of non-governmental organisations are: ASTRA- Anti Sex Trafficking Action; Victimology Society of Serbia; Counselling against Family Violence; and Beo-support – Belgrade support for exploited children and youth.

Representatives of international organisations are: IOM; OSCE; UNICEF; and Save the Children.

65 The first (founding) meeting of the National Team for Combating Trafficking in Human Beings was held on May 30, 2002. Working programme of the National Team was adopted on October 17, 2002 and filed under the number 26-1515-6/02 – Ministry of the Interior, National Coordinator for Combating Trafficking in Human Beings;

66 Communication of the National Coordinator for Combating Trafficking in Human Beings No. 26-1515-5/02 of September 2, 2003.

ASTRA participates in all three working groups: prevention and education; victim assistance; and trafficking in children. Each group is supposed to begin work on the National Plan of Action.

ASTRA is in daily contact with the Belgrade Police Department Anti-Trafficking Team, as well as with all members of the National and Mobile Teams. Communication with the police (in particular with the Belgrade Anti-Trafficking Team) improved considerably compared to communication in 2002. Also, the Ministry for Labour, Employment and Social Policy[67] has taken an increasingly active part in the fight against trafficking in human beings. ASTRA has already stressed that owing to the efforts of their organisation, the Ministry of Justice and Ministry of Education finally became members of the National Team for Combating Trafficking. In our assessment, the weakest link in this battle is the judiciary and prosecution.

Although the state has started dealing with the problem of trafficking in human beings, and particularly trafficking in women and children, this process is slow because many law enforcement officials, prosecutors, and judges still know very little about the problem. This lack of awareness is seen as one of the greatest obstacles to tackling this problem, with widespread corruption exacerbating it even further. There is no institutionalised system of protection for trafficking victims, although the National Referral Mechanism has been established for that purpose within the Working group for victim's assistance, which exists within the National Team for Combating Trafficking in Human Beings, coordinated by the Ministry of Labour, Employment and Social Policy of the Republic of Serbia. The Mechanism defines which persons are considered victims of trafficking (according to the UN Convention against Transnational Organised Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children), who can be the source of information in trafficking cases, and where the victims of trafficking should be referred, i.e. shelter for women victims of trafficking. Since there is

67 As of 2004, the Ministry of Labor and Employment and the Ministry of Social Affairs work as one Ministry of Labor, Employment and Social Policy.

no legal possibility for trafficked women to get temporary residence permits[68], the police tolerates them staying in shelters[69]. Also, the Ministry of the Interior is considering the idea of issuing instructions for law enforcement officials regarding residence permits for trafficking victims. Based on the instruction, the Ministry would tolerate residency for up to 30 or, in exceptional circumstances, 90 days with the possibility to extend it when necessary due to safety or humanitarian reasons, or when a victim decides to testify against offenders.[70]

2003 was marked by the assassination of Prime Minister Dindić and the declaration of a state of emergency, which affected the entire country. Since March 2003, through police operation "Sablja" (Sword), a large number of persons suspected to be members of criminal groups were arrested in connection with the assassination. Many were direct or indirect actors in trafficking chains, including Milivoje Zarubica and members of his criminal group. Milivoje Zarubica is one of the most notorious traffickers in human beings in this part of the region.

A significant change in 2003 was the introduction of trafficking in human beings to the list of offences regulated under the Criminal Law of the

68 Temporary residence in the territory of the Republic of Serbia is regulated under the Law on the Movement and Stay of Foreigners (Official Gazette of the SFR Yugoslavia, No. 56/80, 53/85, 30/89, 26/90, 53/91, Official Gazette of FRY, 24/94, 28/96, 68/02). Under this Law, foreign nationals may be granted temporary or permanent residence. The right to permanent residence shall be denied to a foreign national who has presented false personal information or false documents, who has used someone else's passport or has given his/her passport to someone else to use it, who has come to FRY/Serbia and Montenegro illegally, and does not have the refugee status, i.e. asylum right, who does not have means to support him/herself or his/her support in the territory of the Republic of Serbia has not been otherwise provided, as well as to a foreign national who has helped or inspired the other person to cross the state border of FRY/Serbia and Montenegro illegally.

69 From the Report by the National Coordinator for Combating Trafficking in Human Beings Mr. Dusan Zlokas for the 6th Meeting of the Stability Pact Task Force on Trafficking in Human Beings held in Belgrade, 11 March 2004

70 Instruction of the Ministry of the Interior on permits for temporary residence of the victims of trafficking in the territory of Serbia (lasting three months in all cases, and six and twelve months if the victim collaborates in the criminal proceedings against traffickers) is due to be adopted soon. This Instruction should be harmonized with the Statement on commitments – Legalization of the Status of Trafficked Persons, Stability Pact for South Eastern Europe, Task force on trafficking in human beings, Tirana – Albania, 5 December 2002.

Republic of Serbia[71]. Although the criminalisation of trafficking in human beings is a positive development, we must stress that this Article does not fully conform to the draft[72] proposed by the Victimology Society of Serbia (local NGO), nor is it entirely consistent with the definition set forth in the Palermo Protocol[73]. In Serbian Law, the criminal offence of trafficking in human beings is regulated rather broadly, and includes smuggling of people, which is not stipulated as a separate offence. Since this concerns quite a new criminal offence, with legal practice yet to be developed, all cases of trafficking in humans prosecuted during the period covered by this report are actually cases of the smuggling of people (Turkish and Afghani nationals), with no cases specifically covering trafficking in human beings. Trafficking in women for the purpose of sexual exploitation is still prosecuted under the criminal offences of *acting as intermediary in prostitution*, *documentation forgery*, *illegal crossing of the state border* and similarly, either because traffickers were arrested before 12 April 2003, when this offence was introduced into the Criminal Law[74] (as in the Zarubica case), and because of the principle that legislation should not apply retroactively, or because of ignorance and lack of awareness of trafficking on the part of judges and prosecutors.

71 Criminal Law of the Republic of Serbia, Article 111b, Official Gazette RS, no. 39/03, of 6-11 April 2003.

72 Victimology Society Reader, Belgrade 2002, TEMIDA, Magazine on victimization, human rights and gender, No.1, 5th April 2002, www.vds.org.yu

73 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime adopted by the General Assembly in its resolution 55/25 of 15 November 2000 (annex II).

74 Criminal Law of the Republic of Serbia, Official Gazette of the Socialist Republic of Serbia, no. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 42/89, 21/90, Official Gazette of the Republic of Serbia, no. 16/90, 26/91, 75/91, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 11/02, 10/02, 80/02, 39/03, 67/03, 58/04.

b) Legal and Institutional Issues[75]

At first sight, Serbian legislation seems to provide a significant level of protection for women's rights, including forbidding discrimination[76] and any kind of violence. The legal framework appears consistent and fairly harmonised with main European legislation[77], and is expected to improve in the near future.

But, examining the laws with greater detail, the situation becomes more complicated, mostly for the following reasons:

- Serbia is a transitioning, post-war, basically patriarchal country;
- Women's rights are not recognized yet as equal and part of the human rights corpus;
- Women and children are predominantly regarded as part of men's property;

75 When examining Serbian legislation, it should be borne in mind that in the last fifteen years this country changed its shape several times. For this reason, many laws, in terms of their names and sources, may seem strange to a foreigner. Namely, after the disintegration of the SFR Yugoslavia and erection of the Federal Republic of Yugoslavia, the latter continued applying all the existing laws, which names and terminology were changed only alongside other substantial amendments, if there were any at all. Also during the last years of FR Yugoslavia, federal legislation was actually applied only in the territory of Serbia. Finally, when the Federal Republic of Yugoslavia was transformed into the State Union of Serbia and Montenegro, the majority of former federal laws, which regulated the subject matter not any longer in the competence of the joint state, were accepted as Serbian laws, although their names may suggest otherwise. This is the reason why both federal and republican official gazettes appear as sources of the same laws.

76 The Constitution of the Republic of Serbia, Article 13 "Citizens are equal in their rights and duties and have equal protection before the State and other authorities, irrespective of their race, sex, birth, language, nationality, religion, political or other belief, level of education, social origin, property status, or any other personal attribute". Criminal Law of the Republic of Serbia, Article 60, prohibits all forms of discrimination, including gender discrimination. Basic Criminal Law, Article 186 forbids persons acting in official capacity to discriminate the citizens, including gender discrimination.

77 On March 3, 2004, Serbia and Montenegro deposited ratification instruments for the European Convention for the Protection of Human Rights and Fundamental Freedoms, thus undertaking to apply this Convention as its internal legislation.

- Sexual integrity is perceived as a right of minor value where women are concerned;
- Women are socially degraded and much poorer than men; and
- There is no significant political will to fundamentally change the position of women in society.

Thus the social and political environment tends to keep violence, humiliation and harassment of women low profile, unnoticed and unsanctioned. Judicial, police or health personnel did not obtain gender or violence sensitivity training, except from NGOs working in the field.

With regards to a gender approach in institutions, within the last few years, Serbia has only made slight improvements. During the 1990s and before, NGOs didn't have access to institutions, not only to address trafficking in women, but also family and sexual violence, incest, etc. Within the last few years, these issues have garnered greater attention in public debates. Thanks to women's NGOs, certain regulations concerning the aforementioned problems became part of Serbian legislation[78] for the first time (rape in marriage, family violence, and human trafficking). Article 103 of the Criminal Law of the Republic of Serbia governs rape. This provision used to contain a discriminatory requirement (rape could not be committed against a woman who was married to a perpetrator), but this was changed by the 2003 amendments. At the same time penalties for this criminal offence were made more severe. A new criminal offence was also introduced – family violence (Article 118a), prohibiting the violation of the physical and mental integrity of a family member by the use of force or threat. Perpetrators of this offence shall be prosecuted *ex officio*, indicating state interest in preventing or punishing this kind of violence. However, accompanying regulations, which would enable and facilitate implementation of actual protection, have yet to be enacted. Consequently, the law still does not provide for restraining orders against perpetrators that would prohibit them from approaching a victim's home, place of work, children or the victim herself. Two additional criminal offences introduced in 2003 are the prohibition of sexual harassment (Article 102a) and of various forms of trafficking in human beings (Article 111b).

78 Criminal Law of the Republic of Serbia, Official Gazette of the Socialist Republic of Serbia, no. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 42/89, 21/90, Official Gazette of the Republic of Serbia, no. 16/90, 26/91, 75/91, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 11/02, 10/02, 80/02, 39/03, 67/03, 58/04.

On the basis of available data, the greatest progress was made in the prevention of trafficking in human beings. Significant advances were also made in the field of family violence.

NGOs played an important role in these areas, but international organisations were also influential in fulfilling the principles established by the Palermo Protocol[79]. In addition, certain protection mechanisms[80] for trafficking victims were established, with the goal of reducing secondary traumas to a minimum and to thwart ill-treatment of victims by institutions.

Trafficking victims who are identified by institutions, for example NGOs, enter special programmes of help and support, including medical programmes. The Law on Health Protection for Foreigners[81] hardly applies to foreign trafficking victims found in the territory of Serbia, even though they make up 90% of the population in shelters for trafficking victims. With the help of donations, victims get help in private clinics, which provide mostly dental, gynaecology and internist services.

Throughout Astra trafficking study, reports of victims to either an institution or the ASTRA SOS hotline never came from a doctor, even though all victims attest that they had regular medical examinations (first being, gynaecological examinations) while they were in the trafficking chain[82].

79 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime adopted by the General Assembly in its resolution 55/25 of 15 November 2000 (annex II).

80 Please, find under subtitle "Mobil Team".

81 Official Gazette of FRY, no. 59/98, 37/2002.

82 ASTRA SOS Hotline-founded in 2002 and until May 2004 received 1,400 calls. For 27 months of the work of ASTRA SOS Hotline, but also in communication with the representatives of the Ministry of the Interior, it has been concluded that no case of trafficking in women (reporting knowledge that victims of trafficking are kept in certain location) have been reported by medical workers. In that respect, women who managed to escape from the trafficking chain without exception confirmed that their traffickers used to take them to medical checkups or that they received visits by doctors in the premises in which they worked. For this reason, ASTRA, in cooperation with the Institute for Forensic Medicine of the University of Belgrade, has launched education programme for all Medical Centers in Serbia, with two objectives: to train medical doctors to recognize victims of trafficking and to record properly all injuries they observe, in order to prevent secondary traumatization of victims.

From the very first victim that entered a shelter until today, only one girl tested positive for HIV, and as she was immediately rejected and discriminated by other victims in the Shelter, there were no conditions for her further medical treatment. Since then, girls have not been tested for HIV[83].

Not until 2004, thanks to NGOs dealing with the problem of trafficking in human beings (ASTRA and Victimology Society of Serbia), were protocols for medical services established, specifically in the Institute of Forensic Medicine[84]. The protocols concern medical examinations in the process of investigation, which assume voluntary consent of the victims involved. ASTRA and the Institute for Forensic Medicine will implement this project by beginning September 2004. Victims will undergo only one medical examination for evidence to be submitted in court, thus avoiding secondary trauma for victims, who previously would have to go through various institutions if they decided to appear as witnesses in court proceedings.

Throughout the 1990s and until 2002, no mechanism of this type existed, nor was the principle of victim's consent respected.

Serbian legislation establishes rape as a serious criminal offence[85]. However, rape is only established if there is vaginal penetration. All other forms of sexual violence are considered lesser crimes, labelled with euphemistic definitions such as "unnatural sexual intercourse" and punished with milder penalties.

Criminal proceedings in cases of rape, sexual harassment, family violence, etc., are slow and complicated, subjecting victims to secondary victimization. They have to give statements to the police and to the investigating judge, and to repeat it at least once during trial. The Law[86] stipulates that the public be excluded during a rape trial, but this does not apply to the rapist himself. He and his lawyer have the right to ask questions, and his presence alone is usually enough to shake victim's balance and render her statement incoherent. Furthermore, judges are not always sufficiently sensitive to protecting the victim's rights, and thus the interrogation of the victim sometimes appears like an accusation making her position more difficult and less clear. Also, during trial,

83 Counseling Center against family violence, coordinates the first NGO Shelter in our country designed exclusively for victims of trafficking.

84 Institute for Forensic Medicine of the Faculty of Medicine, the University of Belgrade.

85 Criminal Law of the Republic of Serbia, Article 103.

86 Criminal Proceedings Code of the Republic of Serbia, Article 292, Official Gazette RS, no. 70/01, 68/02, 58/04, the latest amendments on May 28, 2004.

a victim's motives to go on a date with the rapist are questioned, as well as the way in which she dresses, her behaviour, previous liaisons, etc. Evidence in such cases depends on medical expertise and on whether the victim showed resistance. This kind of discrimination is considered legitimate, and is not seen as a violation of basic human rights.

With such treatment, it is no doubt that rulings in rape and similar cases are often inadequate and humiliating for the victim. To compound this problem, courts almost never give the victim reparation during the criminal trial, even though they are empowered to do so. This is an indirect denial of justice because many victims cannot litigate in civil trials because of the high costs and extended duration of such trials (three to seven years and more), and because a victim who has to repeatedly recount a rape experience is continually victimized.

Thus, after damage is inflicted by the rapist or abuser, the State subsequently violates, instead of protecting, the victim's rights.

