

**SECOND AND THIRD COMBINED PERIODIC
REPORTS OF THE FORMER YUGOSLAV REPUBLIC
OF MACEDONIA ON THE IMPLEMENTATION OF
THE CONVENTION AGAINST TORTURE AND
OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT:**

**STATEMENT BY THE INTERNATIONAL
COMMISSION ON MISSING PERSONS**

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Second and Third Combined Periodic Reports of the Former Yugoslav Republic of Macedonia on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Statement by the International Commission on Missing Persons

1. Enforced disappearances and other crimes related to missing persons infringe upon a range of human rights embodied in the Universal Declaration of Human Rights and set out in the International Covenant on Civil and Political Rights (arts. 2, 6 and 7) as well as regional instruments, including the European Convention on Human Rights. Such disappearances have severe consequences not only for the victims of these crimes, but also their relatives and friends – consequences that may involve violations of civil, cultural, economic, political, and social rights and the rights of the child.
2. As the Committee is well aware, Article 1 of the CAT defines torture as “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*”
3. The International Commission on Missing Persons (ICMP) would submit that, under this definition of torture, not only the missing person, but also the families of the missing persons, could be regarded as subject to violations of Article 1. The constant state of uncertainty, doubt and apprehension over a period of time, combined with a lack of response from authorities of the whereabouts of the missing person, can cause severe mental pain and suffering, and has been found to do so by the European Court of Human Rights.¹
4. Although there were only 22² known cases of disappearances during the period of the 2001 crisis, the fate of the missing had proven to be an impediment to building a viable political process through the implementation of the Ohrid Agreement and an obstacle to reconciliation.
5. In July 2002, the late President of Macedonia, Boris Trajkovski, and the European Union Special Representative in Skopje invited the International Commission on Missing Persons (ICMP) to contribute to the process of determining the fate and whereabouts of persons missing as a result of the 2001 crisis in the Former Yugoslav Republic of Macedonia. It was further requested that ICMP conduct such work in light of the findings of the Commission on Kidnapped and Other Missing Persons (CKMP), which had conducted independent investigations, culminating in two reports, one in February 2002 and one in July 2002. However, without executive power, the CKMP was limited in its ability to go further.
6. Accepting President Trajkovski’s invitation, ICMP commenced work in Skopje in November 2002.
7. With the assistance of ICMP, the Government legally identified nine of the 22 persons between November 2002 and January 2005. Blood reference samples have been collected from all families of the missing.
8. Despite repeated assurances of its continued commitment, both before and after the change in government following elections, no further identifications, nor exhumations of clandestine graves, have occurred since January 2005. Thirteen individuals remain unaccounted for.

¹ See e.g. ECHR *Kurt v. Turkey*, ECHR *Cicek v. Turkey*, ECHR *Orhan v. Turkey*, ECHR *Ipek v. Turkey*.

² The List of Issues from the Committee refers to 20 missing persons, which was the number addressed by the CKMP; however, ICMP includes in the numbers an additional two persons (one ethnic Albanian, one ethnic Macedonian) listed with the International Committee of the Red Cross. See *infra* paragraph 16.

9. Article 12 requires prompt and impartial investigations “*wherever there is reasonable ground to believe that an act of torture has been committed*”. Thus, the State Party should be bound to conduct impartial investigations into the events of torture. To date, this has not been conducted in a full and non-discriminatory manner. It is incumbent upon the State Party to investigate the disappearance of the thirteen persons for whom there is still no determination of fate or whereabouts.

