

+4122 839 33 59

REPUBLIC OF SERBIA

**MINISTRY OF HUMAN AND MINORITY RIGHTS,
PUBLIC ADMINISTRATION AND LOCAL SELF-GOVERNMENT
OF THE REPUBLIC OF SERBIA**

RESPONSES

**TO REQUEST FOR ADDITIONAL INFORMATION THAT THE UNITED
NATIONS COMMITTEE AGAINST TORTURE SENT TO SERBIAN
AUTHORITIES FOR THE PURPOSE OF CONSIDERATION OF THE INITIAL
REPORT OF THE REPUBLIC OF SERBIA ON THE IMPLEMENTATION OF THE
CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT
FOR THE PERIOD FROM 1992 TO 2003**

Belgrade, July 2012

+4122 839 33 59

Responses

to request for additional information that the United Nations Committee against Torture sent to Serbian authorities for the purpose of consideration of the Initial Report of the Republic of Serbia on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the period from 1992 to 2003

The principle of protection against torture (point 6)

In point six of the Closing remarks, the Committee expressed its concern as regards the lack of basic legal principles of protection against torture, such as the independent and external oversight mechanism, responsible for alleged unlawful acts committed by the police and disrespect of the right of a detainee to choose a lawyer of his or her own choice, to be examined by an independent physician within 24 hours of detention and the right to contact a family member after being detained by the authorities. The Committee welcomes provided information on the current legal regulations which define the conduct of law enforcement officers. Please clarify how the independent and external oversight mechanisms are being applied at the moment in order to enable successful law enforcement. Specifically, the Committee requests the clarification of the status of the *Sector for Internal Control of the Police*, referred to on page 3 in your response, including an explanation on how is this an independent body when it enters into a hierarchy structure of the police serving this body. Also, please clarify its competences and results achieved as regards filing complaints on instances of police abuse.

Besides the above, according to information submitted to the Committee, a person is entitled to lodge an appeal on the alleged police abuse to the Ministry of Interior within 30 days after the violation of the law, but all appeals are firstly considered by the head of the police station at which the police officer that allegedly committed the offence is employed. With this in mind, please clarify how do you safeguard the aspect of impartiality and objectivity of the police investigation abuse at this first instance? What measures are undertaken by the Government to enable the victims of police abuse, particularly persons in police detention, to lodge an appeal on the alleged abuse without any fear of retaliation and intimidation, particularly bearing in mind that according to the outlined appeal procedure, the first action is taken by the head of the police station where the alleged abuse took place? Please provide information to the Committee whether the police officers who are under the investigation are suspended from duty since the issue of the appeal lodged was their conduct.

Please clarify to the Committee whether the Ministry of Interior is competent for raising the indictment against that police officer or the indictment is raised by the victim itself once the investigation has been concluded and once the head of the competent police station got in a possession of evidence that a certain police officer is found guilty. Please also provide statistical data, if any, on the number of appeals on the police abuse that were submitted to the police and the Ministry of Interior, stating how many appeals resulted in criminal proceedings and also state their outcome. Specify each procedure based on the torture or ill-treatment by the police.

The Committee welcomes information provided on the rights of persons detained for legal counsel, family visit and doctor examination. Please clarify who is the person authorised for determining whether the detained person should be allowed to contact a lawyer after the detention or how long will it be until such contact is allowed. Please

+4122 839 33 59

explain the performing oversight mechanisms in prisons and stations with detained persons ensuring that detained persons to have access to legal assistance after the arrest. As regards the rights of detained persons to a medical examination by an independent physician, we kindly ask you to clarify on what grounds the investigative judge approves or disapproves the request of a detainee to access medical examination, as stated on page 7 of your response. Please provide information how are the detained persons informed of their rights to seek medical assistance from an independent physician within 24 hours spent in custody.

Independent oversight mechanism

National Mechanism for the Prevention of Torture (NPM) has been established in the Republic of Serbia by adopting the Law amending the Law on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Official Gazette of RS" – "International Treaties", no. 7/2011), which the National Assembly of the Republic of Serbia adopted on 28th July, 2011.

The Law stipulates the following:

„Ombudsman shall be appointed to perform the activities of the National Mechanism for the Prevention of Torture.“

While performing the activities of the National Mechanism for the Prevention of Torture, the Ombudsman shall cooperate with Ombudsmen of the autonomous provinces and the associations whose statutes aim at the improvement and protection of human rights and freedoms in accordance with the law.“

The Ombudsman Saša Janković and the Provincial Ombudsman Aniko Muškinja Heinrich signed the Memorandum of Understanding between the Ombudsman and the Provincial Ombudsman on performing activities of the National Mechanism for the Prevention of Torture on 12th December 2011.

Public call for Associations was published on 29th December in the "Official Gazette of the Republic of Serbia", and on Ombudsman's website: www.zastitnik.rs. The subject of the public call was the selection of associations the Ombudsman would cooperate with in the activities of the National Mechanism for the Prevention of Torture, including the participation of associations while visiting the places where the persons deprived of their liberty are located, writing reports, recommendations, opinions and other acts as well as performing other activities of the National Mechanism for the Prevention of Torture. Deadline for the submission of applications was 15 days following its publication in the "Official Gazette of the Republic of Serbia". Certain associations will be recommended for the systematic monitoring of the situation of persons deprived of their liberty and the occurrences of torture in police stations, institutions for the execution of criminal sanctions, social protection institutions of residential type and psychiatric hospitals, as well as the situation of specific vulnerable groups among the persons deprived of their liberty.

Following the public call, nine non-governmental organizations applied. On 20th January 2012, the Ombudsman passed a Decision on cooperation with associations on performing activities of the National Mechanism for the Prevention of Torture.

+4122 839 33 59

The adopted budget of the Ombudsman for 2012 envisages special earmarked funds for conducting activities of the National Mechanism for the Prevention of Torture in the amount of RSD 7,670,000. 00.

A van has been purchased from the Ombudsman's funds, which are the result of savings. The van is primarily intended for the work of NPM, but in the available intervals, and when necessary, it will be used for other activities of the Professional Service.

Control procedure in the Ministry of Interior and its consequences

The provisions of the Law on Police ("Official Gazette of RS", nos. 101/05 and 63/09) stipulate that any person shall have the right to file a complaint against a law enforcement officer if the person believes that the officer has violated rights or freedoms by unlawful or improper action.

A complaint may be filed by any individual (citizen or representative of a legal person) who believes that the unlawful or improper action of the law enforcement officer has violated his or her rights, within 30 days of the alleged violation.

The procedure for addressing complaints against law enforcement officers is regulated by provisions of Article 180 of the Law on Police and the Regulations on Procedure of Addressing Complaints ("Official Gazette of RS", no. 54/2006). The procedure is arranged as a two-instance procedure where in the first instance the Head of the Organisational Unit addresses the complaint and in the second instance the complaint is addressed to the Commission for addressing complaints.