Unfortunately, there are similarities with trials where the victims are children. ASTRA's lawyer is currently assisting in a case of the sexual abuse of an eight-year-old girl by her father. As there was no penetration the offence was qualified as sexual misconduct. The trial has lasted for two and a half years now, before the District Court in Trstenik, where everybody knows the father. The court keeps ordering additional expert opinions. In the meantime, when the parents got divorced, the same Court granted the father the right to take the children to his home every second weekend (there is a younger brother in the family, who witnessed sexual abuse of his sister at the age of three). When the mother refused to let the father take the children, the police initially interfered in his favour, but fortunately gave up. The proceedings are expected to end soon, but all the pain suffered by the mother and children could have been avoided had the Court and social welfare centre acted in a manner prescribed by the law.

Although Serbia and Montenegro is one of the signatories of the United Nations Convention against Transnational Organised Crime and the Protocol thereto signed in Palermo in 2000[87], not until April 2003 did Serbian

87 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime adopted by the General Assembly in its resolution 55/25 of 15 November 2000 (annex II).

legislation recognise trafficking in women as a separate criminal offence, when the Article 111b Trafficking in Human Beings was introduced to the Criminal Law of the Republic of Serbia[88].

(1) A person who by force or threat, by misleading or keeping in delusion, by the abuse of authority, confidence, dependence relation or difficult conditions of another person: recruits, transports, transfers, delivers, sells, purchases, mediates in delivery or sale, harbours or holds another person for the purpose of acquiring some benefit, exploitation of his/her labour, pursuing a criminal activity, prostitution or begging, of using for pornographic purposes, depriving of a bodily part for the purpose of transplantation, or using in armed conflicts, shall be sentenced to a term between one and 10 years in prison;

(2) If the act from Paragraph 1 of this Article is perpetrated against several persons, by abduction, in the course of performing an official duty, within a criminal organisation, in a specially cruel or in a specially humiliating way or if a severe bodily injury has occurred, the perpetrator shall be sentenced to a term of at least three years in prison;

(3) If the act from Paragraph 1 of this Article is committed against a minor, or if the victim dies, the perpetrator shall be sentenced to a term of at least five years in prison

(4) For the act from paragraph 1 of this Article committed against a person who has not turned 14, the perpetrator shall be sentenced to a term prescribed for such an act even if no force, threat or any other of the stated ways has been used.

Until the introduction of this criminal offence (and currently with the prohibition of retroactive application of law), traffickers were mainly prosecuted and sentenced under one of the following laws:

88 Criminal Law of the Republic of Serbia, Official Gazette of the Socialist Republic of Serbia, no. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 42/89, 21/90, Official Gazette of the Republi8c of Serbia, no. 16/90, 26/91, 75/91, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 11/02, 10/02, 80/02, 39/03, 67/03, 58/04.

c) Basic Criminal Law[89]

Establishment of a slavery-like relationship and transportation of persons in a slavery-like relationship (Article 155. of the 1977 Federal Criminal Code)

Whoever, in violation of the rules of international law, enslaves another person or puts him/her in similar position, or keeps him/her in such position, buys, sells or hands him/her over to another person, or whoever mediates in the buying, selling or handing over of such a person, or whoever incites another person to sell his/her freedom or freedom of persons he/she supports or takes care of, shall be punished with a sentence of imprisonment for a term exceeding one year but not exceeding ten years.

1. Whoever transports persons in slavery or similar relation from one country to another, shall be punished with a sentence of imprisonment for a term exceeding six months but not exceeding five years.

2. Whoever commits the act described in paragraphs 1 and 2 of this Article against a minor, shall be punished with a sentence of imprisonment for not less than five years.

Even though this Article does not cover all forms of trafficking in persons, the prescribed sentence is inadequate (one to ten years), and the offence itself is very difficult to prove, this Article of the Basic Criminal Law was the closest thing to the act of trafficking in human beings.

Illicit crossing of the state border (Article 249)[90]

This Article provides for the possibility of sentencing to prison persons who crossed the state border without adequate documents, as well as those persons who executed the transfer. The only relevant segment for trafficking in human

89 Criminal Law of the SFRY/FRY, Official Gazette SFRY no. 44/76, 36/77, 34/84, 74/87, 57/89, 3/90,38/90,45/90 and 54/90, Official Gazette of FRY no. 35/92, 37/93, 24/94, 61/2001, accepted at the level of the Republic of Serbia under the name Basic Criminal Law, Official Gazette RS, no. 39/2003 of April 11, 2003.

90 Criminal Law of the SFRY/FRY, Official Gazette SFRY no. 44/76, 36/77, 34/84, 74/87, 57/89, 3/90,38/90,45/90 and 54/90, Official Gazette of FRY no. 35/92, 37/93, 24/94, 61/2001, accepted at the level of the Republic of Serbia under the name Basic Criminal Law, Official Gazette RS, no. 39/2003 of April 11, 2003.

beings is illegal crossing of the state border in an organised group, but not the smuggling of persons, which is not considered trafficking in persons.

Whoever crosses or tries to cross the border of FRY without valid permission, either armed or by the use of force, shall be punished with a sentence of imprisonment for up to one year. A person involved in illegal transfer of others across the border of FRY or who for the purpose of material benefits, enables other person to illegally cross the border, shall be punished with a sentence of imprisonment for a term exceeding six months but not longer than five years.

Acting as the Intermediary in Prostitution (Article 251[91])

Whoever recruits, tempts, inspires or lures females to prostitution or anyhow participates in selling of a female to another person for the purpose of practicing prostitution shall be punished with a sentence of imprisonment for a term exceeding three months, but not longer than five years. If the offence from Paragraph 1 of this Article is committed on a minor female or by the use of force, intimidation or deceit, the offender shall be punished with a sentence of imprisonment for a term exceeding one year, but not longer than ten years.

Incrimination from Paragraphs 1 and 2 of this Article provides for prosecution in the case of forced prostitution. This act was most often used as a substitute before trafficking in human beings was adopted as a criminal offence.

Law on Movement and Stay of Foreigners[92]

The Law on Movement and Stay of Foreigners, according to the latest amendments of June 2003, in Article 106, Paragraph 1, items 2,3,4 and 7, reads that a foreigner shall be punished with a fine of CSD 21,000 or with imprisonment for a term of up to 30 days if he/she:

"*Presents inaccurate personal information or is using a false ID"*

"Has used other person's passport or has given his/her own passport to another person to use"

91 Criminal Law of the SFRY/FRY, Official Gazette SFRY no. 44/76, 36/77, 34/84, 74/87, 57/89, 3/90,38/90,45/90 and 54/90, Official Gazette of FRY no. 35/92, 37/93, 24/94, 61/2001, accepted at the level of the Republic of Serbia under the name Basic Criminal Law, Official Gazette RS, no. 39/2003 of April 11, 2003.

92 Law on Movement and Stay of Foreigners, Official Gazette of the SFR Yugoslavia, no. 56/80, 53/85, 30/89, 26/90, 53/91, Official Gazette of FRY, 24/94, 28/96, 68/02

"Has entered Serbia and Montenegro illegally and his/her refugee status or right to asylum is not recognized"

"Fails to leave the territory of Serbia and Montenegro within the deadline specified in the ruling of the authorized officials."

Paragraph 2 of this Article stipulates that for these violations a foreigner may be given the protective measure of banishment from the territory of Serbia and Montenegro. The fine for these offences was up to CSD 6,000, until the amendments in 2002, when it was increased to CSD 21,000.

Article 107, paragraph 1, items 1,2,4,6 and 7 of this Law states that a foreigner will be punished with a fine of CSD 21,000 or a prison sentence of 15 days if he/she:

"Moves, resides or takes up permanent residence in a specific place or area where moving, residing or taking up permanent residence by foreigners is limited or forbidden."

"Resides in the SFRY two days longer than specified in his/her visa, tourist pass or permission for permanent residence, or if he/she fails to apply for temporary residence within a specified time period."

"Wears a foreign military, police or customs uniform during his/her stay in the SFRY/FRY, in contrast to the Law."

"*Avoids reporting his/her residence or change of address to the authorities."*

"Refuses to show a form of identification to an authorized official".

Paragraph 2 of this Article stipulates that officials in charge of border-crossing control may fine a foreigner up to CSD 9,000 for acts referred to under paragraph 1, item 2 of this Article. Until the 2002 amendments, fines for violations under paragraph 1 were up to CSD 6,000, and under paragraph 2, CSD 900.[93]

93 Exchange rate for the dinar in June 2004 was: 1 =CSD 71.

Law on Public Order and Peace of the Republic of Serbia (Article 14)[94]

> *"Whoever works as a prostitute or provides premises for prostitution shall be punished with a sentence of imprisonment for a term up to 30 days."*
>
> *"Whoever provides premises for prostitution to a minor shall be punished with a sentence of imprisonment for a term up to 60 days."*

Citizens of Serbia and Montenegro trafficked for the purposes of prostitution were also not recognised as victims of trafficking in women. In most cases they were prosecuted for the offence of disturbing public peace and order. Although some of them readily admit that they are prostitutes, they are rarely ready to reveal the names of pimps and their helpers. Often the "pimp" is the one who pays the fine on behalf of the woman.

Criminal Proceedings Code (CPC) (Articles 102, 109, 292)[95]

A new addition to the CPC is the power given to the court to offer certain kinds of protection to witnesses and victims, together with the possibility of providing special police protection to the witness and victim upon request of the investigative judge or the chairman of the trial chamber. Specific forms of protection have yet to be introduced in the Rules of Procedure for Internal Affairs Authority and other relevant internal bodies. Although the amendment of the CPC brought about significant changes, Serbian legislation still does not provide witness protection, nor is it familiar with the special methods of interrogation of victims of trafficking for the purpose of their protection, or prevention of enforcement or deferred enforcement of the measure of banishment of a foreign citizen from the territory of Serbia and Montenegro. The amendments of December 2002 introduced provisions concerning organised crime[96]. One of the additions is the concept of witness-collaborator, which implies the protection of a member of a criminal gang who agrees to testify, but not the protection of the victim or victim/witness. Southeast

94 Law on Public Peace and Order of the Republic of Serbia, Official Gazette RS no. 51/92

95 Criminal Proceedings Code of the Republic of Serbia, Official Gazette RS, no. 70/01, 68/02, 58/04, the latest amendments on May 28, 2004.

96 Law on Organisation and Competence of State Authorities in Combating Organized Crime, Official Gazette of RS, no. 42/2002, 27/2003 and 39/2003.

European Cooperative Initiative (SECI)[97] centre operates in the region as an organisation for combating organised crime in South Eastern Europe, and it assists the courts by ensuring the safety of victims in court. However, in a poor country like Serbia, neither the court nor the Ministry has funds to provide protection for the victim/witness, and therefore depends on SECI funding. It is natural that a court, which doesn't even have the money to make a phone call or to send a fax to Romania, is susceptible to corruption.

Since the procedural legislation does not yet provide witness protection for trafficking victims, victims often do not want to serve as witnesses in criminal proceedings against traffickers. Due to mental and physical violence that might have persisted for years, victims are often frightened and are not ready to speak about their experiences.

Post-traumatic stress, among other things, makes some of them remember the tiniest of details (nicknames, names of clients, tattoos, statements, etc.), while others forget even the names of those who abused them. This is one of the reasons why their testimonies in court frequently differ from those given to the police. Quite often a victim, out of the justified fear for herself and her family, will refuse to reveal everything she knows, and very often she is convinced by her traffickers that she is the one who has committed an offence. Victims are often ashamed, believing that they are to blame for what happened to them, and thus when giving a statement they either deny or minimise the acts of the indicted. They are afraid of condemnation from their surroundings and families, to whom they will have to answer questions regarding where they were, what they were engaged in, what happened to them, and why they did not bring home money, (the reason for the journey being to earn money).

Experience shows that victims who decided to testify were under permanent threats and even their families in their native countries were threatened (at the time when proceedings were going on against traffickers in the other country). This highlights the effective connections and information sharing among those who participate in trafficking chains[98]. It is common practice that full names and personal data of victims/witnesses and of attending observers are read aloud in the presence of the indicted during the proceedings.

For example, during the trial of Milivoje Zarubica, and twelve others indicted,

97 Southeast European Cooperative Initiative www.secinet.org.

98 Source: testimonies of victims of trafficking to ASTRA.

that took place before the District Court in Belgrade, the connection between the indicted with criminal groups in Moldova, Romania, Bosnia and Italy was established. However, unfortunately, it was not an item of indictment. Also, in none of these trials was the perpetrator forced to forfeit the money they generated practicing this "activity", so their capital remained untouched, while the victims were denied their right to reparation for the pain suffered.

After they return home, victims face the same circumstances they had previously run away from: poor economic situation, unemployment, a family which expects income from them, and, of course, the same people who recruited them the first time by promising them a job. For this reason, quite often the same girls repeatedly end up in trafficking chains, each time starting their journey hoping that the same thing will not happen again. In addition to trauma suffered during their trafficking experience, victims often encounter discrimination from their families and the wider community when they return to their country of origin. For example, a young woman, S.M. from Moldova, testified that after she returned home, she was banished from her village, as local people believed that she had dishonoured the entire village with her conduct.

d) Representation of the Victim in Criminal Proceedings

Since mid 2003, ASTRA has been contacted by victims who managed to escape from trafficking chains, and who appeared in court as witnesses in proceedings against indicted traffickers, as well as in civil litigation for reparation. As only a public prosecutor has the right to prosecute the indicted for such criminal offences, the victims may appear only in the capacity of a witness. They have the right to representation, but they usually lack the money to hire a lawyer. For this reason, NGOs (ASTRA, Counselling Centre against Family Violence), whenever it is possible, hire lawyers to represent victims of trafficking.

The victim is entitled to representation by an attorney throughout the proceedings. The attorney has the right to inspect papers, propose evidence, ask questions of defendants, witnesses, forensics, etc., file for damages and give the closing argument. The attorney may also continue prosecution if the public prosecutor gives up the case. For this reason, it is necessary to ensure the representation of the victim by professional and capable lawyers, who are ready to fight against misogyny and xenophobia and to take certain personal risks and endure various forms of obstruction.

Since neither the victim nor her attorney have the status of a party, but only the status of a participant in the proceedings, the court is not obliged to send them the indictment, forensic findings and even the final ruling. The victim does not have the right to appeal the ruling, except the part concerning costs, or if the public prosecutor has assumed the prosecution from the victim as private plaintiff. For this reason, cooperation with the public prosecutor is vital for the protection of the victim's personal rights, since this is the only way for the argumentation of her attorney to be taken into account through the prosecutor's appeal.

