United Nations CAT/C/SRB/CO/1/Add.1

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

Distr.: General
29 August 2011

Original: English

Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Follow-up responses of Serbia to the concluding observations of the Committee against Torture (CAT/C/SRB/CO/1)*

[5 February 2010]

* In accordance with the information transmitted to State parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Responses to the recommendations of the Committee against Torture regarding the initial report on the application of the Convention

Response to the recommendation contained in paragraph 6 of the concluding observations (CAT/C/SRB/CO/1)

Fundamental safeguards

Supervision of police activities

1. The control of the activities of the police in the Republic of Serbia is governed by the Law on Police, which was adopted in 2005. It may be of external or internal type.

External control

2. Article 170 of the Law on Police prescribes that the external control of the police activities shall be carried out by the National Assembly, in compliance with article 9 of this Law, other laws and regulations. The external control of the police activities shall be also carried out by the Government, the competent judiciary bodies, the State administration bodies in charge of certain supervision jobs as well as other bodies and authorities authorized to do by law (these include authorizations established by a separate law relating to access to adequate information, contact with competent police officers, right to get replies to the questions asked and other rights established by law).

3. Article 9 of the Law on Police prescribes that the Minister shall submit a report on the activities of the Ministry and on the state of security in the Republic of Serbia to the working body of the National Assembly in charge of security once a year or more frequently, should there be any need, under the request of the National Assembly, and also the reports on issues within the scope of its activities and under its request.

Internal control

4. The Sector for Internal Police Control shall carry out internal control of the police activities, especially in relation to the respect and protection of human rights on the occasion of performance of police assignments and exercise of police powers.

5. The Sector acts according to the proposals, complaints and applications submitted by natural persons and legal entities, in respect of the written referrals of the members of the police and under their own initiative, namely based on the collected data and other information relating to the activities and acts of the police officers when exercising official powers. In this context, the Sector shall check all allegations and knowledge indicating possible abuse and overstepping of powers by the police officers towards the accused persons who had been ordered deprivation of liberty and detention.

6. In the performance of its activities the Sector shall consistently apply legal regulations of the Republic of Serbia and adequate secondary legal documents, but it shall also respect at the same time the provisions of international conventions ratified by the Republic of Serbia, which relate to the area of prevention and protection of human rights.

7. With the intention to contribute to the improvement of professional competence and skills of the police in the field of protection and promotion of human rights, the Sector for Internal Police Control has prepared *the Collection of Recommendations by International Bodies Addressed to the Republic of Serbia in the Field of Protection of Human Rights and Prevention of Torture*, the aim of which is to compile the recommendations by the most important international bodies, to make them available and useful to the police officers in every day practice.

8. Article 12 of the Law on Police prescribes that the police shall adhere to the national standards of police conduct when performing police duties, to the requirements established by law and other regulations and documents of the Republic of Serbia, as well as to the international treaties and conventions adopted by the Republic of Serbia. In the performance of police duties, in accordance with paragraph 1 of this article, the police shall also adhere to the international standards of police conduct, especially to the requirements established by the international documents related to: the duty to serve people, to respect legality and suppress illegality, to accomplish human rights, non-discrimination when performing police duties, to be restricted and be hesitant ant in the use of coercion means, prohibition of torture and use of inhuman and degrading treatments, to render aid to injured persons, to the obligation to protect confidential data, to the obligation to reject unlawful orders and resists bribe, corruption. The police shall undertake measures to accomplish the highest standards mentioned in paragraphs 1 and 2 of this article. The police shall see that the actions of police officials in practice are not beyond or contrary to the European standards of police actions.

9. Also, the provisions of article 31 paragraphs, 4 and 5 of the Law on Police prescribe that on the occasion of exercise of police powers, the authorized person shall act in accordance with the law and other regulations and shall respect the standards set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the European Code of Police Ethics and other international documents related to the police.

10. The provisions of article 2 paragraph 2 of the Code of Police Ethics, which was adopted in 2006, as one of the main objectives of the police, but of the police officers as well, also specify protection and respect of human rights. In the provisions of article 5, paragraph 1 it is stressed that the police officers enjoy the same civil and political rights as other citizens, and that they also comply with the restrictions of such rights, necessary for the performance of the function of the police in a democratic society, in accordance with the law and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Also, it is stressed in the provisions of article 7 of the Code of Ethics that the police strive for the laws, which, in accordance with the Constitution and the European Convention, provide judicial protection of fundamental personal freedoms. Article 34 prescribes that no person within the Ministry is allowed to order, carry out, cause or tolerate torture or any other cruel or inhuman treatment degrading a human being, nor any other action impairing the right to life, freedom, personal security, respect for private and family life, assembly and association or any other right or freedom guaranteed by the provisions of the European Convention. Also, the police officers of the Ministry of Internal Affairs acts in accordance with the provisions of articles 53 and 54 of the Law on Police and the Book of Rules on Exercise of Police Powers prescribing the conditions when a person may be detained, as well as the rights of a detained person.

11. Within the Ministry of Internal Affairs there are also other forms of internal control of the police, such as the control by means of disciplinary responsibility (defined by the Decree on Disciplinary Responsibility within the Ministry of Internal Affairs) and the control related to the use of coercion means (the Book of Rules on Technical Features and Methods of Reporting and Assessment of Justification and Regularity of Use of Coercion Means has been adopted, and the Commission to consider justification of exercise of coercion means has also been established).

