

Legal Aspects of the Rehabilitation of Torture Victims

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Abstract

This paper focuses on international standards and national regulations defining the concept of torture, as well as on procedures before international and domestic bodies that serve to provide redress for torture victims. The first part deals primarily with the definition of torture and related issues of prohibition of torture, ill treatment and other inhuman and degrading treatment or punishment, in the manner defined by international standards. Second part of the paper explains the regulations of the State Union of Serbia and Montenegro that define torture, as well as the procedure for legal protection and redress for torture victims. Pursuant to national regulations, torture victims have the right to protection through criminal procedure and civil procedure (proceedings for compensation of damages). The manner of exercising this protection is clarified through case studies. Besides legal protection before national bodies, torture victims have the right to legal protection before international bodies and courts, primarily before the UN Committee against Torture and the European Court of Human Rights. We have also emphasised the necessity to harmonise national legislation in the field of human rights with international standards.

INTRODUCTION

Prior to defining the concept of torture according to current standards we should emphasise that the right to life, right to freedom, as well as the prohibition of torture and inhuman or degrading treatment, are inseparably linked and interdependent, representing a set of basic and inalienable human rights. Only if taken together, their importance and significance can be fully understood.

Although other human rights are also personal, the above-mentioned ones pertain directly to one's physical integrity in its strictest sense and represent the basic expression of personal freedom.

All international legal acts on the protection of human rights, from the Habeas Corpus Act of 1679 to the UN Universal Declaration, International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and others, guarantee personal freedom as the inherent human right and prohibit arbitrary arrest, detention and expulsion, as well as any form of torture and other inhuman and degrading treatment.

The concept of the prohibition of torture has existed since the Habeas Corpus Act, which was first to establish a set of guarantees aimed at protection of the personal freedom of individual in proceedings before the court and the police. One of the fundamental ideas is contained in the protection of person deprived of liberty from ill-treatment and extortion of statement.

Provisions of the Habeas Corpus Act have been elaborated until the present day through the Universal Declaration on Human Rights, International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights, Convention against Torture and Other Cruel or Degrading Treatment or Punishment and other related international documents.

RELEVANT INTERNATIONAL STANDARDS

UNIVERSAL DECLARATION ON HUMAN RIGHTS (ARTICLE 5)¹

"No one shall be subjected to torture, or to other cruel, inhuman or degrading treatment or punishment."

¹ The Declaration is one of the non-treaty standards, which, though not legally binding, have enough power to compel the authorities to respect human rights, since they are a result of long negotiations and accepted by political bodies such as the UN General Assembly.

UN CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTICLE 1)²

"Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ARTICLE 7)³

"No one shall be exposed to any torture, cruel, inhuman or humiliating one's dignity treatment or punishment. Particularly, no individual should undergo medical or scientific experiments without his free-will consent."

EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (ARTICLE 3)⁴

"No one may be subjected to torture, or, inhuman or degrading treatment or punishment."

UN CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

This Convention resulted from the need of the states parties to improve the effectiveness of their global effort to combat torture and other cruel, inhuman or degrading treatment or punishment, in accordance with the principles proclaimed in the UN Charter.

2 Adopted and open for signatures, ratification and accession by the Resolution of UN General Assembly no. 3946 of 10th December 1984. It entered into force on 26th June 1987. Yugoslavia signed and ratified this Convention. It is published in the Official Gazette no. 9/91.

3 It is adopted at the UN General Assembly of 1966, entering into force in 1976. International agreements (pacts) are legally binding for signatory states.

4 Adopted in Rome on 4th November 1950.

Article 1 of the Convention defines the concept of "torture". This is the most precise definition of torture, clearly elaborating all elements of the offence, as well as specifying what constitutes the act of torture and who the perpetrators may be.

The Convention provides a wide interpretation of torture, binding states parties that have signed and ratified the Convention to incorporate the concept of "torture" into their national legislations. The Convention, however, does not prevent the states from including into their national legislations more far-reaching provisions.

The particular significance and contribution of the Convention lie not only in the fact that it comprehensively defines the concept of torture, but also in the fact that it binds States Parties to always adhere to the provisions on prohibition of torture, which may be not be derogated under any circumstances, including the state of war, threat or war, internal political instability or the state of emergency. Therefore, this right is absolute and can never be derogated.

States parties to this Convention are bound to incriminate all acts of torture in the national criminal law. The states undertake to include instructions and information with regard to the prohibition of torture in all training of government agencies involved in guarding, interrogation or treatment of individuals in custody, detention or imprisonment, as well as to supervise the manner in which these instructions are implemented. All public officials and law enforcement agents are strictly prohibited to apply, encourage or tolerate acts of torture or other forms of cruel, inhuman or degrading treatment or punishment against persons deprived of liberty. This prohibition pertains to all acts by which physical or psychological pain or suffering is inflicted upon the victim. Whenever reasonable suspicion exists that an act of torture has been committed in the territory under their jurisdiction, states are obliged to conduct a prompt and impartial investigation and ensure adequate legal protection for the victim.

As shown above, the Convention gives strict guidelines and recommendations to the states parties, which they are bound to enforce. Nonetheless, these guidelines are frequently violated by state agencies. In order to ensure effective protection of the torture victims, the Committee against Torture was established (CAT) pursuant to Article 17 of the Convention; this body will be discussed in more detail in the Section dealing with international bodies.