BACKGROUND

10. The post-crisis political situation in Macedonia was complex, and the issue of disappeared persons was a contributing factor to that complexity, particularly given that high-level persons within the crisis-era Ministry of Interior and similarly high-level persons in the NLA were alleged to have been involved in at least some of the disappearances.
11. Family members representing missing ethnic Macedonians camped out in the Parliament building, where they accosted members of Parliament, as well as representatives of international organizations. In addition, the families often blocked entrances to, *inter alia*, the OSCE and EU offices in Skopje.
12. Contributing to the complexity of the situation, members of the families of both ethnic Albanian and ethnic Macedonian missing persons expressed strong concerns regarding political manipulation of the issue. In addition, many ethnic Albanian families were fearful of reporting cases of disappearances due to the perceived repressive environment enforced by the authorities at the time.
13. Of the reported twenty-two cases of missing persons, twenty-one are Macedonian citizens, of whom fourteen are ethnic Macedonians and seven are ethnic Albanians.³ One is a citizen of Bulgaria. Most of the individuals disappeared around the time of the signing of the Ohrid Agreement in 2001. One of the reasons the issue of the missing was so politicized is that persons at high levels of the crisis-era Government and the former National Liberation Army (NLA)⁴ were allegedly implicated in some of the disappearances.
14. The issue reached a critical stage following the discovery of an alleged “mass grave” in late October 2001. On November 11, the then Minister of Interior Ljube Boskovski⁵ deployed 150-200 police, including special forces, in armored vehicles to secure the site which was in a predominantly ethnic Albanian area near the city of Tetovo. That night three ethnic Macedonian policemen were killed during an exchange of gunfire in the area of the site. Four sets of mortal remains were located at the site. Despite efforts of the Government, the families of the missing ethnic Macedonians continually refused to submit to DNA testing of the remains, claiming that their relatives were alive.
15. Following an initiative of the Swedish Government through the EU, in November 2001, a decision was reached between the Macedonian President Boris Trajkovski and the EU to establish the CKMP. The CKMP was given an initial six-month mandate, ending on June 30, 2002, to solve the cases of “20 persons reported as kidnapped or missing in the course of the crisis in 2001.”
16. On July 8, 2002, the CKMP submitted its second report. Following investigations into the 20 cases of disappearances, the report stated that the CKMP was unable to solve a single case. In addition, the report asserted that individuals within the former NLA and others within the Macedonian security and police forces had information regarding certain cases of disappearances. After the release of the report

³ The terms “ethnic Macedonian” and “ethnic Albanian” are commonly used to differentiate between the two major communities in the country.

⁴ The NLA were the ‘rebel’ forces composed of ethnic Albanians.

⁵ Mr. Boskovski was indicted by the ICTY and was transferred by the authorities of the Republic of Croatia to The Hague to stand trial. The indictment may be seen online at <http://www.un.org/icty/indictment/english/bos-ii050309e.htm>

by the CKMP in July 2002, there were daily roadblocks, accompanied by occasional outbreaks of violence, on the road between Tetovo and the capital Skopje.

17. This tense situation was compounded by the fact that the elections, originally planned for January 2002, were not held until September 2002. The outcome of the elections was a new coalition Government composed of the Social Democrats (SDSM) and the Democratic Union for Integration (DUI). The latter was the political incarnation of much of the former NLA.
18. The list of 20 persons sought by the CKMP was the result of an agreement between its three members. ICMP is aware of 22 cases, all reported to the International Committee of the Red Cross (ICRC) and, over time, the Ministry of Interior.

ICMP ACTIVITIES

19. ICMP opened its office in Skopje in November 2002. Its terms of engagement mandated ICMP to work with local parties towards the establishment of a viable process for addressing the cases of disappearances, the goal being the creation of a national process including both parties to the crisis. The process was to require an ad hoc commission that would report directly to the Government and would also be responsible for working directly with the national judicial system. The aim was to ensure that the state authorities would become fully accountable and responsible for resolving these cases.
20. ICMP's immediate objectives were three-fold:
 - 1) to begin the process of work with the national political players;
 - 2) to ensure public involvement in the process through incorporating the families of the missing; and
 - 3) to provide technical assistance to the authorities on an as-needed basis.
16. On 31 March 2003 the Government adopted the *Information on the need to establish a Government-Parliamentary Commission* and forwarded it to the Parliament. Due to various conflicting interests in Parliament, this initiative was approved by Parliament in name only, with no members ever appointed.
17. ICMP invited representatives of both the ethnic Albanian and ethnic Macedonian families, as well as representatives of the Government to its *Seventh Regional Conference on Missing Persons Issues in the former Yugoslavia* in Sarajevo, held on 16 – 19 May 2003, exposing them to the approaches used by other countries in the region regarding this issue.
18. Between the 16 and 18 of May 2003, an “exhumation” was carried out on three sites in the area of Tetovo: at Neprosteno, Dzepciste and Dobroste (including the use of cadaver dogs from Germany). ICMP provided both monitors and a forensic archeologist. No remains were found. A formal assessment report of the three days was presented by ICMP to the Government (Minister of Interior) regarding technical shortcomings observed and recommendations for future activities.
19. On 18 July 2003 ICMP organized the *Conference on the Right to Know – Determining the Fate and Whereabouts of the Arrested, Kidnapped and Otherwise Missing in Macedonia*, which was the first opportunity for all concerned parties to jointly discuss the issue of missing persons as well as ways to move the process forward. The concept was based upon a resolution of the full Macedonian delegation to the *Seventh Regional Conference on Missing Persons Issues in the former Yugoslavia*, and the list of invitees, as well as the agenda, was decided upon jointly by representatives of both the ethnic Albanian