Article 8, paragraph 1 of the Regulations on Procedure of Addressing Complaints stipulates that the examination of a complaint in a first instance shall be conducted by the Head of the Organisational Unit employing the defendant. Head of the Organisational Unit addressing the complaint in the first instance shall imply Chief of Cabinet, Secretary of the Ministry, Head of Sector, Head of the Internal Control Service, Director of Police, Head of Regional Police Directorate and Commander of Police Station, i.e. an authorised police employee, depending on the organisational unit where the defendant is employed. The objectivity and impartiality in the work is assumed in checking the complaints. This means that the Head of the organisational unit must study all available documents, conduct relevant interviews and do anything else required to gain a comprehensive insight into police proceeding that a complaint relates to. He/she must examine all circumstances necessary to determine the facts and to conduct an interview with the defendant (Article 13).

It should be noted that the complaint is addressed by the Head of the organisational unit employing the defendant, primarily because of the fact that due to the nature of his/her work, the head is most familiar with the security situation of a regional police directorate which is falling within his/her jurisdiction in accordance with the law as well as with the work process of the directorate itself. Also a Head of the organisational unit as the police officer's immediate superior is in a situation to directly monitor and supervise his skills, abilities and personality traits and is in the position to objectively assess his results and detect shortcomings in his performance.

In the procedure of addressing complaints a Head of the organisational shall not allow bias, conflict of interests or influence of others that could put at risk his professional judgement. It is essential that the Head is independent and impartial in performing his work and that his report is based solely on evidence obtained and gathered and facts observed in the process of addressing the complaint. The competent senior officer shall impartially and in accordance

+4122 839 33 59

with regulations implement the procedure during which he will call the complainant and conduct an interview with him regarding the allegations in the complaint, conduct an interview with witnesses and other persons deemed to be able to provide useful information, collect and verify the official documents, obtain medical and other documentation, conduct an interview with the police officer the complaint is addressed to, and perform all other required checks. Should the views of the complainant agree with the views of a Head of the organisational unit, the procedure for addressing a complaint shall be concluded. It shall be entered into the records about the complaint and the records shall be signed also by the complainant. The procedure must be concluded within 15 days of the receipt of a complaint.

Upon the examination of a complaint, a Head of the organisational unit shall invite the complainant in writing or orally to attend the interview in order to discuss a complaint. The complainant has no legal obligation to appear on the interview.

Complaints to the Ministry in the second instance are addressed by the *Commission for Addressing Complaints*.

Should the complainant decide not to appear on the interview or to respond but not agree with views of a Head of the organisational unit, and also in cases where the complaint implies a suspicion on commission of a crime which is prosecuted *ex officio*, the Head of the organisational unit shall submit the whole case-file to the Commission for Addressing Complaints to follow up the procedure as to the complaint concerned.

The Commission shall act in the following cases:

1. if the complaint implies a suspicion on commission of crime which is prosecuted *ex officio*;
2. if the complainant fails to appear on the interview with a Head of the organisational unit or
3. if the complainant appears but does not agree with views of a Head of the organisational unit.

The Commission is composed of three members, namely: representative of the Internal Control Sector, a police representative authorised by the Minister and representative of the public. Representatives of public participating in the procedure of addressing complaints in the region of the police directorate, at the motion of local self-government bodies from the territory of certain regional directorates, shall be designated, enlisted as members and released from duty on the basis of the decision rendered by the Minister. Representatives of the public participating in the procedure of addressing a complaint in the main Ministry, at the motion of organisations and following a public invitation published in the media, shall be designated and enlisted as members and released from the duty on the basis of the decision rendered by the Minister.

In appointing representatives of the public, candidates who have been tackling issues of protection of human rights and freedoms were given the preference, thus allowing them to contribute to the objectivity of the Commission.

Members of Commission shall be equal in decision-making. According to the conducted procedure before the Commission, including the facts found, circumstances identified and evidence presented in the procedure of addressing complaints, the Commission shall, by voting not witnessed by others who have been invited, decide on whether or not a complaint has been founded. The decision passed shall be that, voted for by minimum two members of

+4122 839 33 59

the Commission. When a member of the Commission representing the public has not voted for a decision, he/she shall be entitled to provide reasoning of his/her view in writing, his/her document being attached to the minutes referred to in Article 24 of the Regulations and becoming its integral part.

The Regulations stipulate that the sessions of the Commission shall be public, indicating the transparency of work. All stakeholders are allowed to attend the session and follow its progress as well as actions taken in complaint procedure. The Commission may exclude the public for reasons of protecting classified data.

Each member of the Commission is entitled to its own opinion and such opinion is set aside, explained and then entered into the minutes of deciding and voting. This process is contributing to a greater degree of objectivity in decision-making on complaint of citizens that are related to the work of the police. The reply to the complainant concludes a complaint procedure and the complainant may resort to all legal and other available means for the protection of his/her rights and freedoms.

Should the Commission decide that the allegations in the complaint are founded and should it state that there were certain omissions in the work of the law enforcement officer against whom the complaint was filed, he/she will be called up for material and other responsibilities and criminal action including misdemeanour shall be taken against such an officer. Actions such as criminal, misdemeanour, material and other responsibilities shall be taken against such officer. Commission's decision in addressing the complaint shall be final.

The procedure of addressing a complaint in the Ministry of Interior shall be concluded upon the submission of the reply to the complainant within 30 days from the date of the conclusion of the procedure at the Head of organisational unit. Total period for addressing a complaint against the work of police shall be 45 days from the date of the receipt of the complaint. The complainant shall be invited in writing to attend the session of the Commission. The complainant is neither obliged to appear on the interview with the competent senior officer, nor to attend the session of the Commission.

Should the Commission determine that a complaint implies a suspicion on commission of a crime which is prosecuted *ex officio*, after the conclusion of procedure, it shall submit the whole case-file to the organisational unit competent for crime suppression, in order to comply with the rules of criminal law.

If a complaint was filed in a timely manner, the Commission shall act only in the part related to irregularities in the work, but not in part related to the commission of a crime.

Work in the Ministry of Interior is based on the principle of subordination, which in its broadest sense means that the work of each employee of the Ministry, including senior officers, is controlled by the officer who is superior to them. In this specific case it means that the work of senior officers/heads of the organisational unit is followed and controlled by senior officers/heads, not allowing any doubt as regards their objectivity and impartiality. Thus, any action undertaken in the first-instance procedure is subject to the control and assessment of higher authorities, such as the Police Directorate and the complaint unit in the main Ministry, which supervises the work of senior officers/heads of the organisational units as regards complaint procedures. It has already been stated that in the case the complainant fails to appear on the interview with the Head of the organisational unit or appears but does not agree with his/her view, a complainant case-file shall be submitted to the Chairman of the Commission to address it, and he/she shall be obliged to comprehensively consider findings

+4122 839 33 59

originating from the procedure conducted by the Head of the organisational unit and to assess whether the preceding procedure has been conducted properly. If so, ~~rapporteur at the session of the Commission shall be the Head of the organisational unit~~, and should the Chairman of the Commission assess that it is necessary to undertake some activities to clarify the certain facts, he/she shall propose to designate another authorized person who will be in charge of conducting examination of a complaint and prepare a report aimed at a complaint to be taken into consideration by the Commission (Article 17 of the Regulations).