A national of Serbia and Montenegro, S.T.[99], now 19 years old, was 17 at the time when she was trafficked from Serbia to Italy. Her two traffickers were arrested and prosecuted under Article 251 of the Criminal Law of the Federal Republic of Yugoslavia, for the criminal offence of acting as intermediaries in prostitution. The girl was arrested to attend the trial upon the order of the investigating judge (a woman), despite the fact that at the moment of trial she was living the Shelter for victims of trafficking for her own safety and the safety of her family, which was receiving daily threats, of which the judge was aware. The judge also had information regarding who was the lawyer of the victim/witness, but nevertheless issued the warrant. Although the judge knew that the girl was included in the Shelter programme for victims, and that the girl was obviously scared, she did not allow ASTRA representatives to attend the trial. During the trial, the judge was very rough mannered and tactless (the hearing lasted for one hour), even though the victim was visibly upset (she was crying throughout the entire hearing). After leaving the courtroom, the judge commented to an ASTRA representative, "I am returning her to you now. It didn't hurt at all". During the hearing, the girl talked about the highest structures of an organised criminal group in Pancevo, and her security once she leaves the Shelter is uncertain.

e) Mechanisms of Assistance to Victims

As far as the treatment of victims of trafficking is concerned, we may distinguish two periods:

1. The first period covers the 1990s. During this decade, there was no systematic mechanism aimed at helping the victims of trafficking. The

99 Municipal Court in Pancevo, court case No. KI 332/03, ASTRA database No. 305/03.

problem of trafficking in women in Serbia was not recognised at the political level. Also, the Criminal Law of the Republic of Serbia did not contain the provision that incriminates trafficking in human beings. The investigation into and bringing to justice of persons responsible for trafficking in women was very difficult, almost impossible. Since there were no clear standards for identifying the victims of trafficking, a large percentage of women found during raids in bars, motels and similar establishments were arrested, interrogated and sent to a magistrate's court[100], where they were prosecuted pursuant to the Law on Movement and Stay of Foreigners. In these cases, the Magistrate had quite narrow powers; it could rule a fine, jail sentence of up to 30 days in prison or deportation. Without exception, such women were treated as illegal immigrants. If they were foreign nationals they were sent to the State Detention Centre for illegal immigrants in Padinska Skela, from which they were later deported to the countries of their origin, without prior evaluation of the situation and the victim's position in the country of origin. If it concerned domestic nationals, they were punished under Article 14 of the Law on Public Peace and Order. Women's NGOs were the first to draw public attention to the fact that this problem in our country exists. Ms. Sonja Drljević, the woman who was the first to take initiative in founding ASTRA, describes this period as follows: "In 1996 I read a story in the newspaper about two girls who in Novi Pazar killed a pimp. One of the girls jumped out of the window. Our feminist group decided to get involved in this problem. There was Vesna Nikolić-Ristanović, Jasmina Lukić, Desanka Drobac, me and some other women. We managed to reach these girls and offered them legal assistance. One girl was sentenced to eight years' imprisonment; but she refused assistance, saying that it was better to spend eight years in prison than to be free out there, where traffickers could find her.[101] An important characteristic of this period is the fact that girls were not only left to the mercy of traffickers, but enjoyed no support from state institutions. Very often, the very same trafficker waited for deported girls on the other side of the border and transported them back to Serbia.

2. The second period follows the democratic changes in 2000. As described in the General Background section, the Yugoslav Team for Combating Trafficking in Human Beings was set up, and soon after that, in May 2002, the Serbian National Team for Combating Trafficking in Human

100 This is actually petty-offence authority, as Serbia still does not have magistrate courts in the form known in comparative jurisprudence.

101 ASTRA Biannual report, Belgrade 2004.

Beings was established. (Montenegro also has its National Team for Combating Trafficking in Human Beings; in the State Union of Serbia and Montenegro, there is no joint body in charge of coordinating efforts of both member states in the fight against trafficking in human beings). Significant changes in the procedures and treatment of the victims of trafficking could be observed after 2002 when, owing above all to political will (at that period Serbian criminal legislation did not contain provisions regulating trafficking in human beings), informal mechanisms for helping the victims of trafficking were established. Women victims of trafficking were no longer treated as persons who violated the above-mentioned laws, but were granted the status of victims. Women identified as the victims of trafficking have been referred to the Shelter for women – victims of trafficking run by the local NGO Counselling against Family Violence, where they could receive psychological and social assistance. In the period between February 2002 and May 2004, more then 110 women were identified, assisted and sheltered. Also, according to the ASTRA SOS Info Hotline (we received 1400 calls for 27 months) 70 women were registered as the victims of trafficking. The Shelter for women victims of trafficking operates thanks to donations (in particular, a donation by the Austrian Government). Donations are administered through the International Organisation for Migration (IOM). The state does not participate in funding victim assistance programmes (for example, accommodation costs, food, clothes, health care, legal representation of victims and medical assistance). The IOM bears repatriation costs. In all cases followed by ASTRA, there has not been any analysis of the repatriation of trafficking victims.

Mobile Team:

During 2003, four meetings of the Mobile Team were organised as a part of the National Referral Mechanism. The OSCE Mission in Belgrade initiated this team as a formal part of the Referral Mechanism, even though this team was working with ASTRA and the Counselling Centre against Family violence (NGO Shelter) on an informal level. The members of the Mobile team are: the Ministry of Social Affairs, ASTRA and Counselling against Family Violence.

The team has a coordinator and assistant. The Memorandum of Understanding should be signed with the Ministry of the Interior and IOM.

A new coordinator and assistant were chosen in January 2004 and were trained during February 2004. The Mobile team has had the first successful

cases. A difficulty in the referral process is the relation among international organisations, which often influences the relationship between an NGO and its direct help to victims. IOM has opened a second shelter with the intention of separating domestic and foreign victims of trafficking. That shelter was supposed to be a reintegration shelter, but it only has five beds. In the last week of May, seven domestic victims were found, but since the capacity of the shelter is insufficient, they had to be sent to the shelter for foreign citizens, again. Also, there is no systematic programme of reintegration and some of the victims have not decided whether they will use the facilities of the existing programme yet.

Although considerable progress has been made with regards to the building of mechanisms of assistance to victims of trafficking, examples of great violations of the human rights of trafficking victims in institutions are not that rare. This is supported by the example of a minor Romanian girl M.V. (16)[102], nine months pregnant. She was stopped at Belgrade Airport, together with two other Romanian nationals, because of incorrect documentation. Unrecognised by airport officials as a victim of trafficking, charges were brought against her for forgery of documents. She went into labour in the hallway of the court while she was waiting to give a deposition. The girl was brought to a hospital. Although it was explained to the judge that she was a probable victim of trafficking and that there was a shelter for accommodation for victims of trafficking, which had experience with providing accommodation to mother-victims and their babies, the judge refused to change the ruling and put M.V. in the Children and Youth Education Centre "Vasa Stajic" (this centre is an institution of semi-open type for minor delinquents). The baby was put in the Institution for children and deprived of parental care in Belgrade. Since she could not breastfeed her baby, M.V. got mastitis. Although the employees in the Centre "Vasa Stajic" were aware of this, as were the representatives of the Ministry for Social Issues (which is the member of the National Team for Combating Trafficking in Human Beings), by pointing out that they had no experience with such cases and that this institution was not the best possible solution for M.V. because of her health condition and the entire setting, the judge failed to change the ruling. When the girl's documents were ready, she was deported to Romania, together with her baby.

102 ASTRA Data base No. 654/03.

f) Law Enforcement Officials and Trafficking in Women and Girls

ASTRA is not aware of any proven or documented cases of police force violence aimed at victims of trafficking. But some victims, during their stay at the Shelter talked about humiliating treatment by the police, mostly verbal or indirect, e.g. they were not allowed to immediately put on decent clothes, but were kept as they were caught, in their underwear, for a few hours wait before giving a statement. Usually they never want to talk about details, and are content to be in the Shelter at last and afraid to complicate their position. The Ministry of the Interior established anti trafficking units in almost all police departments in Serbia. In practice, only the anti trafficking team in the Belgrade City Police Department is active.

Most of the girls told us that police officers were their regular clients. In the Zarubica trial, one of the defendants was a police officer, and one of the witnesses was a military officer (it is not clear why he did not appear as the indicted). Both of them were official security guards of some of the highest political officials. The police officer was sentenced to a deferred sentence of five months. As for the Zarubica case, it is widely known that Milivoje Zarubica was on friendly terms, if not in business relations, with the infamous Red Berets unit. An 18-year-old girl (B.Z) who used to work in the escort agency said that the entire intervention brigade was her clientele, and she had nobody to complain to.[103] Although the case was reported to the police several times, no investigation was initiated until autumn 2002, when the chief of the department for public peace and order of the Belgrade Police Department Petar Peslac was arrested on reasonable doubt that he abused his office.[104] Among other things, this department is in charge of suppressing prostitution, and escort agencies fall within its jurisdiction. The Chief of Department is suspected to have received bribes from the owners of several agencies, and in return, he did not carry out raids in these agencies. After nearly two years, the proceedings have not yet been finished.

In addition, trafficking victims are usually the only valuable source of evidence in such cases, so they are exposed to additional pressure to be witnesses in trials. Unfortunately, the state uses them for the purpose of finishing court cases, disregarding their personal needs and wishes, and exposes them and their

103 ASTRA Data base No. 103/02.

104 Glas javnosti: http://arhiva.glas-javnosti.co.yu/arhiva/2002/08/ 17/srpski/H02081601.shtml

families to revenge by organised crime. As stated earlier, there is no witness protection for them, except in the courtroom, but sometimes that fails too.

For example: in a trial against 13 traffickers (Milivoje Zarubica and his gang) in the District Court in Belgrade[105], the accusation was based on the criminal offences *acting as the intermediary in prostitution, rape, unlawful denial of freedom, forgery, illegal border crossing, etc*, because the trial started before the provision governing trafficking in people had been incorporated in the Criminal Code. It was public knowledge that one of defendants is one of the most powerful bosses in the region. At the court session in July 2003, when the girl A.T. from Moldova, who had been raped fifteen days in a row, in a particularly severe and humiliating way, and who escaped by jumping from the third floor and breaking her spine, was giving her deposition, defendants mocked, commented and insulted her. The judge reacted, but mildly, and not strong enough. During the same session, the other girl (S.M.) recounted her rape for the first time (which took place in front of another 11 girls), but the district attorney failed to bring charges against the rapist who was present in the courtroom. After a few months, the other Moldavian girl L.G. gave her deposition about the most important defendant raping her. She was extremely scared and explained how his emissaries had visited her in Moldova. The accusation of rape was rejected on the basis that she could not explain why if she was so scared she did not resist. One of the defendants even threatened to kill her during the court session. The judge merely told him to stop talking without permission. At the end, the defendant was mentioned as a participant in the fifteen-day raping (which the court found proven), got one year in prison, which is exactly three times less than the minimum for that crime. The others were given minimum or even lower sentences, some of them with probation. More precisely, the mildest sentence passed in this trial was one year for the aforementioned raping, and the longest was the cumulative sentence of three and a half years for five criminal offences. All seven victims were rejected in their reparation demands and advised to start civil trials.

This trial, which was expected to set a standard in such cases, is an excellent example of institutional ill-treatment of victims. The presiding judge, as well as the entire trial chamber, sent a clear and strong message to the victims, to the organised crime members and to the public opinion: discrimination of women is legitimate and women are not to be protected, especially if they are from other countries (they are not "ours"). The above-mentioned girl (L.G.)

105 District Court in Belgrade court case No. K 309/03.
"Dnevnik" http://www.dnevnik.co.yu/arhiva/06-03-2004/Strane/spec.htm

explained before the court that the "delegates" of the defendant had visited her five times in her flat in Moldova persuading her not to testify as "this would be better for her". Moreover, the judge allowed the defence's counsel to question her about her life in the past, as if there are women less worthy of court protection and as if the victims' morality may free the perpetrator of responsibility for violence.

Another case is significant as well. A girl that had been forced into prostitution escaped from her traffickers, only to be kidnapped and beaten. After a few hours, she died of internal bleeding. She was purposely left conscious throughout the torture in order to intensify her suffering. ASTRA's lawyer represented the girl's mother. The judge allowed the defendants' lawyer to say that they did not want to kill the girl, because "you hit the snake on the head if you want to kill it" which was humiliating and painful for the girl's mother and disrespectful of the dead girl, as well. Of course, the girl's mother's reparation request was denied.[106]

A minor national of Serbia and Montenegro, S.B[107], (16), was trafficked from Belgrade to a nearby town, where she was raped by the owner of the bar establishment in which she was forced to practice prostitution. She managed to escape by addressing two police officers who were drinking in the same establishment. Six months after she returned home, she found out that she was pregnant. She was called by an investigating judge to appear in the courtroom in the capacity of witness in the trial against the owner of the establishment in question, who was arrested in the meantime for acting as an intermediary in prostitution (he had been previously accused for the same offence three times and in that period the Criminal Law of our country did not have separate provisions regulating trafficking in human beings).

The judge scheduled the hearing of the victim and of the trafficker at the same time. In front of the courtroom, the trafficker threatened and bullied the girl. The trafficker's lawyer (male, like the judge) was present while she was giving

106 Municipal Court in Pancevo, No. K 16/03; ASTRA Database No. 492/03, 500/03, 501/03, 502/03, 509/03, 539/03, 562/03, 563/03, 565/03, 568/03, 572/03, 573/03, 575/03, 598/03, 604/03, 619/03, 629/03, 630/03, 638/03, 661/03.

107 First Municipal Court in Belgrade, November 22, 2002, ASTRA Database No 172/02, 175/02, 176/02, 177/02, 192/02, 193/02, 286/02, 304/02, 306/02, 307/02, 308/02, 319/02, 322/02, 324/02, 336/02, 339/02, 340/02, 341/02, 342/02, 343/02, 344/02, 346/02, 347/02, 348/02, 349/02, 351/02, 352/02, 353/02, 357/02, 362/02, 363/02, 402/02, 405/02, 407/02, 410/02, 411/02, 412/02, 416/02, 417/02, 428/02, 429/02, 430/02.

her deposition. To the judge's question asking if she had been raped and if she was pregnant, S.B said she was not, which the judge accepted as truth, although her pregnancy could be noticed easily.

The baby died of serious complications three days after it was born. S.B. has still not received her social and health insurance, nor conditions for her to continue school, in spite of the fact that her social and family situation is very difficult. Even today, she receives telephone threats by the trafficker and his friends.

2.2 Trafficking in Women in Montenegro

The Montenegrin Criminal Code was amended in 2002 in order to make trafficking in persons a crime.

Article 201 (a) states that "*anyone who picks up, transports, carries or receives persons with the intention of exploiting them for the purpose of forced labour, prostitution or other forms of sexual abuses by coercion, threat or deception or in another way*" will be sentenced to one to eight years in prison.

Montenegro has also established an *Anti-Trafficking in Persons Strategy* to protect, prosecute and prevent these types of crimes. It sets forth means of combating the problem, such as public awareness campaigns, educating officials, law enforcement etc. But above all, it sets up a mechanism to prosecute "corrupt public officials."[108]

Furthermore, Montenegro has apparently adopted the *National Plan for Combating Sex Trafficking* and has supposedly participated in a *Stability Pact Project* for "Protection of Victims of Sex Trafficking in Montenegro" involving the Government, the NGOs and International organizations under the coordination of the OSCE.[109]

In practice, during the last five years, some politicians and officials have been involved in different crimes of this kind. The Deputy State Prosecutor Zoran Piperovic, for example, was arrested for trafficking in persons and forced

108 Stop Violence Against Women, Serbia and Montenegro, available on www.stopvaw.org/Serbia_and_Montenegro.html.

109 Office of the High Commissioner for Human Rights, Human Right Committee, List of issues: Serbia and Montenegro, 01/05/2004, CCPR/C/81/L/SEMO, para. 744.

prostitution. He has apparently directly participated in the purchase, sale, rape and torture of a Moldavian victim: SC. She was found in a very poor state, with physical injuries on her body caused by beatings and had been starved.[110]

The list of the other arrests might include other high-ranking politicians and public figures. The Moldavian victim has apparently named other officials in the judiciary, police and politics. However, the charges against government officials were dismissed, as for the Government, due to insufficient evidence. In realty, judge Vukovic claimed that the security services threatened her, and tried to obstruct her investigation.[111]

This event regarding the allegations, lead to the critics from the international community, the Council of Europe and the Organisation for Security and Cooperation in Europe. This last one conducted a survey and issued a report with some recommendations on the matter in September 2003. This information and the pressure put on the Serbian government permitted Piperovic to be fired by the Government, as well as Piperovic's supervisor State Prosecutor Bodizar Vukcevic and Podgorica Prosecutor Zoran Radonjic.