and ethnic Macedonian families. The Minister of Interior and numerous other Governmental and Parliamentary representatives were present.⁶

20. On the basis of an instruction issued by ICTY to the Government, on 2 December 2003 samples from the bones exhumed from the Neprosteno/Treboš site in November 2001 were transferred to ICMP for DNA testing.⁷
21. As the Government-Parliamentary Commission never *de facto* functioned nor were any members appointed to it, ICMP continued support for the creation of a coordination body for the issue of missing persons. In December 2003 the Government appointed two *Coordinators for the issue of the missing*, to work in conjunction with ICMP and relevant State authorities: Mr. Subhi Jakupi of the Ministry of Justice; and Dr. Mihail Levenski of the Ministry of Health.
22. In the first few months of 2004, ICMP Skopje concentrated on two primary issues. The first was working with families of the missing with the goal of collecting blood samples for comparative DNA testing with, initially, the mortal remains already exhumed in November 2001. The second was to work with the *Coordinators for the issue of the missing*, appointed by the Government in December 2003, to develop a sustainable and functional mechanism to close cases of the missing.
23. In support of Government efforts to identify the four exhumed remains, ICMP's DNA blood collection teams and DNA experts gave presentations for the families of the missing on the process of blood collection and DNA analysis. In April 2004, the families of all missing ethnic Macedonians living in-country agreed to donate blood samples to be tested by both ICMP and the State, initially against the four sets of remains which had been recovered in November 2001. One month later, three legal identifications were made, based on these DNA tests, by the Tetovo Investigative Judge. On 9 June the fourth identification relevant to the November 2001 remains was made, having been delayed by the lack of sufficiently close living relatives from whom blood could be collected.⁸
24. In May 2004 ICMP, along with ICTY, EU Proxima,⁹ and other international organizations, received information from the Ministry of Interior of an anonymous letter giving site locations relevant to six other missing persons. From 17 to 19 May, a recovery operation was conducted on the site "Jama" between Mavrovo and Debar. Unlike the previous unsuccessful exhumation in the Tetovo area in May 2003, this operation was carried out with sufficient planning amongst the Ministry of Interior, the Kicevo Court and Public Prosecutor, Forensics Institute, EU Proxima, and ICMP. From a legal and technical standpoint, it was well-organized; further, families and journalists were provided sufficient information and access as to prevent the "circus" atmosphere which surrounded previous endeavors. Unofficial speculation nonetheless reached the press. That notwithstanding, interaction with families of the missing remained positive, and on 3 June relatives of four of the seven missing ethnic Albanians, and the one missing Bulgarian, gave blood for DNA testing against the four remains recovered at "Jama".

⁶ The conclusions adopted by the conference were: (1) The Government/Parliamentary Commission which was approved by Parliament on 24 June should become functional as soon as possible. Its competencies must be defined and deadlines should be declared for appointment of its members and commencement of work. (2) The passage of a law on witness protection should be supported. (3) Reciprocity should not apply to determining the fate and whereabouts of the missing. (4) It is essential that family members share information across ethnic lines. (5) The issue of the missing should not be politicized. (6) The international community should support the implementation and functioning of the Government/Parliamentary Commission.

⁷ Due to the primacy exercised by the Tribunal over four potential cases, the original case before the Tetovo Court to which the mortal remains were attached was frozen. Thus, the Tetovo Court was prohibited from issuing further orders regarding the biological samples and it was necessary to have a request from ICTY to move the process within the legal system.