It should be noted that provisions referred to in Article 5 of the Regulations reduce the risk of a biased evaluation of a Head of the organisational unit handling a complaint. This Article prescribes that a Head of the organisational unit who receives a complaint to be addressed must, without undue delay, inform the complaint's unit in the main Ministry (Bureau for Complaints and Petitions) and Director of Police, i.e. a person authorized by him or her if in the acts referred to in the complaint:

1. somebody has been injured, seriously injured or lost life;
2. fire arms have been used or some other means of force has been resorted to against three persons at least and
3. an action has been exercised which may be the subject of a broader attention in the media distributing newspapers and disseminating other information across the whole territory of the country.

Also, Article 29 of the Regulations specifies that monitoring of the procedure of addressing complaints by heads of organisational units shall be conducted by the competent complaint unit and Police Directorate and a police employee authorized by the Minister shall perform the monitoring of the work of the Commission.

It is the duty of the Police Directorate to submit to the Minister quarterly, six-month and annual reports on addressing complaints and the complaint unit at the main Ministry shall be obliged to inform the Minister about the addressing of complaints. The Ministry of Interior shall introduce the public with the contents of these reports by publishing it on its website.

It is important to emphasize that in the procedure of addressing a complaint no measures are proposed as regards the responsibility of the law enforcement officer, if determined that the complaint is founded. Complaint procedure is the starting point for taking measures that are proposed and applied *ex officio* within the second procedure against a law enforcement officer (in disciplinary, misdemeanour, civil, criminal proceedings, etc.).

It could be concluded from the aforementioned that the complaint procedure is regulated in such a manner that it primarily protects citizens, their rights and freedoms. On the other hand, a lot of attention is given to the control of work of law enforcement officers in performing their duties as well as law enforcement officers who are authorized to act on citizens' complaints on the work of police, aimed at fostering and preservation of public confidence in integrity, impartiality and efficiency of police work.

Sector for Internal Control of the Police

Pursuant to provisions of the Law on Police (Articles 171-179), which comprehensively defines the scope and jurisdiction of the Sector for Internal Control of the Police, it states that the Sector is also in charge for the control of legality of police work, especially in terms of the respect and protection of human rights while performing police tasks and applying police powers.

+4122.839.33.59

Sector for Internal Control of the Police is the organisational unit of the Ministry and is not a part of Police Directorate, which prevents any influence on his work and actions. Assistant Minister – Head of the Sector is elected by public call and appointed by the Government of the Republic of Serbia for a period of five years.

Authorised persons in the Sector for Internal Control of the Police have all police powers to exercise control and in terms of their rights and duties they are equal to other authorised persons. Sector acts on proposals, complaints and petitions by physical and legal entities, on written communications of police members and on his own initiative, and/or on the basis of collected information and other data relating to the operation and actions of police officers while applying police powers. In this context, the Sector conducts background checks on all allegations and findings implying possible abuse or exceeding the limits of police powers towards suspects who were deprived of their liberty and detained.

The Sector checks all information that relates to exceeding the limits of powers in applying some means of force, and criminal charges are filed against police officers who exceeded the limits of their legal powers with a proposal to initiate appropriate disciplinary proceedings.

The Minister exercises the control over the work of the Head of Sector for Internal Control of the Police, police officers employed in the Sector and other police officers in the Ministry who are responsible for internal control of the police.

a) Filed criminal charges

On the basis of criminal offences with elements of torture, the Sector of Internal Police Control has filed a total of 57 criminal charges due to criminal offences with elements of torture (2011-4; 2010-6; 2009-9; 2008-17; 2007-6; 2005-3; 2004-8 ;) in the period since 2002 from 11th August 2011.

Table 1: The structure of reported criminal offences

-	Ill-treatment and Torture - Article 137 of the Criminal Code of RS	17 offences (2011 - 3 offences; 2010 - 4 offences; 2009 - 2 offences; 2008. - 5 offences; 2007 - 1 offence; 2006 - 2 offences)
-	Serious bodily injures - Article 121 of the Criminal Code of RS	4 offences (2008 - 1 offence; 2006 - 1 offence; 2004 - 2 offences)
-	Robbery - Article 206 referring to Article 30 of the Criminal Code of RS (attempt)	1 offence (2008)
-	Participating in a group committing a criminal offence - Article 349, paragraph 1, referring to Article 33 of the Criminal Code of RS	1 offence (2008)
-	Unlawful depriving of liberty - Article 132 of the Criminal Code of RS	1 offence (2008)

+4122 839 33 59

-	Minor bodily injury - Article 122 of the Criminal Code of RS	5 offences (2008 - 1 offence; 2007 - 1 offence; 2006 - 2 offences; 2004 - 1 offence)
-	Coercion - Article 135 of the Criminal Code of RS	1 offence (2009)
-	Extortion - Article 214 of the Criminal Code of RS	10 offences (2011 - 1 offence; 2009 - 1 offence; 2008 - 3 offences ¹ ; 2007 - 3 offences; 2005 - 1 offence; 2004 - 1 offence)
-	Attempt of extortion	3 offences (2009 - 2 offences; 2008 - 1 offence)
-	Abuse in service - Article 66 of the Criminal Code of RS	6 offences (2005 - 2 offences; 2004 - 4 offences)
-	Instigating national, racial and religious hatred and intolerance - Article 317 of the Criminal Code of RS	1 offence (2007)
-	Extortion of confession - Article 136 of the Criminal Code of RS	1 offence (2006)
-	Domestic violence - Article 194 paragraph 2 referring to paragraph 1 in the Criminal Code of RS	3 offences (one offence in 2010, 2009 and 2008)
-	Violent behaviour - Article 344 of the Criminal Code of RS	7 offences (2010 - 1 offence; 2009 - 3 offences and one offence in 2008, 2007 and 2006)
-	Causing general danger - Article 278 of the Criminal Code of RS	2 offences (2008)
-	Total number of offences	63 criminal offences (2011 - 4 offences; 2010 - 6 offences; 2009 - 10 offences; 2008 - 18 criminal offences; 2007 - 7 offences; 2006 - 7 offences; 2005 - 3 offences and 2004 - 8 offences)
-	Filed criminal charges	57 criminal charges (2011 - 1; 2010 - 6; 2009 - 9; 2008 - 17; 2007 - 6; 2006 - 4; 2005 - 3; 2004 - 8 ;)

+4122 839 33 59

Reported police officers	78 (2011 - 4; 2010 - 8; 2009 - 11; 2008 - 29; 2007 - 8; 2006 - 6; 2005 - 3; 2004 - 9)
--------------------------	---

Criminal offence reports submitted by the Sector as per criminal offences with elements of violence include 78 police officials.

After submission of criminal offence reports, disciplinary measures were undertaken against all of the police officials – disciplinary proceedings were initiated and decisions adopted on their removal from the Ministry of Interior, until completion of those disciplinary proceedings.

Out of the total number of criminal offence reports submitted by the Sector as per criminal offences with elements of torture, 6 criminal offence reports were dismissed: in two cases, competent prosecutor's offices withdrew the charges, and in one case, investigation was discontinued.

b) Actions undertaken based on citizens' petitions and complaints against excessive use of force

Every person is entitled to file a complaint to the Ministry of Interior or the Sector for Internal Control of the Police, against a police official if they believe that the official has violated their rights or freedoms by unlawful or improper action. All petitions and complaints of citizens and legal entities which are forwarded to the Sector for Internal Control of the Police, regardless of the status, title and job position of the police official in question, are treated as a priority and are immediately taken into consideration; necessary verifications of the stated allegations and of the current situation are performed and those who submitted complaints are informed.