However, apart from this exceptional measure, the problem of trafficking is not taken seriously enough. This has been confirmed by the United Nations Human Rights Commissioner for Serbia and Montenegro, Laurie Wiseberg, who stated, in an interview that,

> "*A practice of letting politicians, businessmen and criminals go unpunished must cease in the process of establishing an effective and independent judicial system.*" [112]

Apparently, the Government acts contrary to the struggle against impunity, since it has not renewed the mandate of the Minister of Internal Affairs who authorized the arrest of Piperovic, it has transferred the Chief of the anti-

110 Sex Trade Scandal in Montenegro, by Kacusa Krsmanovic in Podgorica, December 6, 2002, Peace Women, Women's International League for Peace and Freedom, available on www.peacewomen.org. See also the description of the injuries suffered by the victim, in "Mise en sommeil d'un procès retentissant: les autorités sont soupçonnées de couvrir une affaire de trafic sexuel", AI, Eur 70/017/2003, 5 juin 2003.

111 *Ibid.*

112 United Nations Foundation, "U.N. Wire, U.N Envoys Criticizes Montenegro On Sex Trafficking Case", Friday, September 5, 2003.

trafficking police in another department, and has dissolved the anti-trafficking police unit that arrested the suspects.[113]

It also appears that the police and local authorities sometimes turn a blind eye to traffickers and clubs known to keep trafficked women as prostitutes.[114]

3. Conditions in Prisons and Detention Facilities

In Serbia, before 2001, no NGOs, except for the International Committee for Red Cross, could visit centres of detention. After long-term negotiations between the Helsinki Committee for Human Rights and the Serbian Ministry of Justice, the permission for NGOs to freely visit prisoners, without the jail personnel have been acknowledged.[115]

Among the six prison facilities visited in 2001, one was a centre for adult female convicts. According to the International Helsinki Federation for Human Rights, poor conditions were encountered. The cells had not been painted, unhealthy, were without any source of heat, poorly equipped, and often overcrowded. The hygiene and sanitary conditions were at a low level due to financial difficulties. Moreover, the quality of food, the health care and medical equipment were not appropriated.[116]

The position of The International Helsinki Federation for Human Rights, regarding the need for Serbia to implement its international obligations, is perfectly clear. It recalls that "the resolution of the problem of poor conditions

113 *Ibid.*

114 Commission on Human Rights, 59th session, Integration of the Human Rights of Women and the Gender Perspective Violence Against Women, Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coosmaraswamy, submitted in accordance with Commission on Human Rights, UN. Doc. E/CN.4/2003/75/Add.1, para. 2096.

115 "Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America", Report 2002 (Events of 2001), International Helsinki Federation for Human Rights, p. 375.

116 "Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America", *op. cit.,* pp. 375-376.

in prisons and their harmonization with standards envisaged by the European Prison Rules and the UN Minimum Rules for the Treatment of Prisoners, apart from having the state allocate large funds, need also to begin with urgent education of prison staff so as to acquaint them with international standards in this sphere and with human rights in general.[117]

117 *Ibid.*, p. 376.

PART III

STATE VIOLENCE AGAINST CHILDREN IN SERBIA AND MONTENEGRO

Introduction: Definition of the Child

There is no specific provision defining a child or a minor in Serbia and Montenegro's legislation. However, according to the legislation of Serbia and Montenegro, the age of civil majority is 18 years old (Article 15, Para. 1 of the Marriage and Family Relations Act of the Republic of Serbia). This age also matches the electoral majority.

Education is compulsory from seven to 15 years old.

A child who has reached the age of 15 years and who possesses a general health capacity may independently establish his/her employment status and dispose with his/her earnings and property acquired through his/her own work. An employment relationship may only be established with a person below the age of 18 years under written consent from his/her parents or guardians, provided that the work does not place in danger his/her health, morals and education, that is, if such work is not prohibited by the law.[118]

In Serbia and Montenegro, the age of sexual consent is 14 for heterosexual relationships and between two females. There is a difference concerning the age of homosexual relationships between two males : it is from 14 in Montenegro and from 18 in Serbia.

The minimum age of criminal responsibility is 14 years old, that is, under criminal law, a child is a person under 14 and is theoretically exempt from criminal sanctions (Article 72 of the Criminal Code of the Federal Republic of Yugoslavia).

118 Article 7, para. 2 of the Act on Employment of FRY, Article 122, para. 2 of the Marriage and Family Relations Act of the Republic of Serbia, Article 13, para. 1 of the Labour Act of RS, Article 13, para. 3 of the Labour Act of RS.

1. Torture and Other forms of Ill-treatment against Children

A) Legal Framework

1) International framework

The former Yugoslavia (Socialist Federal Republic of Yugoslavia) signed and ratified the Convention on the Rights of the Child (CRC) respectively on 26 January 1990 and on December 1990. As a succeeding country, Serbia and Montenegro ratified it on March 2003.

As all other international instruments on human rights, the CRC applies directly and has priority over the laws of Serbia and Montenegro (Articles 10 and 16 of the Constitutional Charter).

2) National framework

There is no specific provision criminalizing torture as such. Only Article 12 of the Code of Criminal Procedure provides the prohibition and punishment of the use of any kind of violence on a detainee.[119] But the legislation contains nothing particular to child victims.

In case of ill-treatment of a child, which does not qualify as torture, a state agent who as maltreated a child may be prosecuted for different abuses of office when dealing with arrested persons (unlawful deprivation of freedom, extortion of deposition, maltreatment).

Criminal Codes of both Republics, Serbia (CCS) and Montenegro (CCM) specifically prohibit sexual harassment when the perpetrator is an official and it is punishable especially when committed against a minor (Articles 90 CCM and 107 CCS).

Nevertheless, other sexual offences against minors are not aggravated if committed by a state agent. In addition, the differentiation of sanctions according to the age of the child victim should be systematised and coherent. Some offences are subject to specific penalties when they have been committed against a minor aged over 14 years old, but not specifically under 14 (see table p. 90-91).

119 Report of the Special Rapporteur on Torture, E/CN.4/2003/68/Add.1, § 1965.

B) Complaints Procedures

There are no specific complaints procedures in cases of child victims either for torture or cruel, inhuman, or degrading treatment or punishment.

2. Children in Conflict with the Law

A) Grounds for Arrest and Police Custody

Chapter XXIX of the Code of Criminal Procedure of Yugoslavia (Articles 464 to 504) especially regulates proceedings against juveniles. Nevertheless, there are no provisions on the duties of the police and specific rights of arrested children. Thus the rules governing this issue are the same for all citizens, including the children. Under criminal law, there are no grounds for arrest specific to children.

Yet, several acts of violence and discrimination by police officers towards children, both in police premises and in other places (street, victim's home, etc), have been reported over the past years. These acts are typically committed against minority children (Roma or Kosovars):

On 22 September 2001, two police officers allegedly beat and broke the arm of 14-year old Enis Mamutovski, from a family of displaced Kosovo Roma, who was collecting scrap paper from waste containers with five other Roma children in the centre of Novi Sad. It seems that the investigations only lead to the fact that the injury of the boy was caused by a fall.[122]

On 21 June 2001, police officers brought an 11-year old Roma boy to a police station under the suspicion that the boy was involved in a car theft. The police inspector who conducted the interrogation slapped the boy, hit him on the palms of his hands and his back with a truncheon and struck him on the head with an open fist several times during the interrogation. The boy was released two hours later.[123]

120 This is only specific to girls.
121 This is only specific to girls.
122 See www.omct.org, reference : YUG 031001.CC
123 See www.errc.org

Crime (Article) – those underlined are specific abuses of office		Victim=any minor whatever his/her age	Victim=minor under 14	Victim=minor aged 14 and over	Sentence (imprisonment)	Sentence when the victim is not specifically a minor
Sexual harassment or unnatural debauchery by abuse of office (Art. 90 (2) CCM) (Art. 90 (3) CCM)			X	X	From 6 months to 5 years From 1 to 8 years	From 3 months to 3 years
Sexual intercourse or unnatural lechery through abuse of office (Art. 107(2) CCS) (Art. 107(3) CCS)			X	X	From 1 to 10 yrs From 3 to 10 yrs	From 6 months to 5 years (only female victims)
Procuring and permitting sexual abuse (Art. 93 CCM)	Procuring	X			From 3 months to 5 years	
	Permitting	X			3 years maximum	
	Procuring, permitting for payment	X			From 1 to 10 years	3 years maximum
Maltreatment and neglecting of a minor (Art. 100 CCM)		X			From 3 months to 3 years	
Trafficking of human beings (Art. 201a (3) and (9) CCM)		X	X		From 1 year to 10 years	From 6 months to 5/8 years
Rape (Art. 103 (3) CCS)		X			From 3 to 10 years	From 1 to 10 years

Exploiting minors for pornography (111a (1) CCS) (111a (2) CCS)	X	X		From 1 to 5 years Min. of 3 years	
Human trafficking (111b(3) CCS) (111b(4) CCS)	X	X		From 1 to 10 years	From 1/3 to 10 years
Sexual intercourse or unnatural lechery with a person under 14 years of age (Art. 106 CCS)		X		From 1 to 10 years (if against a helpless juvenile under 14 years of age or by use of force or a threat to directly assault life or body of that person or a person close to him :min. 3years ; if resulted in a serious bodily injury or a death of a juvenile or if the act was committed by several persons or in a particularly cruel or humiliating manner, or if the act caused a pregnancy or a difficult infectious disease : min. five years ; if death of the juvenile : min. 5 years)	
Rape (Art 86 CCM)			X	From 1 to 12 years	From 1/3 to 10 years
Coercion to sexual intercourse and unnatural debauchery (Art 87 (3) CCM),[120]			X	From 1 to 10 years	From 6 months to 5 years
Sexual intercourse or unnatural debauchery over the helpless person (Art 88 (3) CCM)[121],			X	From 1 to 12 years	From 3 months to 3/5 years

On 8 November 2002, two Roma children, 11-year-old S.S. and 13 year-old M.S., were driven from their home to the Security Centre in Niksic, with the agreement of their father, A.S., by two police inspectors, named Stanisic and Koprivica, on suspicion of breaking into a car and stealing a bag from it. Once in the police station, the two boys were severely ill-treated by the two police officers in order to make them confess the offence. The boys were beaten on their soles and body with a nightstick, were made to jump up and down on one leg and were threatened to be made naked and their testicles cut off if they didn't confess. S.S. was moreover threatened by one of the inspectors who took out a knife and put it under the boy's chin. M.S. reported that he was thrown on the floor and had his head stomped on. The two boys were held at the Security Centre for nearly a day. The inspectors allegedly warned their mother not to complain about her sons' ill-treatment and threatened to send back all the family to Kosovo if she did not comply.[124]

Three boys, one of whom has developmental problems, were abused and insulted by four police officers on 9 July 2002 near the village of Americ. During an illegal search of the boys' home, the police reportedly forced the retarded 15-year-old D. Djuric to dig holes in the yard to uncover firearms allegedly hidden by their father, who was currently in prison. After their mother informed the Belgrade Police Department, the police chief denied the ill-treatment of the three boys by the four police officers, stating they had not exceeded their authority. [125]

Two Roma children were physically and verbally abused by the Yugoslav Police on 9 June 2002. The two Roma children, a 13-year-old boy, Dragan Stancic, and a 14-year-old girl, Ljuvica Ristic, were washing the windscreens of cars that had come to a halt in a busy intersection in Belgrade on June 29th 2002 when a police car approached them. The policeman reportedly shouted aggressively at the boy to go away and then smacked him across his face with the back of his hand, causing Stancic's lip to split open. The same policeman then reportedly swore at Ljuvica Ristic and slapped and punched her left cheek.[126]

124 See www.omct.org, reference : YUG 141102.CC

125 See www.omct.org, reference : YUG 170702.CC and YUG 170702.1.CC ; it is also reported in the report of the Special Rapporteur on Torture n° E/CN.4/2003/68/Add.1 Para. 1972.

126 See www.omct.org, reference : YUG 080702.CC ; also reported in the report of the Special Rapporteur on Torture n° E/CN.4/2003/68/Add.1 Para. 1970.

B) Administration of Juvenile Justice

In Serbia and Montenegro, there is no special and unique law to regulate juvenile justice matters in a comprehensive manner. A special procedure (chapter XXIX of the Code of Criminal Procedure of Yugoslavia - Articles 464 to 504) is applied to juveniles by special bodies along with the special system of criminal sanctions (chapter VI of the Criminal Code of the Federal Republic of Yugoslavia - Articles 71 to 83) which juveniles serve in specifically designed institutions.

In Serbia and Montenegro, the minimum age of criminal responsibility is 14 years old. Under 14 a minor is called a child and is exempt from criminal sanctions (Article 72 of the Criminal Code of the Federal Republic of Yugoslavia). A minor over 14 and under 18 is called a juvenile and may be subject to criminal sanctions. A distinction has to be made between junior juveniles who are between 14 and 16 years of age and senior juveniles who are over 16 and below 18. The former category may be subject to educational and security measures, whereas the latter may, in addition, exceptionally be subject to juvenile custody (Article 73 of the Criminal Code of the Federal Republic of Yugoslavia). Judicial admonition or suspended sentence may not be imposed on both categories of juveniles.

There is no special court for minors in Serbia and Montenegro. Instead, according to Article 475 of the Code of Criminal Procedure of Serbia and Montenegro, all courts shall contain juvenile panels with at least one juvenile judge at first instance. The composition of a juvenile panel is as follows: in first and second instance, there is one juvenile judge and two lay judges, and at Supreme Court level, there are two judges and three lay judges. Lay judges are appointed from the ranks of professors, teachers, child-care persons and other persons who have experience in juvenile education.

A juvenile judge of the court at first instance shall conduct pre-trial proceedings. In this framework, he has to decide on the request of the State Attorney relating to the start of criminal proceedings. He may also order a child to be placed in an institution or under supervision, or, exceptionally, in juvenile custody, during preliminary proceedings.

One may particularly mention Article 467 of the Code of Criminal Procedure relating to the defence counsel. Indeed, “a juvenile may retain a defence counsel from the moment of the start of pre-trial proceedings”. It becomes an obligation when the juvenile is accused of having committed “a

criminal offence punishable for a term of more than three years of imprisonment, and for other criminal offences punishable by a more lenient punishment, if the judge deems that the juvenile needs the defence counsel". Moreover, in a case where "the juvenile, his legal guardian or relatives fail to retain a defence counsel, the juvenile judge shall appoint defence counsel by virtue of the office".

According to the Child Rights Centre, the enforcement of this provision meets some difficulties in practice mainly because "the defence counsels in these proceedings do not often provide their clients with the best representation - the reason partly being that they are not particularly specialised in this area. In practice, there are cases where appeals are not even submitted against convictions even when the sentence involves being sent to juvenile prison, or that there is no response to the state prosecutor's appeal seeking a severer sanction".[127]

And worst, the right to a defence counsel may be infringed when the child is the victim and may thus lead to the impunity of the perpetrators. This is the case of a 10-year-old Roma child, victim of sexual abuse, who was deprived of legal representation so that the prosecution against the perpetrators was abandoned. In this case, the Centre for Social Work decided to revoke the attorney appointed by the Humanitarian Law Centre to protect the abused boy. The District Court refused to put the perpetrators under investigations, despite the evidence proving their culpability.