Control of police activities by resolution of complaints

12. The Book of Rules on Resolution of Complaints, which was adopted in 2006, establishes the procedure of resolution of complaints against the police officers filed by

individuals (the complainants) and, in this respect, the protection of data, keeping of records, supervision and reporting.

13. Article 180 of the Law on Police prescribes that any person has the right to file a complaint to the Ministry against a police official if he/she finds that his/her rights and freedoms have been violated because of unlawful or improper action of the police officer. An individual may, within 30 days from the date of violation, file a complaint to the police or to the Ministry. All complaints filed against a police officer must first be considered, as well as all circumstances related to it, by the head of the police unit the police officer complained about is employed with, or by the police officer authorized to do so by him/her. If the opinions of the complainant and the head of the police unit are coordinated, it may be decided that the procedure of resolution of the complaint has thus been concluded. This is entered into the minutes concerning the consideration of the complaint to be also signed by the complainant. This procedure must be completed within 15 days from the date of receipt of the complaint.

14. In case the complainant shall not come to an interview or if he/she shall come for an interview but shall not agree with the opinion of the head of the police unit, as well as in cases when a suspicion of committed criminal act results from the complaint, which is prosecuted in the capacity of the office, the head of the police unit must forward the entire case file to the Commission, which is in charge of further procedure of the complaint resolution.

15. The complaints addressed to the Ministry are to be resolved by the Commission for Resolution of Complaints, which consists of three members, as follows: the head of the Sector for Internal Police Control or other authorized official of the Sector for Internal Police Control to be authorized by the head of the Sector, a police representative authorized by the Minister and a representative of the public. The representative of the public, who participates in the resolution of complaints in the territory of the police directorate, under the proposal of the local self-government unit, shall be appointed and released from duty by the Minister, and the representative of the public participating in the resolution of complaints about the actions of police officers at the seat of the Ministry, under the proposal of professional public and non-governmental organizations, shall be appointed and released from duty by the Minister. The representative of the public shall be appointed for the period of four years with the possibility to be appointed again.

16. Twenty-eight commissions have been established on the grounds of the Minister's decision (27 were established at the regional police directorates and one at the seat of the Ministry). The procedure for resolution of complaints at the Ministry shall be closed by the submission of a reply to the complainant within 30 days from the closure of the procedure with the head of the police units. A reply to the complainant shall mean the completion of the procedure related to the complaint, and the complainant has at his/her disposal all legal and other remedies to protect his/her rights and freedoms.

Right to access to a legal representative of one's own choice and right to contact a family member

17. In accordance with article 68, paragraphs 1 and 2 of the Criminal Procedure Code, an accused may have a defender during the entire criminal proceedings. The defender may also be engaged for the accused by his/her legal representative, spouse, next to kin in the first line of ascent, adopter, adopted person, brother, sister and foster parent, as well as the person the accused lives out of wedlock or in some other permanent arrangement. According to article 69, paragraph 2 of the Criminal Procedure Code an accused may have five defenders at the same time at maximum in the proceedings, and it is considered that defence has been provided if only one of the defenders takes place in the proceedings.

18. According to article 71, paragraphs 1, 2, 3 and 4 of this Code, if the accused person is dumb, deaf or incapable of successfully defending himself/herself or if the proceedings are conducted for a criminal act for which a prison sentence of more than ten years or a more severe sentence may be pronounced, the accused must have a defender at the first hearings already. The accused designated to be in detention must have a defender while in detention. The accused being tried in absence must have a defender as soon as the decision no trial in absence has been adopted. If the accused in cases of compulsory defence mentioned in the previous paragraphs shall not engage a defender on his/her own, the president of the court shall appoint a defender for him/her in the capacity of the office for further criminal proceedings until the judgement shall become final, and if a prison sentence of forty years has been pronounced – the same shall be done for the proceedings according to extraordinary legal remedies. If a defender is appointed to the accused in the capacity of the office after the indictment had been raised, the accused shall be informed about it, together with the submission of the indictment. If in case of compulsory defence the accused is left without a defender in the course of the proceedings, and if the accused shall not engage a defender on his/her own, the president of the court the proceedings are held before shall appoint a defender in the capacity of the office.

19. Article 72, paragraph 1 of the Criminal Procedure Code prescribes free legal aid, namely it is prescribed when there are no conditions for compulsory defence, if the proceedings are held for a criminal act for which a prison sentence of more than three years has been prescribed, and in other cases, if the interests of equity require so, the accused shall have a defender appointed at his/her request, provided he/she cannot cover the costs of defence because of his/her financial standing.

20. In accordance with article 75, paragraphs 1, 2, 4 and 5 of this Code, if the accused is in detention, a defender may keep correspondence and talk to him/her. The defender has the right to a confidential interview with the accused who had been deprived of liberty even before the accused was heard, as well as with the accused who is in detention. The control of this interview before the first hearing and during the investigation is permitted by observance only, and not by listening to it. The investigation judge may order that the letters, which are sent by the accused from detention to the defender or by the defender to the accused in detention, are delivered only after he/she had previously checked them, if there are reasonable grounds to believe they are used to try to arrange a run away, influence the witnesses, harass the witnesses or some other disturbance of investigation. The investigation judge shall make notes on hindering and checking of letters. Upon the completion of investigation or after the indictment had been raised without the conduct of an investigation, the accused may not be prohibited to keep free correspondence and talk with his/her defender without supervision.