In all the cases where excess and abuse of police authorizations were determined, as well as other failures in police officials' actions towards citizens, the Sector proposed undertaking of adequate measures against responsible persons, in case the authorized bodies had not already taken appropriate measures against them. In cases when police official's identity was not determined, the Sector proposed undertaking of measures and intensifying activities for the purpose of identifying responsible individuals and their further processing.

In the period between the year 2009 and 31st July, 2011, the Sector for Internal Control of the Police conducted verification of allegations from 379 petitions in which the citizens complained against police officials and their excessive use of physical force and other enforcement measures. In 58 cases, it was determined that there was a failure in performing of duty by police officials and the Sector proposed undertaking of disciplinary measures against those police officials. In addition, during the same period, the Sector received 306 complaints from the citizens which were examined in accordance with Article 180 of the Law on Police and Regulations on Procedure of Addressing Complaints. Upon completed verifications, the Commissions for Addressing Complaints, whose members are also the employees of the Sector, determined that there were 28 instances of failure in performing of duty by police officials.

+4122 839 33 59

Table number 2: Statistical overview of complains against excessive use of enforcement measures in the period from the year 2009 till July 2011

	Total number	Justified
petitions	379	58
complaints	306	28
TOTAL	685	86

Protection of rights of persons deprived of freedom

Generally speaking, the Criminal Procedure Code (Article 5) stipulates that person deprived of freedom must be immediately informed, in his language or the language he understands, about the reasons why he is deprived of freedom and what offence he is charged with, as well as of his rights; that he has the right to remain silent and that everything he says can be used as evidence against him; to choose a defense counsel; to have free communication with his defense counsel; to have the defense counsel present during his interrogation; to have the persons selected by him informed of the time, place and any change of place of his deprivation of freedom, without delay, as well as diplomatic-consular representative of the state whose citizen he is, that is, representative of appropriate international organization if the person is a refugee or a stateless person; to have free communication with diplomatic-consular representative, that is, with representative of appropriate international organization; to request at any time to be immediately examined by a doctor of his choice, and if that doctor is not available, by the one chosen by the institution that deprived him of freedom; to initiate a proceeding before the court for purpose of examination of legitimacy of his deprivation of freedom.

In 2007, the Ministry of Interior of the Republic of Serbia adopted the **Regulations on Police Authority**, where Article 30 stipulates that a police official shall make an *official record* which shall include: 1) personal data of a detainee; 2) start- and end-time of his detainment; 3) reason for detainment; 4) informing the person of the reasons for detainment and of his rights; 5) exercised rights of a detainee and informing of appropriate institutions (time, method, name); 6) bringing of a detainee before a competent authority; 7) visible physical injuries and other signs that can be observed and due to which a detainee would need medical assistance; 8) whether a detainee received medical care or first aid (who, when and why); 9) dangerous objects taken from a detainee for his own safety; 10) completion of detainment. Official record shall be signed by the police official who detained that person and by the detainee.

In addition, the Regulations stipulate that the police official detaining the person shall be responsible for the safety of the detainee from the moment that person entered detainment premises until his release. Ill or injured person in obvious need of medical assistance or person showing signs of severe poisoning by alcohol or by some other agent, cannot be

+4122 839 33 59

detained at detention premises. Police officials detaining such persons must provide them transport to a health care facility where they would receive medical assistance. When a detainee himself requests medical assistance, police official shall ensure that he receives the necessary medical assistance at the detention premises, or he shall provide transport to the closest health care facility.

If there is a reasonable doubt that a detainee will try to escape during transportation to a health care facility, police official must undertake all the measures to prevent the detainee from escaping during transportation to a health care facility.

In accordance with obligations the Republic of Serbia undertaken by signing of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "Commission for Monitoring of Implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment" (hereinafter referred to as: the Commission) was established in 2005 by the Ministry of Interior of the Republic of Serbia, with the composition and mandate similar to the Council of Europe's Committee for the Prevention of Torture.

Tasks of the Commission are related to the following: visiting detention premises in the Ministry's organizational units; direct inspection of facilities and rooms used for temporary detention of detainees deprived of freedom and juveniles; control of hygienic conditions in detention rooms; visiting the rooms used for interviewing persons for the purpose of finding non-standard objects (baseball bats, crowbars, etc.), and direct inspection of facilities and locations for their disposal and storage; control of the records on detainees, persons deprived of freedom and juveniles, as well as records on applied authorizations, and control of police officials' knowledge of rights of the abovementioned persons as guaranteed by the Constitution, law and by-law regulations; performing control and supervision over processed cases which include elements of torture, inhuman or degrading treatment by the Ministry's police officials; organization and initiation of trainings in the field of prevention of torture, inhuman or degrading treatment or punishment, as well as actions of Ministry's police officials towards persons deprived of freedom, detainees and juveniles in those cases when they were deemed necessary after visit by district police administration; other activities focused on prevention and promotion of protection of rights of persons deprived of freedom, detainees and juveniles.

In line with recommendations of the Council of Europe's Committee for the Prevention of Torture, the Commission has prepared the following forms: "Rights of a Person Deprived of Freedom", "Rights of a Detainee", "Rights of a Juvenile Deprived of Freedom", "Rights of a Juvenile in Capacity of Citizen" and "Rights of a Juvenile in Capacity of Suspect", for the purpose of conveying information about basic legal rights in line with the provisions of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, the Criminal Procedure Code, and the Law on Police, which have all been successfully implemented in the Ministry's practice.

In addition, on the Ministry level, per different lines of work, regular control is being performed in order to raise awareness and responsibility of police officials regarding protection, prevention and promotion of rights of persons deprived of freedom and juveniles.

Detainee's contact with defense counsel

An authority of the Ministry of Interior shall, not later than within two hours, adopt and deliver the decision on detention to a detainee. A suspect must have a defense counsel as soon as the authority of the Ministry of Interior adopts the decision on detention.

+4122 839 33 59

If the suspect does not obtain defense counsel himself, the authority of the Ministry of Interior will provide one for him *ex officio*, according to the list of the attorneys as supplied by appropriate Bar Association. Interrogation of the suspect will be delayed until arrival of the defense counsel, but not more than eight hours. If the defense council's presence has not been ensured in this time period, the authority of the Ministry of Interior will release the suspect, or bring him immediately before the appropriate investigating judge.

In line with Article 229 of the Criminal Procedure Code of the Republic of Serbia ("Official Gazette of the Republic of Serbia", number 72/2009), authority of the Ministry of Interior may exceptionally keep the person deprived of freedom as defined in Article 227, paragraph 1, as well as the suspect as defined in Article 226, paragraphs 7 and 8, for purpose of collection of information (Article 226, paragraph 1) or interrogation, for not more than 48 hours from the moment he was deprived of freedom, or he voluntary surrendered.

The authority of the Ministry of Interior shall, not later than within two hours, adopt and deliver the decision on detainment to a detainee. The decision must include the offense with which the suspect is charged, reason of suspicion, date and hour of his deprivation of freedom or his voluntary surrender, as well as the start-time of the detainment.