Furthermore, despite Article 474 of the Code of Criminal Procedure which requests the authorities "to proceed expeditiously in order for the proceedings to be concluded as soon as possible", proceedings are too long since they may last up to two years.[128]

The training of personnel from the system of juvenile justice is mainly carried out by NGOs. In particular, the Child Rights Centre organised a series of seminars attended by juvenile judges, misdemeanour judges, public prosecutors, representatives of the police and centres of social work.[129]

127 Child Rights in Serbia 1996-2002, Child Rights Centre, Belgrade 2003, p.268.
128 Child Rights in Serbia 1996-2002, Child Rights Centre, Belgrade 2003, p.269.
129 Child Rights in Serbia 1996-2002, Child Rights Centre, Belgrade 2003, p.269.

C) Pre-trial Detention

Article 486 of the Code of Criminal Procedure of the FR of Yugoslavia sets pre-trial detention of an accused juvenile. According to the law this must be an exceptional measure, that is to say only on the grounds of Article 142 para.2 of the code (see above).

With regards to the duration of the pre-trial detention, the juvenile judge may decide for a period no longer than one month and the juvenile panel may extend it for two further months maximum. Moreover, after pre-trial proceedings are closed, that is waiting for the trial, detention may last up to one year.

Articles 480 para.2, 485 and 495 of the Code of Criminal Procedure of the FR of Yugoslavia provide for the placement of the accused juvenile under supervision during preliminary proceedings. Precisely, the State Attorney (Article 480) and the juvenile judge (Articles 485, 495) may order the juvenile to be placed in a shelter, educational or other similar institution, or in the care of the guardianship authority or another family. A juvenile may be placed under supervision if a separation from his/her previous environment is necessary, or if he/she needs assistance, or if his/her protection or housing is required. These measures are alternative measures to pre-trial detention. However, some of these also amount to deprivation of liberty.

However, alternative measures are rarely used and pre-trial detention is used as a rule, generally justified by the danger of escape.[130]

D) Criminal Sanctions Towards Juvenile Offenders

The treatment given to juvenile persons convicted for a criminal offence is defined by the provisions of the Code of Criminal Procedure (chapter XXIX: Proceedings against juveniles, Articles 464 to 504) and the Law on the enforcement of penal sanctions and is distinct from the treatment of adults.[131]

130 Child Rights in Serbia 1996-2002, Child Rights Centre, Belgrade 2003, p.77.

131 Consideration of reports submitted by states parties under Article 40 of the International Covenant on Civil and Political Rights, Human Rights Committee, para. 337 (24 July 2003) - CCPR/C/SEMO/2003/1.

The maximum criminal sanction that may be pronounced against a minor (only senior juveniles, i.e. from 16 to 18 years old) is juvenile prison for a maximum of 10 years. Juvenile prison sentences vary from 1 to 10 years.

1. Juvenile custody

Only minors over 16 years may be sentenced to imprisonment and only exceptionally.

An imprisonment penalty is submitted to cumulative conditions (Article 77 of the Criminal Code):

- the minor has committed a criminal act for which a penalty longer than five years of imprisonment is prescribed;
- the serious consequences and the high degree of criminal liability make educational measures unjustifiable.

The penalty of imprisonment is also prescribed for no longer than 15 days in the case of minor offences.

As a rule[132], a child is detained separately from adults. However, the juvenile judge can decide that the child be held in detention with an adult who will not have a harmful effect on him/her in order to avoid solitary confinement.

Moreover, the lack of specifically designed programmes for the stay of the juvenile in detention constitutes a great problem, as well as his/her stigmatisation by the pronouncement of this measure and aggressive atmosphere in detention. Juveniles reportedly silently accept the use of truncheons by guards as a disciplinary measure. Although they consider that guards often go beyond the "reasonable" number of blows.[133]

2. Educational Measures

Educational measures may be imposed on juvenile offenders over 14 years.

132 Article 487 of the Code of Criminal Procedure of the Federal Republic of Yugoslavia.

133 Child Rights in Serbia 1996-2002, Child Rights Centre, Belgrade 2003, p.268.

Article 75 of the Criminal Code of the FR of Yugoslavia enumerates and describes the different types of educational measures:

- disciplinary measures are a kind of warning through the placement in a disciplinary centre for juveniles, in particular when the minor "has committed a criminal act out of thoughtlessness or frivolity";
- measures of intensive supervision which imply strict supervision by the parents or the guardian, or intense supervision in another family or by the guardianship organ, particularly where it is not necessary to separate him/her from his/her previous environment;
- institutional measures are extended measures of education, rehabilitation or treatment which require the placement of the juvenile in an educational institution, in a correctional centre or in a special institution; in this case the measures can not last more than five years.

According to the Child Rights Centre, the problem with educational measures provided in the Criminal Code is that they restrict the liberty of the juvenile and, considering institutional and disciplinary measures, that their duration is not legally defined. Thus, a juvenile aged 15 and convicted to an institutional measure for instance, could be in a situation worse than that of a juvenile aged 17 convicted to a juvenile prison sentence of two 2 years, for example. Indeed, in the former case, there is no pre-determined duration for the measure and it could last up to five years, whereas in the latter the juvenile will stay in prison *only* for two years.

Another problem is that juveniles are held together in pre- and post-trial detention (either in detention centres or correctional facilities).

Furthermore, under Article 503 of the Code of Criminal Procedure of the FR of Yugoslavia, the administration of the institution in which a juvenile follows educational measures has to submit, every six months, a report on juvenile's behaviour to the court which imposed the measure. However, according to the Child Rights Center, this legal possibility is not used adequately.

3. Alternatives Measures to Deprivation of Liberty

The alternative measures to deprivation of liberty are the measures of intensive supervision in Article 75 of the Criminal Code.

The legislative regulation exclusively envisages the application of a "protective model" in the treatment of minors in criminal legislation. In such an established model there are two dominant, polarised forms of protection of a minor: institutional protection and measures of open protection. Support programmes, between these two extremes, (half-way houses, probation, community-based educational measures, etc) do not exist although they are urgently needed.

3. State institutions

A) Schools

Discrimination against Roma children

Roma children drop out of school at an early age because they feel personally unsafe and rejected by their peers. Other children do not want to associate with them, regard them as dirty and thieves, and also insult and beat them. The consequence is a mass ghettoisation of Roma children in schools. The school system is ill-adapted for children from different cultural and social environments. The curriculum has not been modified during the last ten years or so, as a result of which it is dominated by Serb nationalism and ignores the existence of the Roma literary, historical, and cultural heritage in Serbia.[134]

Numerous cases illustrate that Roma children are systematically harassed and verbally and physically abused by their non-Roma classmates in schools. Teachers are reportedly reluctant to take action to guarantee safety for Roma pupils and there are even cases where the teachers also ill-treat them.[135]

134 Report by the Humanitarian Law Centre, Roma in Serbia, December 2003 ; available on the following website : http://dev.eurac.edu:8085/mugs2/do/blob.html?type=html&serial=1075731222215

135 See European Roma Rights Centre website, particularly the following page : http://lists.errc.org/publications/indices/serbia_and_montenegro.shtml

• Zoran Miladinović, a nine-year-old second-grade Roma student at Cirilo i Metodije school in Belgrade, stated that the non-Roma children slapped him and called him names almost every day. Zoran complained to his teacher, who reportedly told him it was best to ignore the other children when they called him names.[136]

• On 27 January 2003, 14-year-old Kadira Idić, an 8th-grade Roma pupil at the Branko Radičević primary school in Bujanovac, southern Serbia, informed the European Roma Rights Centre, in partnership with the Belgrade-based non-governmental organisation Minority Rights Center (MRC), that earlier in the day, she had been verbally harassed by three of her ethnic Serbian classmates and physically assaulted by her ethnic Serb teacher. According to Kadira, she then went to the staff room and told her teacher what the three boys had said to her. The teacher reportedly reacted by hitting Kadira on her head with a ruler and sending her out of the staff room. Kadira's mother, Anifa Idić, met the director of the school and Kadira's teacher that same day. Ms Idić told the European Roma Rights Centre/Minority Rights Centre that Kadira's teacher denied having hit her, although the headmaster agreed to look into the problem.[137]

• The mother of Safet and Zaim Beriša, Ljubica Stanković, complains that her two sons regularly return from their primary school covered with bruises. Safet went on to describe the attitude of his fellow pupils towards him: "Children in my class call me a Gypsy and say all kinds of nasty things about my Gypsy mother. One boy named Peda sometimes hits me. During the break, many children call me a Gypsy, and sometimes I also get a kick or a punch in the bargain. I've complained several times to my teacher, Biljana Vuković. She promised that she'd ask them to stop it, but they still do it." After one such incident, when Zaim came home with bruises on the head and a broken nose, the boys' mother asked the school governor, Ratko Jokić, to help protect her children. In spite of Jokić's promises that the school would take measures to protect its Roma pupils, the harassment continued as before and Safet and Zaim left the school. In order to protect her sons, Ljubica had their Albanian surname changed to Stanković.[138]

136 See European Roma Rights Centre website, particularly the following page : http://lists.errc.org/rr_nr4_2000/snap20.shtml

137 See European Roma Rights Centre website, particularly the following page : http://lists.errc.org/rr_nr3_2003/snap43.shtml

138 Report by the Humanitarian Law Centre, Roma in Serbia, December 2003 ; available on the following website : http://dev.eurac.edu:8085/mugs2/do/blob.html?type=html&serial=1075731222215

• Kristina Stanojević is a fifth-year pupil at the Banović Strahinja primary school in Belgrade. "Until last year, I was insulted by the children all the time. They would shout at me: 'Gypsy face', 'You Gypsy motherfucker', 'You filthy Gypsy girl' and suchlike. Five of the boys were at it all the time. One would start it and the rest would chime in. Some of the girls also treated me that way. I was one of the three Roma in my class and we were all insulted in the same way. Once, in May this year, one of the boys gave me a kick and said, 'Clear out of here, you Gypsy girl, have a good look at yourself in the mirror.' Another boy hit me in the face with a ball and accused me of stealing a coin from him. A girl from my class used to hit, insult and push me around all the time. I complained to my teacher. She told them to stop it and that we children should stick together. But the children continued to tease me. I'm now in my fifth year and I've not been bothered so far. The Serb schoolchildren don't want to associate with their fellow Roma pupils. I keep company with my sister Jelena and my Roma girlfriends. Only one Serb girl mixes with us. Her name's Nataša. She's a very good pupil. She's never insulted us or called us Gypsies."[139]

The Law secures the right to education of national minorities in their native tongue. Roma children are included in the educational process, but their educational level is lower than that of the majority population. Moreover, the majority of Roma children are enrolled in special schools for children with developmental problems, which do not correspond to the children's intellectual capacities and potential school achievements. Many inclusive programmes that have been implemented in the last two years in the Serbian Republic provide support to Roma families and children for their adequate inclusion into the educational process. These projects also include the establishment of preschool and school institutions within Roma settlements.[140]

B) Institutions for Education of Children and Youth

In Serbia and Montenegro, children and young people who violate the generally accepted social rules of behaviour in certain situations are sent to

139 Report by the Humanitarian Law Centre, Roma in Serbia, December 2003 ; available on the following website : http://dev.eurac.edu:8085/mugs2/do/blob.html?type=html&serial=1075731222215

140 Serbian Republic Country Report; available on the following website : http://www.children-strategies.org/English%20creports/Serbia%20Final.pdf

educational institutions that provide them with protection, education and health care. Sending a child to an educational institution is a measure that relies on two fundamental premises: a criminal legal basis, and a social and a family legal basis. In the former case (described above), this measure may be pronounced for criminally responsible juveniles who need to be under constant professional supervision. In the latter case, social welfare organs have the possibility of sending children below the age of 14 years, who are not criminally responsible but have committed a criminal offence, as well as children and young people whose life and development have been at risk and deviant for years, to this kind of institution.

There are currently three institutions for education of children and youth in Serbia: in Belgrade, in Knjaževac and in Nić.

Very young children (even under seven years of age) assessed as "delinquent" by the centre for social work may be found living with children over 14 in an institution where the latter have been place there due to a criminal sanction. The Child Rights Centre and OMCT consider that such a legal possibility and practice constitute an area of exceptional violation of these children's rights.

In addition, children (both criminal offenders or children with deviant behaviour), who suffer from disorders or retardation in their physical or mental development, are also accommodated together with others.

There is a lack of medical staff, particularly a trained nurse, in all the observed institutions.

The combination of male and female youth in the same premises poses a particular problem for the staff.

The complexity and the multiplicity of cases increase the range of needs for individual treatment, as well as the increased number of children and youth with special difficulties.

Particularly in Belgrade, the educational work at present is burdened with difficulties because the institutional treatment is neither defined in terms of duration nor termination of any particular programme. There is no defined degree of success in the process of re-socialisation and in practice this means that children remain institutionalised up to the age of 18 or when the correctional measure expires.

RECOMMENDATIONS

A. General Recommendations

1. The immediate need is for the Serbian and Montenegrin Parliaments to enact legislation which would precisely, and in accordance with international standards, regulate the authority of law enforcement agents in areas such as identity checks, detaining and/or searching persons, vehicles, enclosed spaces and similar. Annulment by the Serbian Constitutional Court of provisions of the Law on Internal Affairs dealing with these issues created a legal vacuum which must be filled as soon as possible.[141]

2. In both Serbia and Montenegro, the governments (executive branches) have immediate control over law enforcement agencies. It is therefore necessary to establish mechanisms for regular and active external supervision of all these agencies. To this end, an independent Committee on Law Enforcement Oversight should be set up by law. Members serving on the Committee should be nominated by an independent expert body and appointed by the Parliaments. The Committee should have broad investigatory powers, including the right to request and receive information and documents from all state agencies and other institutions as well as citizens, police officers and their superiors. The Committee should also have the power to examine all records relating to allegations of law enforcement abuses. On the basis of the facts it establishes, the Committee should be empowered to call to account police officers who break the law in each concrete case. Its mandate should include publication of periodic reports on respect for human rights by the police, and making of recommendations designed to prevent unlawful conduct. Finally, the failure of law enforcement agencies to act upon the requests of the Committee should be deemed a serious violation of duty.

3. The Serbia and Montenegro Assembly should ratify the already signed Optional Protocol to the Convention. The agencies of the state-union should improve cooperation with the Committee with regards to the cases before the body, and comply in full with the decisions the Committee has already handed down.

141 Constitutional Court Decisions No. IU 171/94 and 153/93, *Sl. glasnik RS* No. 8/01. .142 By a decision of the Constitutional Court, the Law on Internal Affairs (Articles 11,13,14,15) was canceled. At this moment, a gap exists in Serbian law. Therefore it is imperative that a new law on the police, which would regulate its competency, be adopted.

4. The republics should amend their criminal law and bring it into conformity with the Convention. To this end, it is necessary to make it a criminal offence for a person acting in an official capacity to incite another to commit acts of torture or to acquiesce to such acts.

5. Furthermore, law enforcement agencies and prosecutor's offices should consistently apply the law, in particular the Criminal Procedure Code.

6. To make the reform of law enforcement as effective as possible, experts should be consulted, and the views and proposals of local authorities and ethnic minorities should be taken into account. This would promote community policing, which is especially significant in multi-ethnic regions such as Vojvodina, parts of Montenegro and the Sandjak, and would contribute to restoring the trust and confidence of the citizenry in its police force.

7. Effective mechanisms must be set up to rein in impunity for abuses, and for ensuring that victims of torture and/or ill-treatment receive fair redress and compensation. The public must be fully informed on decisions to this effect, and be able to see what sanctions are imposed against officers who break the law.