21. According to article 147, paragraphs 1 and 3 of this Code, a body of internal affairs, namely the court, is obliged to inform the family of the person deprived of liberty immediately after the deprivation or within 24 hours from deprivation of liberty at the latest, or other person he/she lives with out of wedlock or in some other permanent arrangement, except if the person deprived of liberty strongly opposes it. The competent body of social welfare shall be also informed about deprivation of liberty if it is necessary to undertake measures to take care of children and other family members the person deprived of liberty looks after.

22. Pursuant to article 150, paragraphs 1, 2 and 3 of this Code, a detained person may be visited by close relatives, and if requested, by a doctor and other persons as well, according to the approval by the investigation judge and under the supervision of the judge or under the supervision of a person to be appointed by the judge, in compliance with the order rules of the detention institution. Certain visits may be prohibited only if damage may result for the conduct of the proceedings. Diplomatic and consular representatives of foreign States

that are signatories to relevant international conventions have the right to visit the citizens of their States provided the investigation judge has been informed about it and talk to the detainees without supervision. A detainee may keep correspondence with person outside the prison if the investigation judge has been informed about it and under his/her supervision. The investigation judge may prohibit delivery and receipt of letters and other consignments, only if there are reasonable grounds to doubt they may be harmful for the successful conduct of the proceedings. This prohibition may not relate to the letters to be sent by a detainee to the international courts and to the domestic bodies of legislative, judicial and executive powers or those to be received from them, as well as to the letters to be sent to his/her attorney-at-law or to receive them from the attorney-at-law, except if the check of the correspondence with the defender proved to be justified. Delivery of applications, complaints and appeals may never be prohibited.

23. According to article 152 of this Code, the president of the court and the investigation judge may at any time visit all detainees, to talk to them and receive complaints from them. Also, the president of the court or a judge to be appointed by him/her is obliged to visit detainees, at least once a week, to check how they eat, how they get other supplies and how they are treated, and he/she is also obliged to undertake necessary measures to eliminate the irregularities observed.

Response to the recommendation contained in paragraph 9 of the concluding observations

Refugees

24. The Law on Asylum was adopted in November 2007 and its implementation started on 1 April 2008.

25. A request for asylum is processed at two instances of administrative procedure. Pursuant to article 19 of the Law on Asylum, the competent organizational unit within the Ministry of Interior Affairs – the Asylum Office shall decide on an asylum application at the first instance. In accordance with article 20, paragraph 1, all appeals lodged against the decisions of the Asylum Office are dealt with by the Asylum Committee. The Committee is comprised of a President and eight members appointed by the Government of the Republic of Serbia for a period of four years.

26. On 6 December 2008, the Government adopted the Decision to open the Asylum Centre in Banja Koviljača. The funds for the activities of the Centre have been allocated in the budget of the Republic of Serbia.

27. While awaiting the final decision on their asylum applications, asylum-seekers are provided with accommodation and basic living conditions at the Asylum Centre, which in fact operates and falls under the jurisdiction of the Commissariat for Refugees. The Commissariat for Refugees managed to achieve this by strengthening its capacities and providing adequate infrastructure, applying legal regulations and following relevant international standards. The accommodation includes: bed and linen, use of sanitary facilities, heating, electricity and water, means for maintaining personal hygiene and that of the common premises in the Centre. The basic living conditions are as follow: food (usually three meals a day, whilst a person with special health care needs has the right to an additional meal to be given in accordance with the physician's instructions), clothing, financial aid and other conditions in accordance with special regulations on asylum.

28. For a person to be accommodated at the Asylum Centre, the Ministry of Interior must first register and direct him or her to the Centre and then such a person must undergo a medical examination in accordance with the regulations based on the provisions of the Law on Asylum.

29. On the occasion of acceptance of asylum-seekers at the Centre, measures to identify groups with special needs are applied. These are normally groups of minors, individuals totally or partly deprived of the ability to work, individuals with disabilities, elderly people, pregnant women, single parents with under-aged children and individuals who had suffered torture, rape or other severe forms of psychological, physical or sexual violence. The applied measures include determination of the type of aid that the groups may require (medical, psychological, social). Persons falling under any of these groups will have priority when it comes to acceptance, accommodation and aid rendering.

30. They will also be able to learn about their rights and obligations in more details from the Handbook for Persons Placed at the Asylum Centre, the publication in several languages prepared for them.

31. In cases when minors are being received and their status is being determined, the primary consideration is "the best interest of the child"- one of the governing principles of the United Nations Convention on the Right of the Child. For this purpose, the Centre has teachers coming to it three times a week who organize work with the children. This project is funded by the United Nations High Commissioner for Refugees and implemented by the Danish Refugee Council. Moreover, each minor placed at the Centre has a guardian and a social worker assigned to him/her by the competent social welfare centre. The two also pay visits to the Centre and offer its users their expert help. All social welfare centres have three offices: the office for the protection of children and the young, the office for the protection of the adult and the elderly and the office for legal issues and tangible benefits.

32. The records of persons placed at the Asylum Centre, and their undergone medical examination and psychological counselling are treated as official secret and thus available only to the authorised individuals.

33. According to the Law on Asylum and similar by-laws, asylum-seekers have additional rights. In essence, they must enjoy full protection pending confirmation of their official refugee status or rejection of their asylum application. The official authorities have a responsibility to do everything possible to keep the families together during the asylum application procedure. In doing so, the competent authorities will apply special measures of non-discrimination and gender principles. Special care will be given to individuals with special needs, such as: minors, children that have been separated from their parents or guardians, individuals totally or partly deprived of the ability to work, individuals with disabilities, elderly people, pregnant women, single parents with under-aged children and individuals who were exposed to torture or other severe forms of violence.