The suspect and defense counsel have the right to appeal against the detainment decision and the appeal shall be immediately delivered to the investigating judge. The investigating judge is obliged to decide on this appeal not later than 4 hours from the receipt of the appeal. The appeal shall not stop enforcement of the decision.

The authority of the Ministry of Interior is obliged to immediately inform the investigating judge about the detainment, while investigating judge may request from the authority of the Ministry of Interior to immediately bring the detainee before him.

The suspect has the rights as stipulated by Article 226, paragraph 8 of this Code and at the time of deprivation of freedom he must be given the following forms: "Rights of a Detainee" and "Rights of a Person Deprived of Freedom", as produced by the Commission for Monitoring of Implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Ministry of Interior.

It should be noted that, in accordance with Article 5 of the Criminal Procedure Code, any violence against a person deprived of freedom or a person with limited freedom is forbidden and punishable. Such persons must be treated humanely and their personal dignity must be respected.

Right to medical exam

Detainees are provided health care in penal correctional institutions. Once a detainee is received in a penal correctional institution, he is examined by a doctor and the results are entered in his medical records. Each institution provides the services of doctors and medical technicians and depending on the size of penal correctional institution, special health care departments are established. In case there is a need for hospital treatment or the prison cannot provide adequate health care, detainee is sent to Special prison hospital or other specialized health care institution. In case of emergency, detainee is sent to the closest health care institution.

+4122 839 33 59

Based on the approval of the institution which conducts the proceeding, detainee maybe examined by elected doctor, at his personal request and expense. In this case, detainee will ~~previously be examined by the doctor employed by that penal correctional institution.~~

Above listed forms of health care are stipulated by the Criminal Procedure Code, Law on Enforcement of Penal Sanctions, and House Rules for Penal Correctional Institutions ("Official Gazette of RS ", no. 35/99). Above mentioned documents are available to detainees, and they are aware of their rights during implementation of the measure of detention. Furthermore, prison administration and relevant employees, in this case health care staff shall also personally inform the detainees of their rights. In each individual case, an investigating judge decides on medical exam by the doctor selected by the detainee, considering medical condition, undertaken measures of medical treatment and reasons stated by the detainee.

Policy towards asylum seekers and refugees (item 9)

The Committee appreciates the information on the measures conducted in order to protect asylum seekers and secure the rights for the persons who request refugee status, as stated in item 9 of Final comments. Furthermore, opening of the Center for Asylum Seekers in Banja Koviljaca is commendable, and the Committee would like to thank for updated information on number of persons placed in the Center for Asylum Seekers. Which measures are undertaken in order to enable that all the persons seeking asylum, regardless of the fact whether they are placed in the Center for Asylum Seekers or not, be aware of their rights?

The Committee is concerned because of the report of your Government stating that in the period between April 2008 and September 2009, although 100 formal requests for the status of asylum seekers were filed, none of these requests was approved. We kindly ask you to specify how many persons who filed the request for asylum have been returned to their country of origin since the Law on Asylum came in force until today, as well as to enclose the list of all the countries where the persons who submitted the request for asylum, and refugees, have been returned. We kindly ask you to submit updated information on number of requests for asylum formally submitted in the period since September 2009 until today, as well as the number of approved requests.

Persons who demonstrate their intention to seek asylum before competent institution receive the confirmation which can be used to request accommodation in one of the centers for accommodation of asylum seekers which function within the Commissariat for Refugees. Currently, the operating centers are those in Banja Koviljaca and Bogovadja. Persons placed in the centers receive all the information on their rights and obligations from the employees of the Commissariat, as well as representatives of the associations such as "Asylum Protection Center", which provides free legal aid and translation services for this group of migrants, within the program of the Commissariat for Refugees. Also, associations "Belgrade Center for Human Rights" and "Humanitarian Center for Tolerance and Integrations" implement programs of free legal assistance and psychological and social support for asylum seekers, financed by the UNHCR.

In order to provide protection for all migrants, including asylum seekers, the Commissariat for Refugees, in cooperation with other competent institutions, implements different projects in the units of local-self-government organizing workshops and seminars intended for the employees who provide different services on local level, in order to raise their level of knowledge on rights and obligations of all groups of migrants, thus, indirectly improving

+4122 839 33 59

knowledge of end users. Currently, there is an ongoing project financed from the funds of the European Union, which implemented such trainings in 100 municipalities/cities in the Republic of Serbia. Within the same project, Manual for the Protection of Human Rights of Migrants was prepared and distributed to services competent for protection of human rights of migrants on local and central level.

From the day implementation of the Law on Asylum started, state authorities of the Republic of Serbia have not executed forced return of any asylum seeker, both in the country of origin, or some third country. In most cases, asylum seekers voluntarily (and illegally) leave the territory of the Republic of Serbia during the procedure for determining the merits of their requests for asylum (mostly leaving to the countries of the Western Europe), and there is insignificantly small number of those who explicitly abandoned the request for asylum and legally left the country.

From April 2008 to September 2009, four requests for asylum were adopted, i.e. the Ministry of Interior of the Republic of Serbia approved four subsidiary protections (1 citizen of Iraq and three citizens of Ethiopia- soon after receiving protection all Ethiopians illegally left the Republic of Serbia).

Since the beginning of September 2009, until August 2011, the Republic of Serbia received 386 formal requests for asylum (36 until the end of 2009, 215 in 2010 and 135 in the first seven months of 2011, but the number of persons who showed intention to seek for asylum, in the same period, was significantly higher (2333 foreign citizens showed intention to seek asylum, out of which 1717 only in 2011, but due to the fact that many of them leave the Republic of Serbia before filing formal request for asylum, there is a great discrepancy between those two numbers.)

Two asylum centers function within the Commissariat for Refugees, Center for Asylum in Bogovadja, where on 10th January, 2012 there were 159 persons, and Center for Asylum in Banja Koviljaca, where on 10th January, 2012, 83 persons were placed. On 10th January, 2012, total number of asylum seekers accommodated in both centers was 234 persons.

Since the Center for Asylum in Bogovadja was opened, total of 399 have been placed at certain point in this facility, while in the Center for Asylum in Banja Koviljaca, in the period from 1st January, 2012 to 10th January, 2012, total of 378 were accommodated.

Establishing additional Center for Asylum helps overcome the issue of full capacity of the existing Centers, as well as creates better conditions for accommodation of especially vulnerable categories, such as juveniles (since, so far, total of 86 juveniles without parental accompaniment have been in the Centers), persons completely or partially deprived of working capability, children separated from parents or guardians, disabled persons, the elderly, pregnant women, single parents with underage children and persons who were exposed to torture, rape or other forms of serious psychological, physical and sexual violence etc.

Commissariat for Refugees has been working rapidly on finding the solution for establishing additional capacities for accommodation of asylum seekers and capacity and infrastructure building for the needs of asylum seekers.

Return of the refugees from former republics of the SFRY, who obtained their status pursuant to the Law on Refugees, to their place of previous residence is exclusively voluntary and spontaneous. Until 2011, UNHCR used to provide necessary assistance to returnees during

+4122 839 33 59

organized return to the Republic of Croatia. In January 2012, the Commissariat for Refugees took over the activities related to provision of assistance to returnees. Pursuant to the law, as permitted by the circumstances, returnees may be provided assistance in form of returnee package or agricultural mechanization. According to the UNHCR data, in 2010, organized return to Croatia was provided for 65 households, and in the first seven months of 2001, for 53 households. It is estimated that the number of spontaneous returns to the Republic of Croatia or Bosnia and Herzegovina together does not exceed 20 families a year.