8. Attention should be devoted to improving law enforcement training, and standards of professional ethics, expected to be followed by the police, should be set down. Professional training in theory and practice should include increased awareness of human rights as well as courses specifically on human rights. Such training should be offered to both police officers and to students preparing for law enforcement careers at secondary institutions and the Police Academy. The HLC's research has brought out that many officers resort to physical abuse and even brutality to extract a confession (above all because of the absence of effective investigation). Law enforcement agencies should be provided with the necessary equipment and their members trained in modern methods of criminal investigation.

B. Recommendations with regard to Women

1. Establishment of a commission that would investigate all cases of mistreatment in the police service and other relevant institutions.

Commission would consist of NGO and institution representatives. This should be a multi-disciplinary commission whose members have passed proper and in-depth training.

2. Introduce the institution of Ombudsman in the Republic of Serbia.

3. Education of professionals at all levels who may come in contact with trafficking victims in their work, in order to stamp out the possibility of elements of torture and ill-treatment. Establishing Ethical Codes for police officers.

4. In drafting a National Action Plan, protection of victims from torture and ill-treatment should be kept in mind.

5. Change of court practice in the field of ordering of demands for compensation in the procedure of criminal charges without referring to civil court procedure.

6. Passing a law on the protection of victims-witnesses in all phases (before, during and after the trial) and in all institutions with which the victim has contact. This law should be common for the entire Region.

7. Promote direct bilateral contacts. In the cases of extreme risk, the relocation of victims to a third country should be considered, where arrangements can be made for her, e.g. to testify via video-links.

8. Find, freeze, and forfeit the assets from traffickers and other persons involved in human trafficking and redirect the funds to victim assistance, reintegration programmes and law enforcement agencies.

9. Establish a programme of reintegration for the victims of trafficking in Serbia and the region, following the standards of International Conventions as well as considering the victim's background in each case, (in particular United Nations Convention against Transnational Organised Crime, The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organised Crime).

10. Corruption, particularly if associated with organised crime and trafficking, should be classified as a form of severe crime and be dealt with by

special courts. All anti-corruption initiatives should be submitted to an independent, internal and external monitoring body to ensure probity and performance in the fight against corruption.

11. Raise awareness among the International Community and members of military forces of the consequences for international staff involved in any offence associated with trafficking in human beings and/or corruption/ torture/ill-treatment of victims of trafficking. Consequences should include disciplinary measures and prosecution by local authorities. Ensure an effective system for the removal of immunity and privileges of international staff and Military Forces in the above listed cases.

C. Recommendations with regard to Children:

1. Request the Serbian and Montenegrin government to establish a child rights protection system that includes and focuses on the most sensitive and vulnerable group of children, those exposed to abuse and neglect in the home, on the street or in institutions, those in conflict with the law, and those from ethnic minorities.

2. Regarding torture and other forms of ill-treatment, to request the Serbian and Montenegrin government:

   - to order thorough and impartial investigations into the circumstances of these kinds of event, in order to identify those responsible, bring them to trial and apply the penal and/or administrative sanctions as provided by law.

   - to establish procedures of complaint particularly adapted to child victims of torture, ill-treatment or any abuse by state agents. This could be performed through the presence and action of a mandatory specialized defence counsel and independent, social worker working in cooperation with a special police unit for juveniles.

3. Regarding police duties, to ask the Serbian and Montenegrin government:

   - to create a special unit of police officers whose mission will be only related to children suspected of having committed an offence and grounded in a child rights approach.

- to set strict legal provisions on how police should behave with children during their arrest and custody.

- to strictly prohibit the extortion of evidence and to enforce it particularly through adequate sanctions.

4. Regarding the juvenile justice system, to ask the Serbian and Montenegrin government:

   - to ensure the effective implementation of the Article 467 of the Code of Criminal Procedure, providing the presence of a defence counsel from the very beginning of the pre-trial proceedings, including police custody.

   - to reform the juvenile justice system in order to make it coherent and to establish a unique and special law which regulates juvenile justice (from the arrest to the following and rehabilitation of the juvenile in the society after any sentence).

   - to establish comprehensive training programmes for all professionals working with children involved in the justice system, whether victims or offenders, including professional methods and continuous training, based on international standards on juvenile justice.

   - to efficiently perform the implementation of Article 474 of the Code of Criminal Procedure under which the proceedings involving a juvenile should be swift.

5. Regarding deprivation of liberty, to ask the Serbian and Montenegrin government:

   - to guarantee, legally and in practice, that any kind of deprivation of liberty (pre- and post-trial, whether in a detention or an educational centre) should be an exceptional measure, that is a measure of last resort.

   - to develop services providing and/or supervising alternatives measures to deprivation of liberty.

   - to promote the application of alternative measures to deprivation of liberty and ensure that the competent authority (judge) are trained and informed of existing possibilities.

   - to ensure due process and safeguards to children in conflict with the law under 14.

- to ensure that educational measures do not restrict liberty and that their duration is specified and communicated to the child.

- to organize separation of child detainees according to their status (in pre- or post-trial, under criminal or administrative sanctions), adequately to their age and gender.

- to ensure, in all cases, the separate detention of juveniles and adults, unless it is considered not to be in the best interest of the child.

- to ensure adequate services for children in conflict with the law who have mental health problems.

- to stop the use of violence by guards in prison towards juvenile.

- to establish a regular and independent investigation of all the premises where juveniles are detained, as well as the review of and necessary training and monitoring problems.

6. Regarding schools, to ask the Serbian and Montenegrin government:

   - to ensure the ban of any kind of segregation in schools based on ethnic ground, violent and aggressive behaviour towards children, particularly Roma children, especially through the sensitisation of teachers and pupils to the right to equality and to non discrimination against Roma people.

   - to sanction, administratively or criminally, members of the school staff for abuse or lack of due diligence in the protection of any pupil.

7. Regarding all institutions, to ask the Serbian and Montenegrin government:

   - to improve the life conditions of the children and youth placed in institutions, particularly concerning their health care, but also the building and equipment and furniture.

   - to organised the continuous training of the staff working in the institutions based on international human rights standards.

   - to improve the children's care particularly through adapted and individual programmes as well as after the care (post institutionalisation) support.

CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE

EIGHTY-FIRST SESSION

ON

SERBIA AND MONTENEGRO

1. The Committee began its consideration of the initial report of Serbia and Montenegro (CCPR/C/SEMO/2003/1) at its 2206th to 2208th meetings (CCPR/C/SR.2206 and 2208), held on 19 and 20 July 2004, and adopted the following concluding observations at its 2221st meeting, held on 28 July 2004. Further consideration of the report in respect of Kosovo was adjourned to the eighty-second session of the Committee.

A. Introduction

2. The Committee welcomes the initial report submitted by Serbia and Montenegro and expresses its appreciation for the frank and constructive dialogue with the State party delegation. It welcomes the detailed answers, both oral and written, that were provided to its questions.

3. The State party explained its inability to report on the discharge of its own responsibilities with regard to the human rights situation in Kosovo, and suggested that, owing to the fact that civil authority is exercised in Kosovo by the United Nations Interim Administration Mission in Kosovo (UNMIK), the Committee may invite UNMIK to submit to it a supplementary report on the human rights situation in Kosovo. The Committee notes that, in accordance with Security Council resolution 1244 (1999), Kosovo currently remains a part of Serbia and Montenegro as successor State to the Federal Republic of Yugoslavia, albeit under interim international administration, and the protection and promotion of human rights is one of the main responsibilities of the international civil presence (para. 11 (j) of the resolution). It also notes the existence of provisional institutions of self-government in Kosovo that are bound by the Covenant by virtue of Article 3.2 (c) of UNMIK Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo. The Committee considers that the Covenant continues to remain applicable in Kosovo. It welcomes the offer made by the State party to facilitate the consideration of the situation of human rights in Kosovo and encourages UNMIK, in cooperation with the Provisional Institutions of Self-Government (PISG), to provide, without prejudice to the legal status of Kosovo, a report on the situation of human rights in Kosovo since June 1999.

B. Positive aspects

4. The Committee welcomes the significant progress accomplished in legislative and institutional reform following the regime change in October 2000. It notes the adoption of the Constitutional Charter forming the State Union of Serbia and Montenegro on 4 February 2003 and welcomes in particular the adoption of the Charter on Human and Minority Rights and Civil Liberties on 28 February 2003.

5. The Committee further welcomes the adoption of, inter alia, the Codes of Criminal Procedure applicable at the Republic level, particularly the enhanced human rights protections of detainees; the amendment of the electoral law of Serbia in May 2004; the Law on the Protection of the Rights and Freedoms of National Minorities at the State Union level; and efforts to address the issue of discrimination against Roma in all social spheres.

6. The Committee commends the State party for its abolition of the death penalty and its accession to the Second Optional Protocol to the Covenant.

7. The Committee welcomes the establishment of Ombudsman institutions in Montenegro and the autonomous province of Vojvodina.

8. The Committee has noted the cooperative spirit professed by the authorities of the State party vis-à-vis the participation of national non-governmental organizations in the process of monitoring, promoting and protecting the enjoyment of Covenant rights.

C. Principal subjects of concern and recommendations

9. The Committee is concerned at the persistence of impunity for serious human rights violations, both before and after the changes of October 2000. Although the Committee appreciates the declared policy of the State party to carry out investigations and to prosecute perpetrators

of past human rights violations, it regrets the scarcity of serious investigations leading to prosecutions and sentences commensurate with the gravity of the crimes committed (Articles. 2, 6, 7).

The State party is under an obligation to investigate fully all cases of alleged violations of human rights, in particular violations of Articles 6 and 7 of the Covenant during the 1990s and to bring to trial those persons who are suspected of involvement in such violations. The State party should also ensure that victims and their families receive adequate compensation for violations. Persons alleged to have committed serious violations should be suspended from official duties during the investigation of allegations and, if found guilty, dismissed from public service in addition to any other punishment.

10. While noting the effective work regarding exhumations and autopsies of some 700 bodies from mass graves in Batajnica, the Committee is concerned at the lack of progress in investigations and prosecutions of the perpetrators of those crimes (Articles. 2, 6).

The State party should, along with the exhumation process, immediately commence investigations into apparent criminal acts entailing violations of the Covenant. The particular needs of the relatives of the missing and disappeared persons must equally be addressed by the State party, including the provision of adequate reparation.

11. The Committee notes the State party's public statements emphasizing its commitment to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY) in order to ensure that all persons suspected of grave human rights violations, including war crimes and crimes against humanity, are brought to trial. However, it remains concerned at the State party's repeated failure to fully cooperate with ICTY, including with regard to the arrest of indictees (Article 2).

The State party should extend to ICTY its full cooperation in all areas, including the investigation and prosecution of persons accused of having committed serious violations of international humanitarian law, and by apprehending and transferring those persons who have been indicted and remain at large, as well as granting ICTY full access to requested documents and potential witnesses.

12. While welcoming the measures taken to establish a system for trying war crimes before domestic courts, including the creation of a special war crimes trial chamber of the Belgrade District Court, and the establishment of the Office of a Special War Crimes Prosecutor, concern remains as to the absence of provisions in domestic legislation implementing the principle of command responsibility, the absence of an adequate system for witness protection, and the absence of investigators assigned solely to the prosecutor's office (Articles. 2, 6, 7)

    The State party should take all necessary measures to ensure that those responsible for war crimes and crimes against humanity are brought to justice, to ensure that justice is carried out in a fair manner and to establish an adequate system for witness protection.

13. The Committee is concerned at the measures taken under the state of emergency, which included substantial derogations from the State party's human rights obligations under the Covenant. The Committee notes the ruling of the Constitutional Court of Serbia of 8 July 2004, declaring unconstitutional some of the measures derogating from the Covenant taken by the Republic of Serbia under the state of emergency, and steps taken to punish violations that have occurred during this period and to provide compensation to all victims. Nevertheless, the Committee regrets that several concerns remain, particularly with regard to allegations of torture of detainees in the context of "Operation Sabre" (Articles. 4, 7, 9, 14, 19).

    The State party should take immediate steps to investigate all allegations of torture during "Operation Sabre" and take all necessary steps to ensure adequate mechanisms to prevent such violations and any abuse of emergency powers in future. The Committee draws the attention of the State party to its general comment No. 29 for the assessment of the scope of emergency powers.

14. The Committee is concerned about continued allegations of ill-treatment of persons by law enforcement officials. It also notes the preliminary statement by the Committee against Torture, referred to in the initial report of the State party, to the effect that torture had been applied systematically in the Federal Republic of Yugoslavia prior to October 2000. The Committee is concerned that sufficient information has not been provided as to concrete steps taken to investigate such cases, punish those responsible and provide compensation to victims (Article 7).

The State party should take firm measures to eradicate all forms of ill-treatment by law enforcement officials, and to ensure prompt, thorough, independent and impartial investigations into all allegations of torture and ill-treatment, prosecute and punish perpetrators, and provide effective remedies to the victims.

15. While taking note of the establishment in Serbia of the Office of Inspector General of the Public Security Service in June 2003, the Committee is concerned that no independent oversight mechanism exists for investigating complaints of criminal conduct against members of the police, which could contribute to impunity for police officers involved in human rights violations (Articles. 2, 7, 9).

The State party should establish independent civilian review bodies at the Republic level with authority to receive and investigate all complaints of excessive use of force and other abuse of power by the police.

16. The Committee notes that Serbia and Montenegro is a main transit route for trafficking in human beings and increasingly a country of origin and destination. It welcomes the efforts made by the State party and the measures taken to address the situation regarding trafficking in women and children, including the establishment of national teams to combat trafficking in Serbia and in Montenegro, as well as the introduction of a criminal offence in the criminal codes of Montenegro and of Serbia directed to trafficking in human beings, although some concerns regarding the definition of trafficking remain. The Committee is also concerned at the lack of effective witness protection mechanisms and notes the apparent lack of awareness about trafficking in women and children on the part of law enforcement officials, prosecutors and judges. The Committee notes that shelters and SOS hotlines are managed by non-governmental organizations, which have also organized awareness campaigns, and regrets the lack of adequate involvement by the authorities in these initiatives (Articles. 3, 8, 24).

The State party should take measures to combat trafficking in human beings, which constitutes a violation of several Covenant rights, including Articles 3 and 24 and the right under Article 8 to be free from slavery and servitude. Strong measures should be taken to prevent trafficking and to impose sanctions on those who exploit women and children in this way. Protection should be extended to all victims of trafficking so that they may have a place of refuge and an opportunity to give evidence against the persons responsible in criminal or civil proceedings.

17. The Committee is concerned at reports of high rates of domestic violence. While noting the efforts made by the State party to combat domestic violence, particularly in the area of legislative reform, the Committee regrets the lack of statistics and detailed information provided on the nature and extent of the problem (Articles. 3, 7, 26).

    The State party should adopt the necessary policy and legal framework to effectively combat domestic violence. The Committee recommends in particular that the State party establish crisis-centre hotlines and victim support centres equipped with medical, psychological and legal support, including shelters for battered spouses and children. In order to raise public awareness, it should disseminate information on this issue through the media.

18. The Committee is concerned about the lack of full protection of the rights of internally displaced persons in Serbia and Montenegro, particularly with regard to access to social services in their places of actual residence, including education facilities for their children, and access to personal documents. It expresses its concern with regard to high levels of unemployment and lack of adequate housing, as well as with regard to the full enjoyment of political rights. While noting the State party's view that internally displaced persons have equal status with other citizens of Serbia and Montenegro, the Committee is concerned at the lack of enjoyment of their rights in practice. The Committee notes that Roma from Kosovo displaced during the 1999 conflict are a particularly vulnerable group (Articles. 12, 26).