34. A minor and a person deprived of the ability to work with no legal representative will have a guardian appointed to them by the competent authorities before their asylum applications are submitted.

35. Moreover, a foreign person claiming asylum has the right to be informed of his/her rights and obligations during the asylum application procedure, to get free legal aid and representation by the United Nations High Commissioner for Refugees and non-governmental organizations whose objectives and activities are aimed at providing free legal aid to the refugees, to get free interpreting services, to have free access to the High Commissioner for Refugees.

36. Asylum-seekers and persons with granted residence, i.e. the newly acquired refugee status, will not only have the right to stay in the Republic of Serbia, but they will also have the right to health care pursuant to the regulations on health care for foreigners, the right to elementary and secondary education and social rights deriving from special regulations.

37. The persons granted the right to asylum will have the same rights as the citizens of the Republic of Serbia in respect of the right to free access to the courts, legal aid and exemption from payment of legal and other administrative fees to the State bodies.

38. They will also have the same rights as a foreigner with a permanent residence status. These include the right to work, labour rights, entrepreneurship, the right to permanent residence, full freedom of movement, right to movable and immovable property, as well as freedom of association.

39. The persons who are granted the asylum status or even subsidiary protection will be given accommodation. However, this is subject to availability and will be for no longer than a year.

40. The Republic of Serbia will insure the integration of refugees as much as possible. This entails integration into the economic, social and cultural flows, as well as their naturalization.

41. A foreigner with granted residence has the right to reunion with his or her family.

42. Pursuant to the regulations on movement and residence of foreigners, a foreigner granted with subsidiary protection will have the same right to reunion with his or her family as will the foreigner under the same regulations.

43. The competent authorities may even permit a foreigner granted with merely temporary protection to reunion with his or her family, but only if the reasons for doing so are strongly justified.

44. Regarding the issue of temporary protection, the Government of the Republic of Serbia is the deciding authority on whether foreigners shall get it or not. Foreigners granted temporary protection shall have the right to residence for the duration of the granted temporary protection, to health care pursuant to the provisions of the regulations on health care for foreigners, to free elementary and secondary State education in accordance with special regulations, to legal aid under the conditions prescribed for asylum-seekers, to accommodation in accordance with the special regulations, to suitable accommodation for persons with disabilities, and so on.

45. In the light of the Law on Asylum, article 67(3), the Minister in charge of social policy adopted the regulations on social care for asylum-seekers, i.e. for persons granted asylum. On the other hand, pursuant to the same article 67, items 1 and 4, the Minister competent for interior affairs further adopted the regulations on the content and form of asylum applications and the set of documents necessary for asylum-seekers or the status bearers to have. These regulations also cover the method of keeping records and registration of the persons in question, and contents thereof. In addition, the Minister competent for health care adopted the regulations on medical examinations to be performed on the occasion of acceptance of asylum-seekers to the Asylum Centre. Thus, the necessary normative prerequisites for a successful and consistent application of the Law on Asylum have been completed.

46. Since the commencement of application of the Law on Asylum, i. e. from 1 April 2008 to September 2009, 226 persons have been accommodated at the Asylum Centre in Banja Koviljača. Most of the asylum applicants had come from Afghanistan, but also from Iraq, Georgia and some African countries. A total of 100 asylum applications were formally submitted. Not a single asylum status was granted during that period of time, except for subsidiary protection to four applicants.

Response to the recommendation contained in paragraph 11 of the concluding observations

Cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY)

47. In order to establish full cooperation with the ICTY, all measures must be taken and activities directed towards arrest and extradition of the remaining two fugitives to the Tribunal. The Ministry of Interior shall, therefore, establish regional cooperation with other security agencies for the purpose of exchange of information on possible hiding locations and persons who potentially assisted in hiding the fugitives.

48. The said cooperation is established due to the possibility that the Hague's remaining two fugitives, Ratko Mladić and Goran Hadžić, and their helpers, are located outside the territory of Serbia. In fact, the regional cooperation between the security agencies from May 2007 to July 2008 has brought the arrests and extradition of four indictees (Zdravko Tolimir, Vlastimir Đorđević, Stojan Župljanin and Radovan Karadžić) to the ICTY.

49. The full cooperation that the Republic of Serbia has with the Office of the Prosecutor (OTP) of the ICTY is based on the identification and allocation of witnesses of OTP's interest, submission of court summons to those witnesses and ensuring their appearance at the Tribunal. These activities are done by the members of the Office for Disclosing War Crimes, all within the Criminal Police Directorate of the Ministry of Internal Affairs. Additionally, the ICTY representatives have direct access to all available documents, which they can further select from and have delivered, in the process of finding the perpetrators of war crimes. In other words, the circumstances surrounding the executions of war crimes in the territory of the former Yugoslavia can be more easily unveiled with this type of cooperation.

50. Furthermore, the Ministry of Interior of the Republic of Serbia has been especially focused on investigations of war crimes committed during the armed conflicts in the territory of the former Yugoslavia. As a result, a certain number of highly ranked members of this Ministry and retired army officials reasonably suspected of having committed war crimes had been arrested on previous occasions. Several war crimes supporters (helpers) have also been arrested owing to these investigations and are currently undergoing criminal proceedings before the domestic courts.

51. Following the ICTY's initiation of measures of protection to witnesses whose safety could be endangered during and after their testimonies, the Ministry of Interior is continuing to organize and implement protection to witnesses and their family members.