⁸ This lack of sufficiently close relatives meant that advanced DNA testing was required, which took additional time in the ICMP laboratories. ICMP results, to be issued to the State authorities, must through the review process reach a level of certainty exceeding 99%.

⁹ EU Proxima was the European Union Police Mission in Macedonia.

25. Shortly thereafter, an unsuccessful attempt was made to locate a body (indicated in the same “anonymous letter”) in Butel Cemetary in Skopje. According to the Government, the body had been initially recovered from under a bridge near the city of Veles in 2001, was then autopsied by the Forensics Institute and transferred for burial in an “NN”, or unknown, grave at the Butel Cemetary. However, the attempted recovery on 25 May 2004, under the order of an Investigative Judge of Skopje Court II, was unsuccessful, as the indicated location of the grave was proven to be incorrect. Despite opening over 10 graves containing some 14 bodies, none matched the autopsy report.¹⁰
26. Regarding this case, the ICMP, in agreement with the Forensics Institute, recommended to the judge that he issue an order to allow DNA testing against residual tissues remaining in the Forensics Institute from the original autopsy. Were such tests to indicate a match, which was considered highly likely given information known to ICMP and the Government, procedures could be initiated separately against the management of Butel Cemetary for, at a minimum, a *prima facie* case of negligence in handling mortal remains. More importantly, a legal identification could be generated. On 24 February 2005 ICMP received a request from the Forensics Institute to conduct DNA testing against the remaining residual tissue and on 16 March 2005, ICMP obtained the tissue sample and submitted it to DNA testing. Unfortunately, the DNA in the remaining tissue was too degraded to provide a DNA profile.
27. The sixth body referred to in the letter had been recovered in January 2003 under order of the Bitola Court at a site near Zli Dol/Demir Hisar. In December 2004 this sample was transferred to ICMP under the order of the Bitola Court. One month later, one more identification was made, again based on parallel DNA testing done by ICMP and the Forensics Institute.¹¹
28. In July, matches were generated for two of the remains from “Jama” and submitted to the State authorities. However, given that relatives of three of the missing ethnic Albanians had yet to give blood, the investigative judge decided to wait for full results. Although not an irrational decision, it proved to be a major delay as the remaining families were attempting to tie the issue of the missing to an unrelated issue of non-application of the Law on Amnesty to one of their other relatives (whose alleged activities would not be covered by said law). On 22 September the judge finally announced the results in his possession.
29. The publication of results created further momentum, and on 21 October the remaining ethnic Albanian families gave blood samples. Moreover, on 22 October ICMP obtained a bone sample from a site opened in Dzepeiste in March 2003, based in large part upon the “Jama” identifications and increased trust in the process. The DNA analyses of the sample did not produce a match, thus indicating that the sample could not be any of the persons for whom blood samples were collected, i.e. it was not one of the 22 disappeared persons.
30. On November 19-20, the ICMP hosted a technical working meeting in Ohrid on: *Missing Persons 2001: Recovery and ID - all aspects*, to include all the relevant state bodies which will continue to work on these cases: the Ministry of Interior, Ministry of Justice, State Forensics Institute, Public Prosecutor, Courts, and as their technical assistance was to remain in place through 2005, EU Proxima. The goal of the meeting was to solidify plans for the recovery of the remaining missing from among a number of potential sites. This proved to be the culmination of a number of bi-lateral and multi-lateral meetings with the various parties, to agree on a work plan to close the remaining cases.
31. ICMP closed its office in Skopje at the end of 2004; however, it has continued to monitor the situation and has repeatedly extended its offer of technical assistance. Despite ongoing assurances from the State Party that the issue will be addressed, no further exhumations or identifications have occurred since January 2005.

¹⁰ The body in question was missing one arm. All bodies exhumed in the cemetery had both arms.

¹¹ This identification related to the missing uncle of the former head of the NLA and current head of the DUI, Mr. Ali Ahmeti.

32. The State Party has done little to continue the process since January 2005; the operational conclusions of the November 2004 meeting were not implemented, and no additional missing persons have been identified, nor bodies exhumed.