    The State party should take effective measures to ensure that all policies, strategies, programmes and funding support have as their principal objective the enjoyment by all displaced persons of the full spectrum of Covenant rights. Furthermore, internally displaced persons should be afforded full and effective access to social services, educational facilities, unemployment assistance, adequate housing and personal documents, in accordance with the principle of non-discrimination.

19. The Committee takes note of efforts undertaken by Serbia to strengthen the independence of the judiciary. However, it is concerned at alleged cases of executive pressure on the judiciary in Serbia, and measures regarding the judiciary undertaken during the state of emergency (Article 14).

The State party should ensure strict observance of the independence of the judiciary.

20. The Committee is concerned at the possibility of civilians being tried by military courts for crimes such as disclosure of State secrets (Article 14).

The State party should give effect to its aspiration to secure that civilians are not tried by military courts.

21. The Committee takes note of the information provided by the delegation whereby conscientious objection is governed by a provisional decree, which is to be replaced by a law, which will recognize full conscientious objection to military service and an alternative civil service that will have the same duration as military service (Article 18).

The State party should enact the said law as soon as possible. The law should recognize conscientious objection to military service without restrictions (Article 18) and alternative civil service of a non-punitive nature.

22. The Committee is concerned at the high number of proceedings initiated against journalists for media-related offences, in particular as a result of complaints filed by political personalities who feel that they have been subject to defamation because of their functions.

The State party, in its application of the law on criminal defamation, should take into consideration on the one hand the principle that the limits for acceptable criticism for public figures are wider than for private individuals, and on the other hand the provisions of Article 19 (3), which do not allow restrictions to freedom of expression for political purposes.

23. While noting the adoption of the Law on the Protection of the Rights and Freedoms of National Minorities, the Committee remains concerned that the practical enjoyment by members of ethnic, religious and linguistic minorities of their Covenant rights still requires improvement. In this context, the Committee notes the lack of a comprehensive non-discrimination legislation covering all aspects of distinction (Articles. 2, 26, 27).

The State party should ensure that all members of ethnic, religious and linguistic minorities, whether or not their communities are recognized as

national minorities, enjoy effective protection against discrimination and are able to enjoy their own culture, to practise and profess their own religion, and use their own language, in accordance with Article 27 of the Covenant. In this context, the State party should enact comprehensive non-discrimination legislation, in order to combat ethnic and other discrimination in all fields of social life and to provide effective remedies to victims of discrimination.

24. The Committee is concerned that widespread discrimination against the Roma persists with regard to all areas of life. The Committee is particularly concerned about the deplorable social and economic situation of the Roma minority, including access to health services, social assistance, education and employment which has a negative impact on the full enjoyment of their rights under the Covenant (Articles. 2, 26, 27).

    The State party should take all necessary measures to ensure the practical enjoyment by the Roma of their rights under the Covenant, by urgently implementing all strategies and plans to address discrimination and the serious social situation of the Roma in Serbia and Montenegro.

25. While noting reports about the decrease in police violence against Roma, the Committee continues to be concerned at violence and harassment by racist groups, and inadequate protection against racially motivated acts afforded by law enforcement officers (Articles. 2, 20, 26).

    The State party should take all necessary measures to combat racial violence and incitement, provide proper protection to the Roma and other minorities, and establish mechanisms to receive complaints from victims and ensure investigation and prosecution of cases of racial violence and incitement to racial hatred, and ensure access to adequate remedies and compensation.

26. The State party should widely publicize the present examination of its initial report by the Committee and, in particular, these concluding observations.

27. The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding cooperation with ICTY (para. 11); torture and ill-treatment (para. 14); and internally displaced persons (para. 18). The Committee

requests that information concerning the remainder of its recommendations be included in the second periodic report, to be presented by 1 August 2008.

ANNEXES

1. Jurisdiction of the Human Rights Committee regarding Kosovo

The Committee has never adopted concluding observations regarding the behaviour of international organisations, since only States are entitled to ratify ICCPR. However, in the case under examination, whereas Kosovo is *de jure* under the sovereignty of Serbia and Montenegro, it is governed *de facto* by international organisations, that is the United Nations, through UNMIK administration, and NATO, through the Kosovo Force (KFOR).

Therefore, it is argued that the Committee is entitled to examine activities by these organisations in Kosovo in the light of the provisions of ICCPR, as these are the actors responsible for implementing the Covenant. Indeed, the Committee's jurisdiction covers the complete territory of States parties, even though some parts of this territory are under the control of other subjects of international law. In the case of Kosovo, the power of the international administration is based on Resolution 1244 of the Security Council, which recognized Serbia and Montenegro's sovereignty. Therefore, international organisations involved in this process act on behalf of this State and are bound by its international human rights obligations. In addition, UNMIK's *Regulation 1999/24 on the law applicable in Kosovo* explicitly provides that ICCPR applies to "all persons undertaking public duties or holding public office in Kosovo".[142]

In this regard, OMCT wishes to raise four issues of concern:

1.1 Performance of international and local police

As emphasized by the European Commissioner for Human Rights, crime prevention and repression in Kosovo has been perceived by many as poor.[143] In addition, complaints of torture and other ill-treatment have been made against the police, including UNMIK agents.[144]

142 Article 1.

143 *Kosovo : The Human Rights Situation and the Fate of Persons Displaced from their Home*, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, Strasbourg, 16 October 2003, CommDH (2002)11, par. 48.

144 *Ibid.* See Finnish Human Rights Project, *Report: NGO Prison Monitoring Mission-Kosovo*, November 19-24, 2001.

For example, on 26 February 2002, four police officers were arrested for ill-treatment, including the infliction of grave bodily injury. While the four men were under investigation, one of them, an Austrian national, illegally left the country, apparently helped by other Austrian members of the international administration.[145] Other examples are mentioned in paragraph 4 below.

1.2 Conditions of Detention

Whereas conditions of detention have improved in UNMIK and KFOR detention centres, concerns regarding the lack of basic medical care have been raised.[146] The lack of a transparent and independent monitoring system has also been emphasized. Access to prisons should be granted to the Ombudsperson's Office and to OSCE delegates. A visit by the *European Committee for the Prevention of Torture* should also be contemplated,[147] since Serbia and Montenegro ratified the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* on 3 March 2004.

1.3 Arrest and Administrative Detention by UNMIK and KFOR

Concerns have also been raised regarding administrative detention powers by UNMIK and KFOR.

a) Under *UNMIK Regulation 1999/1 on the authority of the interim administration in Kosovo*, the Special Representative of the Secretary General (SRSG) in Kosovo was given very broad powers, including all legislative,

145 Amnesty International, *FRY(Kosovo): No impunity for the international community*, Press Release, 18 June 2002, EUR 70/005/2002.

146 Finnish Human Rights Project, *Report: NGO Prison Monitoring Mission-Kosovo*, November 19-24, 2001.

147 *Kosovo : The Human Rights Situation and the Fate of Persons Displaced from their Home*, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, Strasbourg, 16 October 2003, CommDH (2002)11, par. 107.

executive and judiciary authority.[148] This power has been interpreted as entitling the SRSG to adopt "executive orders" providing for the administrative detention of individuals. In some cases, this power has been used to maintain in detention individuals despite judicial decisions allowing their liberation, thus putting the judiciary under the control of the executive branch.

Whereas no external control was provided on the legality of SRSG's executive detention orders at the beginning, a *Detention Review Commission* was established in August 2001. However, this institution is not satisfactory under due process requirements, since it cannot be considered as a "court" in the meaning of Article 9 paragraph 4 of ICCPR. Indeed, it remains under the control of the executive.[149]

b) In addition, based on an excessively broad interpretation of *Resolution 1244 of the Security Council*, KFOR, the military component of the international presence in Kosovo, has also been arresting and detaining individuals without any involvement of judiciary or external control. In addition, detainees do not receive written documents explaining the legal reasons for their arrest and the detention can be renewed indefinitely.[150]

1.4 Immunity

As emphasized by the Ombudsperson Institution in Kosovo, *UNMIK Regulation 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo* is incompatible with recognised international standards. Usually, the grant of immunity in international

148 UNMIK Regulation 1999/1, 25 July 1999, on the authority of the interim administration in Kosovo. Article 1: "All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General."

149 Ombudsperson institution in Kosovo, *Special Report No 4 on certain aspects of UNMIK Regulation No. 2001/18 on the establishment of a Detention Review Commission for extra-judicial detentions based on executive orders.*

150 *Kosovo : The Human Rights Situation and the Fate of Persons Displaced from their Home*, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, Strasbourg, 16 October 2003, CommDH (2002)11, par. 88ss.

operations aims at protecting members of these operations against interference by the government of the State where they are located. In Kosovo, however, as UNMIK and KFOR have been given administrative and military control over the region, the granting of immunity amounts to establishing protection against the international administration itself. Therefore, this Regulation raises concern on the respect of the right to access to courts and undermines the independence of the judicial system.[151]

This also raises particular concern in cases of torture and other forms of ill-treatment. In the *Rashica* case, for example, where the author had been ill-treated by UNMIK police officers while in detention, the Ombudsperson institution stated the following:

"This immunity places insurmountable obstacles before any resident of Kosovo wishing to enjoy an effective remedy for the violation of his or her rights by a member of UNMIK. In addition to the concerns raised therein, the Ombudsperson observes that for the United Nations itself to maintain a dual policy of anonymity of its international police officers and a refusal even to identify the country from which a police officer abusing rights comes, creates a fertile environment for 'virtual impunity' to flourish".[152]

2. Police Brutality Against Women and Children

2.1 Protestors Beaten

From November 1996 to February 1997 downtown Belgrade was the scene of daily protests against the Milojević regime's vote-stealing. On numerous occasions in that period, the police resorted to excessive force and brutally beat innocent citizens.[153]

151 Ombudsperson Institution in Kosovo, *Special Report no 1 on the compatibility with recognized international standards of UNMIK Regulation no 2000/47. Kosovo : The Human Rights Situation and the Fate of Persons Displaced from their Home*, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, Strasbourg, 16 October 2003, CommDH (2002)11, par. 37ss.

152 Ombudsperson Institution in Kosovo, *Hamdi Rashica v. UNMIK, Report*, Registration No. 52/01, par. 23. For a similar case, see Ombudsperson institution in Kosovo, *Shefquet Maliqi v. UNMIK*, Registration No 361/01.

153 See *Spotlight On: Political Use of Police Violence During the 1996-1997 Protests in Serbia,* HLC, 1997.

On behalf of 34 people, HLC attorneys filed on 17 March 1999 a criminal complaint against several unidentified police officers as well as Miloš Vukobrat, the then Police Chief of Belgrade's Stari Grad Municipality, Petar Zeković, the then Belgrade Chief of Police, and Zoran Sokolović, who was the Serbian Minister of Internal Affairs of the day. The charges were, infliction of slight and serious bodily harm, unlawful detention, extraction by force of statements, civil injury and abuse of office, all of which are defined as criminal offences (Articles 53, 54, 63 (3)), 65, 66, 245 (2)), Serbian Criminal Code).

Since the prosecutor took no action on the complaint for over two years, the complainants on 9 August 1999 requested expedition. There was no response. Another request for expedition was made on 11 April that year, with the complainants insisting that the prosecutor formally notify them of the dismissal of the complaint if no investigation had been instituted, and also requesting information on the identity of the alleged perpetrators so that they could proceed in the capacity of private prosecutor. Again, the prosecutor did not respond.

Ljiljana Djuknić was in front of a police cordon near the bridge across the Sava River on 2 February 1997. At about 11.30 p.m., leaders of the opposition coalition, Vesna Pečić and Vuk Drašković, urged the protesters to sit down so as not to give the police any excuse to go into action. Djuknić sat in the road with other protesters for a while and then they all got up and started walking toward Republic Square. Suddenly, water cannons appeared from a side street. The jets of water dispersed the protesters who scattered in all directions. A larger group, including Djuknić, took a downhill street, with the police from the cordon following them. At one point, the police paused briefly and then moved against the protesters, striking everyone in their path. Djuknić was fell down after a blow to the back. As she tried to get back to her feet, every policeman who passed her struck her a blow before charging after his next victim. After receiving about 10 blows, Djuknić lay on the ground pretending to be dead.

Getting up when she thought the coast was clear, Djuknić felt dizzy and nauseous. A woman passer by took her to the Emergency Treatment Center where doctors found that her upper arm had been fractured and her ribs injured. On 12 February 1997, Ljiljana Djuknić underwent surgery on her arm. Her treatment and physical therapy lasted over six months.

2.2 The case of Popržen

On 22 January 1998, Miodrag Ivković, a teacher at a group home for special-needs children in Veternik, Vojvodina, physically abused one of his charges, Aleksandar Popržen (13). Ivković repeatedly hit and punched the boy in the head and body, causing him to fall, and then slammed him against the floor and a radiator. As a result of this ill-treatment, the minor lost several teeth, his collar bone was fractured and his left shoulder severely contused.

On 14 December that year, the Novi Sad prosecutor indicted Ivković, charging him with civil injury in conjunction with infliction of serious bodily harm. In the indictment, the prosecutor pointed out that Ivković already had several convictions for aggravated assault, and that witnesses had testified on his earlier conflicts with both children and staff at the home. Considering that Ivković was likely to continue with such behaviour, the prosecutor asked the court to bar him from any position involving work with children.

On 26 December, the Municipal Court found Ivković guilty of infliction of serious bodily harm and sentenced him to eight months in jail suspended for two years. As he was acquitted of the charge of civil injury, the court did not ban him from working with children. The decision became final on 25 September 2001 when the District Court dismissed the appeals of both the prosecutor and the defence.

On behalf of Popržen, HLC attorney on 7 June 2002 filed a lawsuit seeking compensation from Serbia. After several sessions, the First Municipal Court in Belgrade on 4 September dismissed the case, finding that the state had no standing to be sued. The HLC appealed, pointing out that the state was the founder of the home for disabled children, financed its operation, had all the other rights and obligations ensuing from this status, and consequently did have standing to be sued. The Belgrade District Court has not ruled on the appeal to date.

2.3 The Case of the Fine Arts Student

Tatjana Smoljanić, a fourth-year student of the Belgrade School of Fine Arts, was beaten by police on 16 April 2000 at a club on the school's

premises. She told the HLC that a police patrol came into the club after 2 a.m. when it was very crowded. Since there had been no incidents that night and the staff always cooperated well with the police, no one paid much attention to the arrival of the police.

One of the officers went to the bar and asked Smoljanić to turn down the music. She tried to explain that only the DJ, who was in a separate booth, could do that. Because the loud music prevented her from hearing what the officer was saying, Smoljanić approached closer to him. Suddenly, he grabbed her by the hair, pulled her over the bar and struck her on the head with his nightstick.

Smoljanić was stunned and stumbled and, regaining her balance, ran to the entrance to seek the protection of the club's bouncers. From the other police there, she demanded an explanation for the violence of their colleague and insisted that they give her his name. The policemen referred her to the patrol commander, Dejan Jovanović. He too refused to give her the name but finally, after an argument lasting some 15 minutes, he told her the shield number of the policeman who had struck her.

The next day, Smoljanić went to the Belgrade Clinical Center because of vertigo, headaches, pain in her lower jaw, and vomiting. A specialist examined her and established a swelling on the left side of her forehead.

The HLC filed a criminal complaint in which it charged an unidentified on-duty officer with infliction of slight bodily harm and civil injury. On 13 June 2001, the prosecutor filed a bill of indictment with the same counts as those cited in the HLC complaint and, on 22 April 2003, the First Municipal Court found the accused officer, Dragan Stupić, guilty as charged and sentenced him to five months in prison suspended for three years.