52. The Republic of Serbia considers its cooperation with the ICTY to be constructive and successful because:

- Forty-three of the 46 indictees have been extradited to the Tribunal following its respective requests. One indictee died before extradition was made possible. Amongst these indictees were two former Presidents of the Republic, a Prime Minister and a Deputy Prime Minister of the Federal Government, three former Heads of the Military Headquarters of the Yugoslav Army, a former Head of the National Security Agency, as well as numerous other army and police generals.
- The two remaining fugitives are continuously being searched for with financial rewards having already been issued for any information on their whereabouts.
- The Republic of Serbia has received 1,840 OTP requests for assistance, all of which have been fully complied with and on time. Only two requests, received in November 2009, are currently being processed.

- Nearly all of 851 requests for assistance to the defence of the ICTY indictees received since the end of 2004 have been responded to. Several remaining ones are being processed.

- Following the conditions set in the Agreement regarding access to intelligence archives in the Republic of Serbia, the OTP representatives have made 29 visits to the archives since March 2006. These included the archives of the Ministry of Defence, the Security Information Agency (BIA) and the Ministry of Interior. Since June 2007, there have been 21 visits made by the defence teams of the ICTY indictees. No request of either the OTP or the defence teams has been rejected.

- For the purpose of enabling them to testify in the proceedings held before the Tribunal, all witnesses for both the prosecution and the defence have been released from the obligation to keep secrets.

- Acting upon the Tribunal's requests, the Republic of Serbia had all witness summons and other letters delivered to the relevant persons in the territory of the Republic of Serbia.

- On the same token, requests for providing protection to witnesses located in the territory under Serbia's jurisdiction have been complied with.

- The conditions for temporary release of the defendants have equally been followed to the last detail. In all instances, the defendants were returned to the Tribunal pursuant to the decisions of the court panels.

- According to the records of the War Crimes Office of the Prosecutor of the Republic of Serbia, a total of 362 persons responsible for severe violations of international humanitarian law have been brought before the relevant national bodies.

53. Bearing in mind all the above, we believe that full cooperation has been and is still being achieved in the best possible way which will only enable its continuation in the future. In this sense, we would like to stress that the Republic of Serbia supports full establishment of the truth behind the crimes committed during the armed conflicts in the territory of the former SFRY. The country is very much in support of punishing all those responsible for the crimes irrespective of the nationality of the victims.

54. In 2003, the United Nations Security Council issued resolutions 1503 and 1534 on the completion strategy for the Tribunal. The completion strategy assumes finalisation of first-instance trials by the end of 2008 while all appellate proceedings are to be completed by the end of 2010. Consequently, the ICTY identified eight essential functions of the residual mechanism which will require work once the Tribunal has been closed. One of the main functions concerns the ICTY archives. The competent authorities of the Republic of Serbia have become involved in the consideration of the residual functions actively approaching this entire issue, but particularly so with regards the ICTY archives.

55. In fact, on 23 October 2008 the Government of the Republic of Serbia took an official position on the question of archives, and subsequently notified the ICTY and the United Nations Security Council of it. Further official positions on the remaining matters of the residual mechanism and the completion strategy of the Tribunal were made on 13 March 2008. These were also subsequently delivered to the United Nations Security Council. Namely, the Republic of Serbia is in support of the creation of the residual mechanism, which should continue to perform certain functions of the Tribunal once the Tribunal's work has officially been finalised. The reference was also made to the jurisdiction over trying the remaining two fugitives as being an important function to be continued. Moreover, the Republic of Serbia is in favour of the possibility that the International Criminal Court could undertake all or some of the residual functions since it is also based in the Hague and all former Yugoslav Republics have signed and ratified its

Statute. Additionally, the Republic of Serbia is willing to take all cases referred to it by the Tribunal or the residual mechanism.

56. The fact that the Republic of Serbia has been fully cooperative with the Tribunal, as previously explained, goes to suggest that Serbia is very dedicated to discovery of the truth behind all the crimes committed in the former Yugoslavia, including punishing all those responsible for them (irrespective of the nationality of either the perpetrators or the victims). Further evidence to Serbia's support are the many activities of the State authorities responsible for public relations. The activities are: organization and participation in round tables, conferences, lectures and academic visits which normally concern the topic of trials before the ICTY, war crime trials before the domestic courts, the significance of Serbia's cooperation with the Tribunal and other matters linked with the process of facing the past events of the region, publishing texts in special publications referring to Serbia's cooperation with the Tribunal and war crime trials, the case-law of the ICTY and all other relevant questions concerning trials before the ICTY and the domestic courts.

57. All these activities have the following as aims: approaching the general public, primarily the young who will be the future holders of public offices, the importance of the cooperation process with the ICTY and trying the relevant war crimes before both the Tribunal and the domestic courts, further development and improvement of the cooperation between the judiciaries of the countries in the region in order to upgrade the quality of war crime trials to a higher level, etc.

Response to the recommendation contained in paragraph 12 of the concluding observations

Other war crimes investigations

58. By the judgement of the War Crimes Council of the District Court in Belgrade of 12 December 2005, the following were found guilty of the criminal act of war crimes against the prisoners of war, as defined in article 144 of the Criminal Code of the FRY, in relation to article 22 of the Criminal Code of FRY, and sentenced accordingly: Miroljub Vujović, Stanko Vujanović, Milan Lančužanin, Predrag Milojević, Predrag Dragović, Ivan Atanasijević, Djordje Šošić and Miroslav Djanković (each to prison sentences of 10 years); Vujo Zlatar, Jovica Perić and Milan Vojnović (each to prison sentences of 15 years); Predrag Madžarac (to prison sentence of 12 years); Goran Mugoša (to prison sentence of 5 years) and Nada Kalaba (to prison sentences of 9 years). However, the accused Marko Ljuboja and Slobodan Katić were acquitted from these criminal charges pursuant to article 355 (3) of the Criminal Procedure Code.