Recommendations:

- Pursuant to Article 12, the State Party should conduct such investigations as are necessary to determine the fate and whereabouts of the thirteen remaining missing persons, including but not limited to additional activities to identify and excavate the locations of the remaining clandestine gravesites;
- To that end, an interdisciplinary approach to recovery and identification should be strengthened, using an interdisciplinary team including the Forensics Institute, the Office of the Prosecutor, the Investigative Judges, and the Ministry of Interior. The team could be headed by a representative of the Supreme Court;
- The determination of the fate and whereabouts of the missing should include proactive participation of families of the missing in the process;
- The State Party should provide a public report on the process to date.

ANNEX: TIMELINE

November 2001

The Commission on Kidnapped and Missing Persons (CKMP) was established with Ambassador Lars Norberg as Chairman. The mandate of the CKMP was to request and receive statements of concern from the families of the missing persons who would like to receive help with establishing the facts surrounding the disappearances; to collect and compile information on the missing persons from all relevant sources, including central and local authorities and officials as well as from the public; to attempt to establish the facts on the cases submitted to it on the basis of the information received; and to report its findings by mid-2002. Also during this month, the exhumation of four mortal remains was completed on a site near the villages of Neprošteno/Treboš in the Tetovo area.

February 2002

The CKMP issued its first report of findings. Ambassador Lars Wahlund succeeded Ambassador Norberg as Chairman of the CKMP.

July 2002

The CKMP issued its second and final report of findings. Then President Boris Trajkovski† invited ICMP to Macedonia.

November 2002

After acceptance of the letter of invitation by its Board, ICMP opened its office in Skopje.

January 2003

Recovery of one set of mortal remains carried out in the area of Zli Dol/Demir Hisar under the order of the Bitola Investigative Judge. The remains were transferred to the Forensics Institute for autopsy, and on July 31 an autopsy report was returned to the court.

12 March 2003

An exhumation was carried out near the road leading to Neprošteno, close to the Tetovo village of Džepčiste, under the order of the Tetovo Investigative Judge. One set of remains, consisting of a half-body, was recovered.

31 March 2003

The Government adopted the Information on the need to establish a Government-Parliamentary Commission and forwarded it to the Parliament. Due to various conflicting interests in Parliament, this initiative was approved by Parliament in name only, with no members ever appointed.

16 – 19 May 2003

ICMP held the *Seventh Regional Conference on Missing Persons Issues in the former Yugoslavia* in Sarajevo where representatives of the Government of Macedonia as well as members of the families of the missing persons attended and were exposed to the approaches used by other countries in the region regarding this issue.

16 – 18 May 2003

An “exhumation” was carried out on three sites in Neprošteno, Džepčiste and Dobrošte (including the use of cadaver dogs from Germany). ICMP monitored and provided a forensic archeologist. No remains were found. A formal assessment report of the three days was presented by ICMP to the Government (to then Minister of Interior Hari Kostov) regarding technical shortcomings observed and recommendations for future activities.

18 July 2003

ICMP organized the *Conference on the Right to Know – Determining the Fate and Whereabouts of the Arrested, Kidnapped and Otherwise Missing in Macedonia*, which was the first opportunity for all involved parties to jointly discuss the issue of missing persons as well as the ways of moving forward in the process.

2 December 2003

Bone samples exhumed from the Neprošteno/Treboš site in November 2001 were transferred to ICMP for DNA testing, on the instruction of the ICTY to the Government of Macedonia.

8 December 2003

The Government appointed two Coordinators for the issue of the missing, to work in conjunction with ICMP and relevant State authorities, one from the Ministry of Justice, and one from the Ministry of Health.

6 April 2004

After prolonged negotiations commencing with ICMP's arrival in Skopje, families of the missing ethnic Macedonians gave blood concurrently to ICMP and the Forensics Institute for DNA testing.¹²

7 May 2004

Three identifications were made based on DNA tests conducted in parallel by ICMP and the Macedonian Academy of Arts and Sciences (MANU). These identifications were related to the four mortal remains exhumed at Nepresteno/Treboš in November 2001 (Krsto GOGOVSKI, Simeon JAKIMOVSKI, and Dimitrije DIMOVSKI). Notification was given to the families by Tetovo Investigative Judge with ICMP present.