2.4 Roma Boy Beaten

A Roma boy of 12 was beaten at the Belgrade Police Department on 21 June 2001. An inspector, unable to elicit from the boy details about a theft committed by his brother, started slapping him, hitting him on the palms of the hands and back, and striking him about the head. After two hours of this physical abuse, the boy was released at the insistence of his mother, who was in the building the whole time. The boy's family refused to file a complaint out of fear of reprisals.

The HLC issued a press release on the incident and on 11 September received a letter from the office of the Minister of Internal Affairs. The letter said: "The incident described in the release is unknown and the child mentioned was not brought in to the Juvenile Delinquency Division, which alone is authorized to work with children," and accused the HLC of coming out with "untrue and unverified information."

2.5 Roma Boy's Arm Broken

Just after midnight on 22 September 2001, a police patrol physically abused a group of Roma children who were collecting paper for recycling in central Novi Sad. One officer struck a 12-year-old girl on the head with a police radio and cursed her "Shiptar mother." E.M., a boy of 14, received the worst treatment. He was kicked all over the body and, when he tried to protect his head with his hands, a blow with a booted foot fractured his arm. The officers left him alone when he began to cry.

In his statement to the HLC, E.M. recounted:

"One of the policemen started running after me and shouted, 'Halt, or I'll shoot!' I stopped in my tracks. He came up to me and kicked me in the calf so hard that I fell as if I had been mowed down. Then another one ran up and they began kicking me as I lay on the ground. They kicked me all over and I covered my head with my hands so they couldn't hit me there. Then one of the kicks landed on my arm and broke it. I started to cry and they stopped beating me. They asked me my brother's name and I told them. Then they went away. We all went home. My arm got all swollen so my mother took me to the doctor's the next day. They said the arm was broken and put it in a cast. "

As soon as it learned of this incident, the HLC issued a press release. In an interview with Radio B92 on 21 October, the Novi Sad Police Chief, Major Saša Adamović, said the inquiry had brought out no evidence of the involvement of police officers in the abuse of E.M.

On 4 December 2001, the HLC was informed by the Ministry of Internal Affairs that the inquiry conducted had not been able to establish with certainty if E.M.'s injuries had been inflicted by police or exactly when they occurred, and that the perpetrators had not been identified. The Ministry added that the Novi Sad Police Department was continuing its efforts to clarify the circumstances of the incident.

By June 2004, the case had been at the Novi Sad Municipal Prosecutor's Office for almost three years.[154] The prosecutor is unable to proceed since the police authorities have failed to name the officers involved in the incident.

2.6 The Radenka Vidaković Case

Officer Zoran Todorović and his colleague stopped Radenka Vidaković on 6 June 2002 near her house in Sabac as she and a friend were taking a walk. The officers asked them for a pack of cigarettes. Mrs. Vidaković learned later on that they wanted a pack containing money. Since neither Mrs. Vidaković nor her friend knew what this was about, Officer Todorović began hurling abuse at them and asked who they were working for and where they were going.

Todorović called a patrol and shortly afterwards two police cars and four officers arrived. Todorović punched Mrs. Vidaković on the head, manhandled her into the back seat of one of the police cars, and repeatedly kicked and punched her on the head, legs and shoulders. This is how Mrs Vidaković described to the HLC her treatment at the hands of this police officer:

"I sort of blacked out. I couldn't see anything, just heard Todorović's voice, saying the vilest things. He kept punching me and pulling my hair all the way to the station."

Mrs. Vidaković was detained at the police station for approximately one hour, after which she went to the hospital where doctors found numerous bruises all over her body.

In October 2003, the Sabac Municipal Court sentenced Officer Todorović to three months in prison. Considering his appeal, the District Court set aside this decision and gave him three months in prison suspended for one year.

154 Case No. Ktn 4156/01, Municipal Prosecutor's Office, Novi Sad.

2.7 The Case of Two Roma Children

On 29 June 2002, a police car pulled up near a busy intersection in Belgrade where a group of Roma children were earning money by washing windscreens of cars waiting for the lights to change. "How many times do I have to tell you? D'you think I am an ape?!' said one of them to the children. He then grabbed 13-year-old S.D. by the ear and hit him over the mouth. The frightened boy started running and as he did so saw the officer slap Lj. R., a girl of fourteen. She too fled, but then returned to pick up her keys. At first, the officer refused to let her get her keys but later relented. As she approached the spot, she noticed the numbers on the shield of the officer in the front passenger seat and the registration plate.

In response to the HLC complaint of 3 July 2002, the Belgrade Police Department issued a statement denying that the police officer had struck the children. 'He merely asked them to move away from the roadway because their presence on the roadway put them at risk and interfered with the normal flow of traffic. The warning was given in a loud and clear voice, there being no verbal abuse and no physical contact. They complied grudgingly and moved away.'

After the statement had been carried by the media, the HLC was contacted by a Belgrade resident, Branislav Dorić, who said that he had seen a police officer beat a Roma child at the same intersection about the same time.

The HLC has received several requests from the Third Public Prosecutor's Office in Belgrade to supply the addresses of the Roma children in question. The HLC has been unable to do so because the children have moved.

2.8. Children Mistreated in Amerić Village

On the morning of 9 July 2002, a police car pulled up outside the house of Elizabeta Durić in the village of Amerić, the municipality of Mladenovac, and four police officers got out. Elizabeta's children Dalibor (aged 15),[155] Stefan (11) and Miloš (8) were alone in the house. One of the officers was Nebojša Blagojević, a native of the village who knew the family's situation very well. On learning that the mother was not at home, the officers started

155 Dalibor attends school in a special class for mentally handicapped children, having been certified as a child in need of special care by the Social Work Centre.

for the garden and asked Dalibor whether he knew where his father, who was serving a prison sentence, had buried weapons. Dalibor answered that he knew nothing about any weapons, whereupon the officers threatened to beat him unless he told them where the weapons were. Stefan sprang to his brother's defence, telling the officers they had no right to treat Dalibor that way because they could see for themselves that he was sick. The officers ignored this, marched Dalibor into the garden, thrust a shovel into his hands and ordered him to dig holes in order to discover the alleged weapons.

Dalibor kept digging while the officers stood around asking where the weapons were and telling him that unless he dug properly they were going to bury him. 'They kept asking me if I knew where my father hid the rifles and pistols and I told them we have no rifles and pistols, we only have chickens and pigs.' Dalibor dug about ten holes of various depths and sizes. Having found nothing, the officers went away and drove off.

On 19 July 2002, the chief of the Mladenovac police station, Dragiša Cvetković, denied that four officers from the police station in question had maltreated and insulted three children, including a mentally handicapped child, in the village of Amerić. The police said in a statement that the officers were acting on a July 9 warrant from the investigating judge of the Mladenovac Municipal Court 'ordering the search of the house of Dragiša Durić of Amerić…pursuant to the warrant, the officers arrived at the house of Dragiša Durić, who is serving a prison sentence, at about 10 o'clock...The officers found at home three underage children, the oldest boy telling them that their mother would be back in half an hour. Since she did not appear in that time, the officers left.'

On 17 July 2002 the World Organisation Against Torture issued a statement in connection with the incident and the FRY ambassador to the UN at Geneva on 22 July 2002 wrote to the competent FRY and Serbian authorities requesting information about the case. The Minister of Justice duly instructed the Public Prosecutor's Office in Mladenovac to investigate the case and a proposal to institute investigative proceedings against the police officers involved was made on 8 August 2002. During the investigation, expert witnesses passed opinion on the ability of the children to recount the incident and the HLC submitted photographs of the children and the holes dug in the yard taken soon after the incident. At the end of the investigative proceedings, the Public Prosecutor's Office ruled that there were no grounds for bringing in an indictment.

2.9. The Case of the Vukčević Sisters

On 14 August 2002 in the Montenegrin town of Bar, Andela and Daliborka Vukčević spotted a friend's car that had been damaged in the rear in a traffic accident some time before. Andela walked over to the car to make sure her friend was all right. She saw no one inside and contacted her friend, who owns the car, by mobile phone to find out what had happened. The friend told her that he had had to leave the scene after being beaten up by the police. After his car had collided with a police vehicle, he said, the police officers got out, beat him up and ordered him to leave the scene. In her statement to the HLC made soon afterwards, Andela said that a police officer came up as she stood by the car. 'He asked me, "Whose car is this?" My sister Daliborka who was there with me replied that the car belonged to a friend of ours and that we'd walked over to find out what had happened to him. She'd hardly finished speaking when the officer struck her on the head with the hand and kicked her in the leg. He next turned to me and slapped me in the face, saying to us, "Get out of here or I'm going to kill you."' The sisters later found out the name of the officer and where he worked.

The police officer was tried for misdemeanour in Bar and fined 500 euro at the insistence of the plaintiffs although the magistrate had intended to sentence him to 30 days in prison.

2.10. A Juvenile beaten up in Bečej

On 17 January 2003, there was a brief quarrel between S.D. aged 17 and a guest in the Minić cafe in Bečej. A police officer who happened to be there, Ljubinko Vuković, went up to S.D. and told him to step outside before the quarrel turned into a fight. Although S.D. complied, Vuković slapped him twice in the face and proceeded to punch him until he fell down. The officer then kicked S.D. all over the body each time he tried to get up. Vuković was still punching S.D. in the head outside the cafe when a police patrol car pulled up. One of the officers in the car, Dragan Radić, went over and gave Vuković a hand, slapping S.D. on the face and punching him in the stomach several times. Doctors at the Bečej Health Centre later established that S.D. had suffered light injuries around the ribs and bruises on the face and chest.

In a public statement released on 23 January 2003, the police said that disciplinary proceeding had been instituted against police officers for not formally reporting the use of force. There was no mention of any ill-treatment on their part.

On 17 February 2003, the HLC filed a criminal complaint with the Municipal Public Prosecutor's Office in Bečej against the two officers for ill-treating S.D. and causing him minor bodily harm. Investigative proceedings against the two officers on these charges are pending before the Municipal Court in Bečej.

2.11. Innocent Couple Beaten and Insulted

At five minutes past midnight on 22 January 2003, a special police squad burst into the rented flat in Kruševac of Zoran Todorović and Danijela Bogojević. They had no search warrant. The flat had previously been occupied by their landlord's son, a person with a criminal file. Todorović says that the officers started to strike him on the head and neck with open hands, fists and pistol grips without a warning. They continued in spite of his attempts to explain that he was not the person they were looking for.

While Todorović was being beaten in the corridor by some of the officers, others were in the living room with Bogojević, Todorović's common-law wife. One of the officers first shone a torch in her face, then pointed a pistol at it. He yelled in a nervous voice, 'What the hell are you doing here?' In her statement to the HLC, Bogojević describes her ordeal as follows: 'One policeman held my arms firmly behind my back while another pawed me on the shoulder and arm and pinched my cheeks. He said, "You must be quite some cunt, having it away with an old geezer like that" and the other asked, "Is he any good?" I wept and shook and they laughed cynically.'

Todorović kept asking the officers why they were beating him but got no reply. Meanwhile, he had overheard them receiving information over the radio that there were no charges against the couple. The officers left soon afterwards. Doctors at the local hospital established that Todorović had numerous bruises mostly in the area of the face.

In March 2003, the HLC requested the Serbian Ministry of Internal Affairs to establish the responsibility of the police officers who beat up Zoran Todorović and abused Danijela Bogojević.

In mid-December 2003, the then head of office of the Minister of Internal Affairs, Colonel Ivan Dordević, informed the HLC that the Ministry had 'failed to secure evidence in support of the allegation that personnel from the Kruševac Police Department had physically abused Zoran Todorović and Danijela Bogojević, nor that they employed instruments of restraint against said persons.'

Todorović has filed a criminal complaint against the unidentified police officers with the Public Prosecutor's Office in Kruševac. An inquiry is in progress and the victims are represented by HLC attorneys.

1.12. The Case of Biljana Erić[156]

On 18 November 2003, Biljana Erić (b. 1966) learned that her husband Vladan Erić had been deprived of his liberty by police officers from the Čačak Police Department. She was informed that her husband had been transferred to the Kruševac Police Department. The next day, 19 November 2003, Erić and a relative turned up at the Kruševac Police Department around noon to inquire after her husband. She was received in a second-floor office by an inspector named Ivan Pantić and a woman named Marija. Pantić asked her in a threatening voice to tell him all she knew about her husband's doings while other officers present in the room made as if to strike her and yelled in her face. After she refused to be interviewed in that way, Pantić took her to another room where two inspectors were already waiting. Erić was made to stand at attention in the middle of the room while the officers insisted that she tell them 'where the money is' and all the rest 'if you want to leave the police station alive and ever see your children again.' Because she refused to answer these questions she was handcuffed, with inspector Pantić pulling a plastic bag over her head and threatening to choke her by fastening adhesive tape round her neck. She remained silent, so the officers proceeded to strike her on the thighs with truncheons and to slap her face. At one time she was made to squat with her hands handcuffed in front of her while the officers kicked and struck her buttocks with truncheons. It was inspector Pantić who delivered the most blows. She was next forced to sign a statement which she was given no time to read. She was told

156 In May 2004, Erić made a submission to the HLC through her attorney, claiming unlawful treatment by police officers. The submission consists of a signed statement by Erić, a medical report, and photographs showing numerous bruises on her body.

that her husband had stolen a large sum of money, that she was requested to acknowledge this and confirm that he had brought the money home.

Erić was taken before an investigative judge at the District Court in Nić at about 8 p.m., having first been cautioned by the officers that unless she repeated what she had been told to say she would be returned to the Police Department building. Having been intimidated in this way, she gave the investigating judge the officers' version of the incident. The officers were not present while she made the statement. On obtaining her statement, the judge told her she was free to go home.

In the morning of 20 November 2003, Erić went to see a doctor and obtained a certificate testifying to her injuries.[157]

Erić has filed a criminal complaint with the District Public Prosecutor's Office in Kruševac against inspector Pantić and two unidentified inspectors, accusing them of using heavy violence to extract statements. An inquiry is in progress.

2.13 The Case of Danka Radević

In the afternoon of 19 May 2004, Danka Radević went to the Security Centre in Berane in Montenegro where her daughter was making an eyewitness statement in connection with a fight that had occurred in the town. At the reception, Radević asked the duty police officer, Dejan Dinović, where her daughter was. He answered rudely that he did not know and told her to wait in the waiting room. Some 20 minutes later Radević went up to Dinović and asked him if he had a light. She told the HLC what happened next: 'On hearing my question, the policeman got violent, grabbing me by the right upper arm and dragging me along the corridor. "What are you provoking me for? Get out of here, get lost if you don't want me to pick you up," he said. I asked him what kind of a man he was, treating a woman that way. He only let go after my mobile phone had dropped out.'

157 Čačak Health Centre, protocol No. 829, time 10:25. Injuries: two bruises on the right upper arm measuring 7x3 and 2x1 cm; a bruise on the left upper arm measuring 5x4 cm; contusion of both thighs and both buttocks; two bruises on the left thigh measuring 16x6 and 9x9 cm; a bruise on the left buttock measuring 24x10 cm; a bruise on the right thigh measuring 7x5 cm; a bruise on the right buttock and right thigh measuring 34x30 cm.

Doctors established bruises on the right arm as well as psychological problems necessitating the use of sedatives and infusions.[158]

Radević has filed a criminal complaint against Dinović with the prosecutor in Berane.

158 Report by a medical consultant at the Berane Health Centre, protocol No. 5273, date 21 May 2004.