Cooperation with the International Criminal Tribunal for the Former Yugoslavia (item 11)

In regards to the recommendation of the Committee to the authorities of the Republic of Serbia referred to in item 11 to fully cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY), the Committee is glad to hear that different efforts are made in order to enable successful daily cooperation. The Committee regrets that Ratko Mladic and Goran Hadzic are still fugitives from justice, and have been for more than 15 years after the ICTY issued warrants for their arrest. We would be grateful for more detailed information about the efforts made to accomplish regional cooperation in order to bring those fugitives to justice, as stated on pages 11-12 of your response, as well as in information on the states with whose security agents Serbian authorities established cooperation. We kindly ask you to submit, to the Committee, the information on the measures undertaken to secure that the investigations on alleged war crimes undertaken by the Ministry of Interior are independent and objective, especially considering the fact that in certain cases those investigations include the members of the Ministry of Interior and retired military officials, as stated on page 12 of your response. The Committee is pleased because of the support your Government has provided for establishing of mechanisms which will take over the function of the ICTY after its closure, such as foundation of new or use of existing national courts, or delegating certain functions to International Criminal Court. We kindly ask you to submit more detailed information on the measures undertaken to protect protected witnesses against retribution for their testimonies, as well as information on the number of witnesses who have used such type of protection, and how are the witnesses informed about their right to witness protection.

Cooperation of the Republic of Serbia with the International Criminal Tribunal for the Former Yugoslavia is conducted on very high level and continuously without interruptions. The Republic of Serbia believes that full cooperation with the Tribunal has been established, and the following data are the best proof of that:

Extradition of the defendants

- Constant search for the fugitives who were at large gave results on 26th May, 2011, when Ratko Mladic was apprehended in the village of Lazarevo, Republic of Serbia, and 20th July, 2011, when Goran Hadzic was arrested in Fruska Gora, Republic of Serbia. Upon proceedings conducted before the High Court in Belgrade, Mladic and Hadzic were handed over to the Tribunal in The Hague.
- Out of 46 defendants whose extradition was requested by the Tribunal from Serbia, the Republic of Serbia handed over 45 persons, and one defendant passed away before extradition.
- Thus, the Republic of Serbia completed its cooperation with the Tribunal in respect to handing over of the defendants.

+4122 839 33 59

Protection of witnesses

According to information of March 2012, the Ministry of Interior provides protection for four witnesses and their families based on the requests of the Tribunal. Also, it is stipulated that the measures intended for the protection of a witness or aggrieved party imposed by the Tribunal shall stay in force, and that the representatives of the Tribunal are entitled to be present during all the phases of criminal proceedings before national courts.

Before adoption of special laws on protection of witnesses in the region, certain non-governmental organization had very significant position in this field, as they cooperated with the police and courts in regards to protection of certain witnesses and providing their appearance at the hearings. In Serbia, this area is regulated by the Law on the Protection Program for Participants in Criminal Proceedings, which also applies to procedural protection of witnesses.

The Law on the Protection Program for Participants in Criminal Proceedings came in force on 1st January, 2006. This Law gives detailed description of conditions and procedure for providing protection and assistance for the participants in criminal proceedings and their close persons, who, due to their testimonies or information which are important as evidence in criminal proceedings, are exposed to situations dangerous for their life, health, physical integrity, freedom or property. Measures for the protection of participants in criminal proceedings (conducted by the Unit for Protection, which represents a specialized organizational unit of the Ministry of Interior) are: 1) physical protection of persons and property; 2) change of the place of residence or transfer to other correctional institution; 3) hiding of identity and ownership information and 4) change of identity. The law stipulates that international cooperation in enforcement of the protection programs shall be done based on international treaties or principle of reciprocity.

Besides provisions of the Law on the Protection Program for Participants in Criminal Proceedings, provisions of the Criminal Procedure Code are also significant for this filed, especially in reference to procedural protection of witnesses. It is stipulated that in the circumstances which indicate that, by public testimony, the witness or persons close to him would be exposed to danger for their life, body, health, freedom or property of larger volume, and especially in case of severe criminal offenses of organize crime, corruption or other extremely severe criminal offenses, court may approve that the witness be provided special security measures. Measures of special protection include interrogation of a witness under conditions and in a manner which secures that his identity is not revealed and measures of physical protection of witnesses during the proceedings.

Court shall, *ex officio* or at the request of the parties or the witness himself, render a decision on measures for special protection of witnesses which contains: code which shall serve as a substitute for the name of the witness, order for deletion from the list of names and other data which may be used to determine the identity of the witness, method of interrogation and measures to be undertaken in order to prevent revealing of identity or place of residence and place of stay of the witness or persons close to him.

Interrogation of protected witness may be done using one or more of the following approaches: excluding public from the main hearing, hiding the appearance of the witness or testimony from a special room with voice and face change using special technical equipment for transmission of picture and sound.

Court is under obligation warn all the persons present at the interrogation of protected witness that the information about him and his close persons, their place of residence, place of

+4122 839 33 59

stay, arrival, stay, place and method of interrogation of protected witness, are to be kept secret and that disclosure of this information shall constitute a criminal offence.

Other forms of cooperation

- The Republic of Serbia continues cooperation with the Tribunal relating to the submission of the documentation, access to the witnesses and archives and other technical aspects of the cooperation. This implies cooperation with the Trial Chamber, Secretariat and Prosecution Office of the Tribunal and Defences of the accused.
- Out of 1981 requests for the assistance to the Prosecution Office, the Republic of Serbia responded completely to almost all of the received requests.
- Out of 1042 requests for the assistance to the Defences of the accused before the International Criminal Tribunal for the Former Yugoslavia in the period starting with the end of 2004 to date, it has been responded completely to almost all of the requests.
- In accordance with the conditions defined by the Agreement on the Insight into the Archives of State Authorities of March 2006, 32 visits of the representatives of the Prosecution Office of the International Criminal Tribunal for the Former Yugoslavia have been realized and 30 visits of the Defence Teams to the state archives of the Republic of Serbia. None of the requests of the Prosecution Office of the International Criminal Tribunal for the Former Yugoslavia and the Defence of the accused relating to having an insight into archives were refused.
- All the witnesses regarding which the Prosecution Office of the International Criminal Tribunal for the Former Yugoslavia and Defences of the accused before the International Criminal Tribunal for the Former Yugoslavia requested to be relieved of the obligation to keep data secret so as to be enabled to give a statement in the procedures conducted before the Tribunal were relieved of the obligation to keep data secret.
- It has been acted in accordance with all the requests of the Tribunal in terms of delivery of a subpoena and other written documents to the entities in the territory of the Republic of Serbia.
- It has been acted in accordance with all the requests of the Tribunal in terms of the provision of protection services to the witnesses situated in the territory within which the competent authorities of the Republic of Serbia have competence.
- The terms and conditions under which the accused have been granted temporary release have been observed immaculately and in all cases the accused were returned to the Tribunal in accordance with the decisions of the Trial Chamber.