17-19 May 2004

Four mortal remains were exhumed from the site "Jama" – located between Mavrovo and Debar. This involved the recovery of four "surface remains" from a deep pit. Planning was conducted in conjunction with the Ministry of Interior, EU Proxima, Forensics Institute, ICMP, and relevant Investigative Judge and Public Prosecutor. Legal procedures were fully followed throughout the recovery operation, which were additionally conducted with appropriate levels of transparency vis-à-vis family members of the missing.

25 May 2004

Exhumation/immediate reburial of 14 bodies from Butel Cemetery in Skopje – "unknown" graves. Body searched for not located (as per autopsy the body is missing one arm and thus distinctive). Investigative Judge from Skopje Court II in charge of site.

3 June 2004

Blood collection from relatives of Islam VELIU, Ruzdhi VELIU, Sultan MEMETI, Xhelil OSMANI, and Radoslav BALEV.

9 June 2004

Final identification issued relevant to 4 mortal remains from Neprošteno/Treboš site (Vasko MIHAJLOVSKI).

22 September 2004

Legal identification of Radoslav BALEV and Islam VELIU issued by Kičevo Investigative Judge.

21 October 2004

Blood collected from relatives of Ibrahim and Zeqirja VELIU and Hajredin HALIMI. The VELIU cases were presumptive cases for the final remains recovered at "Jama".

¹² Except for the relatives of Boshko and Slavko DIMITRIEVSKI, *see supra*.

22 October 2004

Under direction from the Tetovo Investigative Judge, the Forensics Institute transferred bone sample from mortal remains (1/2 body) exhumed at the “Džepčiste” location in March 2003.

18 – 19 November 2004

Working Meeting on recovery and identification of the missing between ICMP and representatives of the Ministries of Interior and Justice, the State Public Prosecutor, the Supreme Court, the Forensics Institute, and EU Proxima (police mission).

01 December 2004

Under direction from Bitola Investigative Judge, the Forensics Institute transferred bone samples from mortal remains exhumed on 15.01.2003 in Zeleznec/Demir Hisar.

31 December 2004

ICMP closes Skopje Office, with plan for continued work on the issue by the normal legal institutions in the Republic, as outlined in the conclusions of the November working meeting.

17 January 2005

ICMP issued DNA match report for the Zeleznec/Demir Hisar bone samples followed up by legal identification issued by Bitola Investigative Judge Slobodanka BAKOVSKA.

30 May 2005

Following a lack of activity after the November 2004 working meeting, ICMP wrote to the Supreme Court (Doc. No. 079-040/2005) reminding them of the conclusions, including the possible expansion of the Coordination Body into a strategic inter-disciplinary team for the future excavations, headed by a representative appointed by the Supreme Court, and to additionally include representatives from the other relevant bodies such as the Ministry of Interior, Ministry of Justice, State Prosecutors’ Office, the Courts, and the Forensics Institute. This had previously been agreed with the Court at a previous meeting.

9 – 13 November 2005

The Government Coordinators on the Issue of Missing Persons and representatives of families of the missing participated in the ICMP’s 8th Regional Conference on Missing Persons, held in Novi Sad, Serbia and Montenegro.

27 April 2006

ICMP sent letters to the President and the Prime Minister (Doc. No. 077-040/2006) requesting that the Government reinvigorate the process of locating and identifying the missing from the 2001 crisis. No response was received.

8 September 2006

ICMP sent letters to the new Prime Minister and Minister of Interior (Doc. Nos. 155-040/2006 and 156-040/2006) requesting that the new Government reinvigorate the process of locating and identifying the missing from the 2001 crisis. No response was received.

9 September 2006

ICMP transferred blinded DNA blood reference profiles to the Forensics Institute. These profiles were generated from blood collected from individuals residing in the United States who have missing relatives from the 2001 crisis. This completed blood collection relevant to all 22 missing persons.

12 December 2006

ICMP met with the Director of the Security and Counterintelligence Service in the Ministry of Interior, who reiterated the commitment of the Government to ensure that the remaining 13 cases, including eight persons from the Tetovo area and one each from Skopje, Kumanovo, Gostivar, Struga, and

Mavrovo. A follow-up letter (233-040/2006) was sent by ICMP to the Director and copied to the Minister. No response was received.