59. The convicted and the War Crimes Prosecutor appealed against the mentioned judgement to the Supreme Court of Serbia. The War Crimes Council of the Supreme Court of Serbia then adopted a judgement on 18 October 2006 whereby the previous judgement was quashed due to formal legal reasons and the case was remitted to the first-instance court (the District Court in Belgrade) for a retrial.

60. By the judgement of 12 March 2009 the War Crimes Council of the District Court in Belgrade found the below, accused guilty of war crimes against the prisoners of war pursuant to article 144 of the Criminal Code of FRY, in relation to article 22 of the same code and sentenced: Miroljub Vujović, Stanko Vujanović, Predrag Milojević, Ivan Atanasijević, Djordje Šošić, Radak Saša and Miroslav Djanković (each to prison sentences of 20 years); Milan Vojnović (to prison sentence of 15 years); Jovica Perić (to prison sentence of 13 years); Nada Kalaba (to prison sentence of 9 years); Milan Lančužanin (to prison sentence of 6 years); Goran Mugoša and Predrag Dragović (each to prison sentences of 5 years). Marko Ljuboja, Slobodan Katić, Predrag Madžarac, Vujo Zlatar and Milorad Pejić were acquitted of the same charges. Those found guilty of the charges and the War

Crimes Prosecutor filed an appeal against this judgement again, for which reason this judgement is not final yet.

Response to the recommendation contained in paragraph 13 of the concluding observations

Human rights defenders

61. The competent authorities in the Republic of Serbia undertake necessary measures aimed at the improvement of the status of defenders of human rights.

62. At the end of 2008 the Ministry of Human and Minority Rights initiated the reform of application of mechanisms of supervision over the respect for human rights in the Republic of Serbia with the aim to institutionalize cooperation and consultancy process with the civil sector. In this respect, the Ministry organized three round tables and a conference on the improvement of the reporting system to the treaty bodies of the United Nations in respect of the general international treaties on protection of human rights in the sense the non-governmental sector is included in the entire process. *Defenders of Human Rights* was the subject of one of round tables. *The Declaration on Human Rights Defenders* and the Report of Hina Jilani, the United Nations Special Rapporteur on the situation of human rights defenders in the Republic of Serbia in 2007 were discussed. In addition to the representatives of the Ministry of Human and Minority Rights, the Office of the United Nations for Human Rights, the OSCE Mission and the representatives of ODIHR from Warsaw, the representatives of non-governmental sector also took part at this round table.

63. In February 2009, within the framework of the mentioned reform, the Ministry concluded, on behalf of the Government of the Republic of Serbia, the Memorandum on Co-operation with about 150 non-governmental organizations. By this Memorandum, the Ministry undertook the obligation to ensure regular exchange of information with the civil sector related to the activities for the preparation, adoption and implementation of laws and strategies in the area of respect for human rights and fundamental freedoms, in respect of preparation of reports on the implementation of undertaken international obligations, as well as in relation to other activities within its scope of activities. Also, the Ministry undertook the obligation to render support to non-governmental organizations in the performance of their activities and strengthen links with the civil sector, so that their capacities are used with the aim to inform and let the Ministry know of any form of violation of human rights the non-governmental organizations are to face in the performance of their activities.

64. The reform of the reporting process to the treaty bodies of the United Nations primarily reflects in the inclusion of non-governmental sector in the process of preparation of periodic reports on the implementation of general international treaties in the field of human rights.

65. The first step of the Ministry of Human and Minority Rights in the accomplishment of set goals was the preparation of the Initial Report on the Implementation of the International Convention on Elimination of All Forms of Racial Discrimination. On that occasion, the draft of the report, which had been prepared by ad hoc working group, was placed on the website of the Ministry of Human and Minority Rights, so the civil sector had an opportunity to get involved in its preparation, namely to contribute to the preparation of the final version of the text in May 2009, submitting its comments and suggestions.

66. The next step on the path of the reporting process reform was the preparation of the Joint Core Document on the Republic of Serbia. In this respect, the Ministry of Human and Minority Rights, under the support of the OSCE Mission and the Office of the United Nations in the Republic of Serbia first organized the Conference on Reporting to the Treaty Bodies of the United Nations Supervising the Implementation of General International

Treaties in the field of human rights in June 2009. The objective of this Conference was to establish the most effective model of cooperation between the State institutions and non-governmental organizations and provision of their active participation in the process of preparation of State reports.

67. After this Conference, the Working Group for the preparation of the Joint Core Document on the Republic of Serbia was formed, consisting of the representatives of the competent Sate bodies and relevant non-governmental organizations. The Working Group had prepared the First Draft of the Report, which was later examined at the working meetings. The academic experts and the experts of the United Nations were engaged at the last meeting, who instructed the Working Group how to prepare the Second Draft of the Report, by applying adequate techniques and from a professional point of view. Upon the completion of the final version of the text, an expert of the United Nations shall be engaged to revise the final text of the report for the members of the Working Group of the Ministry of Human and Minority Rights. It is the intention of the Ministry of Human and Minority Rights to establish such a method of preparation of periodical reports on the implementation of international treaties for the protection of human rights as a model of good practice to be applied in the new system of reporting.