Other investigations on war crimes (point 12)

The Committee is grateful to the Government for responding to point 12 of the Concluding remarks and on the data on the number of rulings relating to "Ovcara" case. The Committee earlier required information on the outcomes of the court proceedings and reasons for instigating retrial in 2006. We highly appreciate your sending of update information relating to the actions in that case since that period to date. On the other hand, we regret because the sent data do not contain information on the reasons for ordering a re-trial, but only state that the basis for ordering a re-trial has formal and legal nature. So let me repeat the request made by the Committee.

+4122 839 33 59

The Committee welcomes the fact that in November 2010 the Court of Appeal supported the ruling of the first-instance court dated March 2009 according to which 5 persons were sentenced to prison in the period lasting from five to twenty years, whereas five persons were acquitted. We would kindly ask you to submit to the Committee more recent information on the precise charges brought against each of the defendants at every stage of the proceedings, as well as whether these individuals are currently serving a prison sentence.

The Belgrade District Court's War Crimes Chamber Ruling K.V. 1/2003 rendered on 12/12/2005 was overturned by the Supreme Court of Serbia decision KI-P3-1/2006 dated 18/10/2006 and sent back for a retrial for formal and legal reasons on account of serious violations of the provisions of criminal procedure set out in Article 368, Paragraph 1, Item 8, 10 and 11 of the Criminal Procedure Code, because the judgment exceeds the charge, the judgment was founded on evidence on which according to the present Code it may not be founded, the judgment does not contain reasons referring to the relevant facts, and these reasons are incomprehensible and considerably contradictory, valid reasons referring to the relevant facts are not given or are insufficient, and the reasons given referring to the relevant facts contradict the material evidence in the records and the contents of the documents, and due to a serious violation of the provisions of criminal procedure set forth in Article 368, Paragraph 2 of the Criminal Procedure Code, referring to Article 504e of the Code, which points to the existence of a violation of the right to defense or non-implementation or improper implementation of the Code's provisions, which affected or could have affected a legal and fair adjudication.

In the retrial, the Belgrade District Court's War Crimes Chamber Ruling K.V. 4/2006 rendered on 12/03/2009 found defendants Vujovic Miroslav, Vujanovic Stanko, Lancuzanin Milan, Peric Jovica, Atanasijevic Ivan, Vojnovic Milan, Milojevic Predrag, Mugosa Goran, Sosic Djordje, Djankovic Miroslav, Dragovic Predrag, Kalaba Nada and Radak Sasa guilty of the criminal act of war crime against prisoners of war set out in Article 144, in connection with Article 22 of the Criminal Code of the Federal Republic of Yugoslavia, with defendants Vujovic Miroslav, Vujanovic Stanko, Atanasijevic Ivan, Milojevic Predrag, Sosic Djordje, Djankovic Miroslav and Radak Sasa sentenced to 20 (twenty) years in prison, defendant Vojnovic Milan to 15 (fifteen) years in prison, defendant Peric Jovica to 13 (thirteen) years in prison, defendant Kalaba Nada to 9 (nine) years in prison, defendant Lancuzanin Milan to 6 (six) years in prison, and defendants Mugosa Goran and Dragovic Predrag to 5 (five) years in prison, counting time served. With the same Ruling, defendants Ljuboja Marko, Katic Slobodan, Madzarac Predrag, Zlatar Vujo and Pejic Milorad, based on Article 355, Item 3 of the Criminal Procedure Code, were found not guilty of the criminal act of war crime against prisoners of war set out in Article 144, in connection with Article 22 of the Criminal Code of the Federal Republic of Yugoslavia.

The Belgrade Court of Appeal Ruling K1-Po2-1/2010 dated 23/06/2010 overturned the Belgrade District Court's War Crimes Chamber Ruling K.V. 4/2006 rendered on 12/03/2009 only in the decision pertaining to the sentence of defendant Kalaba Nada, who was sentenced to 11 (eleven) years in prison, and defendant Atanasijevic Ivan, who was sentenced to 15

+4122 839 33 59

(fifteen) years in prison, counting time served, while the remainder of the Ruling was confirmed.

A Review of case file K.V. 4/2006 at the Belgrade Higher Court's War Crimes Chamber determined that defendant Vujovic Mirosljub began serving his sentence on 23/07/2009, defendant Vujanovic Stanko on 28/04/2009, defendant Lancuzanin Milan on 24/01/2011, defendant Peric Jovica on 30/04/2009, defendants Atanasijevic Ivan, Vojnovic Milan, Milojevic Predrag, Djankovic Milan and Radak Sasa on 29/09/2010, defendant Mugosa Goran on 13/12/2010, defendant Sosic Djordje on 28/09/2009, and defendant Kalaba Nada on 14/06/2011. Defendant Dragovic Predrag was not sent to serve a sentence in prison as he had already served its entirety in pretrial detention.

In connection with the same event (the "Ovcara" case), the Belgrade District Court's War Crimes Chamber Ruling K.V. 9/2008 dated 23/06/2009 found defendant Sireta Damir guilty of the criminal act of war crime against prisoners of war set out in Article 144, in connection with Article 22 of the Criminal Code of the Federal Republic of Yugoslavia, and sentenced him to 20 (twenty) years in prison, counting time served.

The Belgrade Court of Appeal Ruling K1-Po2-2/2010 dated 24/06/2010 overturned the Belgrade District Court's War Crimes Chamber Ruling K.V. 9/2008 dated 23/06/2009 in the decision pertaining to the sentence, as defendant Sireta Damir was sentenced to 15 (fifteen) years in prison, counting time served, while the remainder of the Ruling was upheld.

A Review of case file K.V. 9/2008 at the Belgrade Higher Court's War Crimes Chamber determined that defendant Sireta Damir began serving his sentence on 06/10/2010.

Also, in connection with the same event (the "Ovcara" case), the Belgrade District Court's War Crimes Chamber Ruling K.V. 2/2005 dated 30/01/2006 found defendant Bulic Milan guilty of the criminal act of war crime against prisoners of war set out in Article 144, in connection with Article 22 of the Criminal Code of the Federal Republic of Yugoslavia, and sentenced him to 8 (eight) years in prison, counting time served.

The Supreme Court of Serbia Ruling No. K1-P3-2/2006 dated 09/02/2007 overturned the Belgrade District Court's War Crimes Chamber Ruling K.V. 2/2005 dated 30/01/2006 in the decision pertaining to the sentence, with defendant Bulic Milan receiving a sentence of 2 (two) years in prison, counting time served.

+4122 839 33 59

A Review of case file K.V. 9/2008 at the Belgrade Higher Court's War Crimes Chamber determined that the Novi Sad Municipal Court decision IK No. 245/07 put a stop to the execution of the two-year prison sentence against Bulic Milan due to the defendant's death.