68. Within the legislative frameworks, the contribution to improvement of the status of human rights defenders in the Republic of Serbia reflects in the adoption of the general law against discrimination – the Law on Prohibition of Discrimination on 26 March 2009.

69. The Law on Prohibition of Discrimination has been prepared by a group of national experts from the governmental, civil and academic sectors, which worked under the support of the project implemented by the Ministry of Labour and Social Policy and the United Nations Development Programme (UNDP), under the assistance of the Delegation of the European Commission in Belgrade. The experts of the Ministry of Human and Minority Rights, as the members of the Working Group, had a particular importance in the process of preparation of this law. The draft of the Law on Prohibition of Discrimination was the subject of consultations with the civil sector, trade unions, the representatives of national minorities, national experts and other relevant factors. The public debate on the draft of the Law on Prohibition of Discrimination was carried out within the period from November to December 2008 in several towns in the Republic of Serbia with over 200 representatives of various bodies and organizations.

70. Before the adoption of the Law on Prohibition of Discrimination in the Republic of Serbia, numerous regulations partially governed protection from discrimination, by governing certain areas or by protecting certain vulnerable groups. The Law on Prohibition of Discrimination provides a general definition of discrimination and affirmative actions. It includes definitions of discrimination in respect of certain categories of persons and in certain cases, as well as definitions of forms of discrimination. It establishes a special independent body - the Commissioner for Protection of Equality, which coordinates actions related to prohibition of discrimination and has certain powers in respect of bodies and persons violating prohibition of discrimination. It prescribes judicial protection against discrimination (special civil proceedings for protection against discrimination). It establishes tortuous responsibility and offences of discriminatory behaviour. The solutions contained in this law related to the definition of notion of discrimination, the definition of indirect discrimination as a form of discrimination, as well as the mechanisms of protection – a part on assumed guilt and burden of proof, are fully in accordance with the directives of the EU against discrimination.

71. The Law on Prohibition of Discrimination is grounded on the principle of equality, namely, according to article 4 all persons shall be equal and shall enjoy equal status and equal legal protection, regardless of their personal features. All persons are obliged to respect the principle of equality, namely, prohibition of discrimination. Also, in accordance

with article 8 of this law, there has been a violation of equal rights and obligations if a person of group of persons, because of his/her, namely their personal features, are unjustifiably deprived of rights and freedoms or if obligations are imposed, which would not be deprived or imposed to another person or group of persons under the same or similar circumstances, if the aim or consequence of undertaken measures are not justified, as well as if there is no proportionality between the measures undertaken and the goal these measures are to accomplish.

Response to the recommendation contained in paragraph 16 of the concluding observations

Torture and disability

72. The process of reform of the protection system for disabled persons is an integral part and a priority issue of the reform of the social care system. After the adoption of the Strategy for Poverty Reduction, in December 2005 the Government of the Republic of Serbia also adopted the Strategy of Social Care Development, a document integrating ideas, principles and directions of the reform of social care system, which started in 2001, within the framework of the Ministry of Labour and Social Policy. On one side, the development of support services to individuals and family in the local community – the development of services that are alternative to institutional care, have been defined as the basic development objectives, which are important to be stressed in the context of protection of the groups with special needs, also including intensifying of deinstitutionalization of protection of children, the young and other age groups in need of special social support. It has also been foreseen to improve the quality of institutional protection, determination of minimum standards of services and increase of professional competences of the employees.

73. The Minister of Labour and Social Policy adopted the Action Plan for elimination of irregularities in the care for clients at *Dr Nikola Šumenković,* Special Institute for Children and Youth in Stamnica.

74. The Ministry of Labour and Social Policy, with the aim to establish all the circumstances under which the under-aged Marko Bajčić, a resident of *Dr Nikola Šumenković,* Special Institute in Stamnica, had suffered injuries, undertook all necessary measures to establish the circumstances of his injuries and establish individual responsibility of experts and employees of this institution and of the Social Welfare Centre of the Municipality of Smederevo. On the grounds of the control of activities, namely, on the grounds of supervision of professional work and legality of activities of these institutions of social welfare, the Commission of the Ministry of Labour and Social Policy could not precisely determine the time, place and how the injuries to the under-aged Marko Bajčić had been caused, but it precisely determined the responsibility of the manager and the employees of the Welfare Centre of the Municipality of Smederevo and *Dr Nikola Šumenković,* Special Institute in Stamnica, for the lack of records of the state and needs of wards prescribed by law and by-laws. In order to establish individual responsibility, the Ministry of Labour and Social Policy initiated with the Ministry of Health extraordinary supervision by the competent health inspector at the Special Institute for Children and Youth in Stamnica in order to establish all the facts noted by the Committee in its report, which relate to the care for the under-aged Marko Bajčić. Until the end of June 2008 the Ministry of Health implemented the supervision, which also discovered failures in keeping records on the provision of health care for the wards of the institution. Also, the Minister of Justice was requested that the facts were established related to the period when the under-aged Marko Bajčić was at the Special Prison Hospital in Belgrade (this institution is under the jurisdiction of the Ministry of Justice). In the conducted procedure neither the Ministry of Justice could establish precisely whether the under-aged Marko Bajčić had been injured during his stay at the Special prison Hospital in Belgrade. Regardless of the results of the mentioned investigation, and on the grounds of clearly established facts, which indicate

failures of the employees and the manager in keeping proper records of the state and needs of the wards, the Ministry of Labour and Social Policy undertook certain measures against the responsible persons. In addition, new instruments of monitoring of the health conditions of the wards have been introduced at all stages of residence at the institution, from the acceptance, adaptation to the conditions prevailing at the institution, residence and release.