In reference to your request that we should provide more recent information on the precise charges brought against each of the defendants at every stage of the proceedings, we inform you that the following indictments brought by the Office of the War Crimes Prosecutor of the Republic of Serbia: KTRZ 3/03 dated 04/12/2003, KTRZ 4/04 dated 26/05/2004 and KTRZ 4/03 dated 24/05/2004, amended by act KTRZ 4/03 dated 16/09/2005 and at the main hearing on 24/11/2005, the indictment brought by the Office of the War Crimes Prosecutor of the Republic of Serbia KTRZ 4/03 dated 12/04/2005 amended by act KTRZ 4/03 dated 12/01/2006, all of which were amended at the main hearing on 17/09/2008, and indictment KTRZ 4/03 dated 24/05/2004 and specified by act KTRZ 4/03 dated 21/12/2005, and later by indictment KTRZ 4/03 brought by the Office of the War Crimes Prosecutor of the Republic of Serbia on 17/10/2008, charge the defendants with the criminal act of war crime against prisoners of war set out in Article 144, in connection with Article 22 of the Criminal Code of the Federal Republic of Yugoslavia.

Human rights defenders (point 13)

As for the recommendation of the Committee stated in point 13, asking from the Government to enable that the proceedings against human rights defenders are conducted in conformity with international standards relating to fair trial, the Committee welcomes the fact the Government has adopted the Law on the Prevention of Discrimination and framework for the reform relating to implementing mechanisms protecting human rights, as stated on page 16 of your response. However, requested data on the measures taken by the Government in order to protect human rights defenders from unlawful persecution and respond to the complaints of the human rights defenders according to which they are not enabled to have the fair trial have not been submitted. We would kindly ask you to forward to the Committee updated data on these issues. It would be highly appreciated if you submit to the Committee data on the actions implemented aiming at the protection of human rights defender Natasa Kandic, Head of the Humanitarian Law Centre.

The Government of the Republic of Serbia and all the competent ministries are ensuring the existence of normative and procedural guarantees of the protection guaranteeing the rule of law, access to the justice and the right to fair trial through the ratification of all relevant international conventions and constant modernization of legal framework. Human rights defenders enjoy all the rights guaranteed by the Constitution, positive law and international treaties ratified by the Republic of Serbia, primarily with regard to the protection of safety, protection of participants in the judicial anti-discrimination proceedings, unlawful persecution on any grounds and the right to fair trial.

+4122 839 33 59

The persecution is not presented in the Republic of Serbia. There are not any judicial proceedings conducted having the elements of persecution against human rights defenders. Criminal charges filed against the human rights defender have been rejected by the Prosecution Offices. Owing to the fact that Serbian Criminal Procedure Code following the rejection of criminal charges by the Prosecution Office does not anticipate further actions, private persons may continue with the proceedings based on private charges. The Ministry of Justice does not comment these cases since the judiciary in the Republic of Serbia is independent.

The conference called "*Towards a national policy on human rights defenders*" took place on 2 November 2011 in Belgrade, presenting the continuation of the activities implemented so far and in the context of considering and improving the status of human rights defenders.

The conference having been held under the auspices of the Ministry of Human and Minority Rights, State Administration and Local Self-government-Human and Minority Rights Administration, was organized jointly by the OSCE Mission to Serbia, Office of UN Resident Coordinator for Human Rights and "YUKOM". The goal of the meeting was to analyse the status of defenders in the Republic of Serbia, as well as to improve the implementation of standards defined under the United Nations Declaration on Human Rights defenders.

Torture and invalidity (point 16.b)

Finally, as for the recommendations of the Committee referred to in point 16(b) of the Concluding remarks, according to which Serbia should take into consideration reports on torturing and cruel, inhuman and degrading treatment or punishment of the persons with disabilities in the state institutions, the Committee is grateful for submitted data on the measures undertaken so as to improve the treatment on the persons of disabilities. The Committee regrets the fact that, in spite of the conducted investigation on the maltreatment he has been through, responsible persons for the reported had conduct towards Marko Bajcic still have not been found. We would kindly ask you to explain in detail whether the further investigation is conducted on the allegations on concrete cases relating to abuse of persons with disabilities or wider investigation on the physical restraint procedures used and general treatment of patients in the institutions, as well as to submit data on the results on conducted investigations and recommendations, if any, sent to the competent institutions. The Committee welcomes submitted information on the physical restraint procedures. We would kindly ask you to explain in detail whether the information on every usage of physical restraint procedures against persons with disabilities is entered into a patient's medical record.

+4122 839 33 59

As for the additional question whether further investigations are conducted owing to the allegations of the concrete cases of the abuse of persons with disabilities, we would like to inform you that, in accordance with its competences, defined under the Law on Ministries and the Regulatory Act on the Internal Organization of the Ministries, special service of the Ministry of Labour and Social Policy, Department for Inspection Surveillance in Social Protection, performs the controls of the lawfulness and the adequacy in the treatment of employees relating to organizing protection and support to persons with disabilities placed in the social protection institutions.

Inspection in the social protection institutions looking after persons with invalidities (children and youth, adults and elderly persons) are performed regularly in accordance with the yearly and monthly inspection plan, as well as relating to all reports on prospective abuse, maltreatment and neglect of beneficiary, i.e. in all incidental situations with the participation of persons with disabilities placed in social protection institutions.

The Ministry of Labour and Social Policy, with the aim of preventive acting and preventing prospective inhuman treatment, abuse or torture in the social protection institutions has submitted the Special Protocol on the Protection of Children against Abuse and Neglect to all social protection institutions. Therefore, they are obliged to act in accordance with it in all cases with the elements of inhuman treatment, abuse or torture against children placed in said the institutions. This protocol defines the formation of internal team for the protection of children against abuse and neglect, as well as the formation of the external team. The institution is also obliged to report all types of incidents with children as victims to the Ministry of Labour and Social Policy at the latest within 24 hours. It also has to draw up an internal plan and define internal procedures for acting in those situations (Instruction No. 560-03-402/2011-20 dated 12 July 2011). This also refers to all other social protection institutions for the placement of beneficiaries in the Republic of Serbia. The information is collected and registered within the services of republic and provincial inspection for social protection and it is estimated promptly whether the violation of the rights of beneficiaries or the level of vulnerability is that high so that it requires urgent intervention of the inspection.

As for the physical restraint of beneficiaries, as it has been already explained in the former report of the Ministry of Labour and Social Policy, those measures are implemented solely in exceptional situations, presenting the last resort aiming at the prevention of immediate or threatening harm to a beneficiary or other beneficiaries. All the institutions have protocols on acting in these situations, the procedure is supervised by the medical worker, its duration is limited and it has to be recorded in the patient's medical record existing for each beneficiary. However, this exceptional measure has also to be recorded in the list for the monitoring of the activities relating to general protection of beneficiaries existing in the dossier of the beneficiary.

Tie-up of patients deprived of freedom is performed only at the request of the psychiatrist in case when this is the last resort for preventing self-abuse or attacking another person. The Regulatory Act on the measures for keeping order and safety in the institutions for the

+4122 839 33 59

execution of penal sanctions defines the terms, manner of implementation and control of the said measure. Information on every usage of physical restraint procedures of the persons with disabilities deprived of freedom is recorded in the patient's medical record. The reasons, date, the time of the start and the completion of the execution of the said measure, as well as the name of the psychiatrist or neuropsychiatric proposing its execution are recorded in the special register. As for the case of Marko Bajcic, it has been confirmed that the injuries referred to in the report could not be inflicted in the period during which he was placed in the Special Prison Hospital in Belgrade (from 22 January to 16 March 2007), owing to the data stated in the records and the discharge note from this institution, having been maintained regularly, as well as owing to the time having passed from the discharge from the hospital to the moment when the injuries were recorded.