75. The policy of use of restriction measures advocated by the Ministry of Health and the Ministry of Labour and Social Policy has been established in the Principles for Protections of Mentally Ill Persons and Improvement of Mental Health Protection, adopted at the session of the General Assembly of the United Nations in 1991. In accordance with these recommendations, the employees at the institutions of social care for retarded persons have been warned to use physical restrain only in strictly induced cases, if it is the only way at the disposal to prevent indirect or threatening damage for the client or other persons. Physical restrain must be supervised by medical officers, to be of limited duration and must be entered in the basic medical documentation for each client. The control of application of restriction measures is to be done continuously, and each measure is registered in the special means of registration.

76. The Ministry of Health and the Ministry of Labour and Social Policy have organized education for medical officers and other responsible people employed at all institutions of social care for persons with mental difficulties.

77. The number of employees that had attended the training:

(a) The Home for Adults, Kulpin – 37 employees (2008-2009- School of Life Skills);

(b) The Home for Mentally Retarded Children and Youth, Veternik – 66 experts (24 – Montessori Programme, 21 – Sensitivity integration programme, 21 – Basic protocol for persons with autism) and 75 nurses – Training to work in modern conditions in accordance with methodology of special education;

(c) The Home for Retarded Children and Youth, Sremčica – 58 employees (2 – Montessori, 2- Training in diagnostics of special education, re-education and neuro-psychological rehabilitation, 1- Re-education in psycho-motoric functions, 19 – Enigmatic world of senses, Education of instructors and nurses – 31, International conference - 3);

(d) *Dr Nikola Šumenković*, Special Institute for Children and Youth in Stamnica – 88 employees (68 – School of life skills, 20 – Training for protection outside institutions);

(e) *The Kolevka*, Home for Retarded Children in Subotica – 22 employees (15 – Montessori, 2 - Re-education in psycho-motoric functions, 5 – Psycho-therapeutic);

(f) The Centre for Protection of Infants, Children and Youth, Belgrade, Zvečanska – 71 employee (Practical and life skills, Life school, Capability to grow-up, Establishment and management of self-support group for young at risk, Guide for Self-independence, Incitement of pro-social and prevention of aggressive behaviour of the young, Project team education for development of family accommodation, Family accommodation development strategy, Prevention of Institutional accommodation, Education for activities with sexually abused children, Education for work with children who are victims of natural family violence, Education for preparation of children for family accommodation, Convention on the Right of the Child and the Young).

78. Accommodation at social care institutions is provided, according to the existing regulations, based on the decision of the Social Welfare Centre, and it is the court only that can adopt the decision against the will of the person to be detained at the medical organization performing activities in the field of neuro-psychiatrics and for accommodation

of clients at the social care institutions in all cases of accommodation of persons against their will (or under the initiative of the guardian).

79. In order to clarify the legal position of all customers at the social care institutions for retarded children and adults with psychiatric problems, the Ministry of Labour and Social Policy has ordered all social welfare centres, namely the custody authorities in the Republic of Serbia to carry out the below stated activities within 45 days from the date of receipt of the order:

- To re-examine the suitability of the applied form of care for all persons at the social care institutions for retarded persons,
- To estimate in details, for all persons at the social care institutions for retarded persons, the needs to undertake custody care measures or measures to extend parental rights in accordance with articles 329 -333 of the Family Law,
- To provide statements on willingness to accept accommodation at social care institutions for retarded persons and from the customers who are able to protect their rights and interests on their own.

80. The above-mentioned order has been implemented within the given time, namely the position of persons at social care institutions has been resolved and the causes indicating the existence of unlawful placement – deprivation of liberty have been eliminated.

81. The Ministry of Labour and Social Policy has prohibited the acceptance of children of younger age at the institutions where adults are also placed. This prohibition also refers to the transfer of children of younger age (30 children from Kulpin as a priority) to the institutions specialized for the care of children only, to specialized foster families and families of origin.

82. The Inspection Department of the Ministry of Labour and Social Policy has issued an order prohibiting the use of rooms within the institutions that do not meet minimum standards (so far these measures have been ordered to the institutions in Kulpin and Veternik).

83. Personnel capacities have been strengthened at the institutions, personnel has been trained and compulsory procedures in risky situations have been established in order to avoid injuries and self-injuries of the customers and for the implementation of the Special Protocol for Protection of Children against Abuse, which was adopted in 2005.

84. The following has been established: better quality health care of these particularly vulnerable groups of customers, in cooperation with the Ministry of Health, which implies establishment of conditions for rendering health care to customers and required compulsory procedures, as well as the definition of clear criteria inducing institutional care for children born with risk in growing-up, necessary investments in the improvement of rooms and technical conditions at the institutions for accommodation of customers with special needs.

85. The number of retarded children (up to 18 years of age) accommodated at the social care institutions in Serbia on 31 December 2007/21 September 2009:

(a) The Home for Adults, Kulpin – 259 / 122;

(b) The Home for Retarded Children and Youth, Veternik – 188/166;

(c) The Home for Retarded Children and Youth, Sremčica – 120/118;

(d) *Dr Nikola Šumenković*, Special Institution for Children and Youth, Stamnica –101/82;

(e) *The Kolevka*, Home for Retarded Children, Subotica – 155/180;

(f) The Centre for Protection of Infants, Children and Youth, Belgrade, Zvečanska – 466/441.