EUROPEAN INSTRUMENTS FOR THE PROTECTION OF VICTIMS OF TORTURE

There are many European instruments regulating the field of human rights. Here the priority will be given to the European Convention for the Protection of Human Rights and Fundamental Freedoms which in Article 3 prohibits any form of torture, inhuman or degrading treatment, as well as to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which has established the body aimed at protecting victims of torture.

EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

As already mentioned, Article 3 of this Convention contains a provision on the prohibition of torture. The fact that the provision on the prohibition of torture immediately follows the provision on the right to life speaks of its significance and value. The significance of this right is further emphasised by the fact that the European Convention prescribes conditions under which human rights may be restricted, while the prohibition of torture is not subject to any restrictions. The Convention also establishes the European Court of Human Rights, as an instrument for protection of victims of human rights violations, in particular the victims of torture.

EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT⁵

The Convention is the response to the need for more effective international measures to protect persons deprived of their liberty, given that they are the most likely victims of torture. Therefore, the Convention established the European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: the Committee)⁶

Unlike the CAT (UN Committee against Torture), the Committee examines the treatment of persons deprived of their liberty by way of preventive extra-judicial mechanisms with the aim to strengthen, if necessary, the protection of such persons against torture and inhuman or degrading treatment or punishment.

The Committee is not a judicial body, which means that it does not adjudicate on violations of the relevant international instruments. This body carries out fact finding visits to states parties to the Convention and, if necessary, issues recommendations aimed at improving the protection of persons deprived of their liberty against torture, inhuman or degrading treatment or punishment. The Committee consists of persons of high moral character, known for their competence in the field of human rights, this not necessarily implying they must be jurists. As already mentioned, the members of the Committee carry out visits to the states parties and are obliged to produce a report on the facts found during the visit, taking into account any observations submitted by the state concerned. Based on the assessment of facts established during the visit, the Committee decides whether it is necessary to issue a recommendation, which does not have a binding character. The sources of law by which the Committee is governed in its work are precedents of the European Court of Human Rights and the Commission on Human Rights.

⁵ Adopted on 26th June 1987, open for signatures by the member States of the Council of Europe since 26th November 1987.

⁶ Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Finally, it is worth mentioning that the recommendations of the Committee are aimed primarily towards prevention of torture rather than the application of legal instruments to the current situation.

NATIONAL LEGISLATION (RELEVANT REGULATIONS)

CONSTITUTION OF THE REPUBLIC OF SERBIA (ARTICLE 26. ITEM 2)

"No one may be subjected to torture, or degrading treatment or punishment."

CHARTER ON HUMAN AND MINORITY RIGHTS (ARTICLE 12. ITEM 2)

"No one may be subjected to torture, or inhuman or degrading treatment or punishment."

CRIMINAL PROCEDURE CODE (ARTICLE 148. ITEM 1)

"Personality and dignity of the detainee shall not be abused during detention."

Our national legal system contains many provisions on the prohibition of torture, inhuman or degrading treatment or punishment. Serbia and Montenegro is a state party to the UN Convention against Torture and its obligation under the Convention was to include the criminal offence of torture into its legislation. Unfortunately, the new Serbian Criminal Code (CC) has not established the specific offence of torture either, but only elaborated the existing criminal offences partially encompassing torture in the way it is defined in the international standards. This was one of the key objections to the FRY in the CAT report.

Pursuant to the Serbian Criminal Code the following criminal offences include acts qualifying as torture, ill-treatment or degrading treatment:

Extraction of statement (Article 65 CC)

(St.1) "An on-duty law enforcement official, who in the performance of duty uses force, threat or any other proscribed means or methods with intention to extract a confession or any other statement from an accused, witness, expert witness or other person, shall be punished by term of imprisonment of 3 months to 5 years. "

(St.2) "If the extraction of confession or other statement is accompanied with extreme force or violence or consequences of serious nature ensued from such force for the accused in the criminal proceedings, the perpetrator shall be punished by term of imprisonment of minimum one year. "

Torture perpetrated by persons acting in official capacity (Article 66.)

"An official, who in the performance of duty abuses another insults him or generally treats him in a manner that violates his human dignity, shall be punished by term of imprisonment of 3 months to 3 years."

Unlawful deprivation of liberty (Article 63)

(Paragraph 4) "If the unlawful deprivation of liberty has exceeded 30 days or was carried out in a particularly cruel manner or if serious health problems or other severe consequences ensued for the person unlawfully deprived of liberty, the perpetrator shall be punished by term of imprisonment of 1 to 8 years."

The said offences are frequently accompanied with the offence of inflicting minor or severe bodily harm, depending on the type of consequences ensued from the above criminal offences.

The deficiency in existing legislation, apart from its failure to specifically incriminate torture, is an overly lenient penal policy for the perpetrators of these criminal offences, persons acting in official capacity responsible for inflicting bodily harm to the injured party through abuse of their authority. The statute prescribes exceptionally lenient sanctions, while the courts usually pronounce minimal or even parole sentences. The criminal offence of torture should be incorporated in the legislation in order to raise the awareness of public officials, particularly officers of the Ministry of the Interior, that their right to carry arms and use force shall be understood as the right and obligation carrying specific weight, which they may exercise only in conformity with the law and in the manner stipulated by the statute.

According to the public opinion surveys, people generally tend to believe that the police are allowed to use force when a person is guilty. This is certainly a wrong attitude. The police are not authorised to punish; only the courts are empowered to adjudicate on guilt or innocence and decide on adequate sanctions prescribed by statute if the guilt of a person is established.

Since 2000, significant changes have been introduced in the national legislation with respect to human rights, including the adoption of the Charter on Human and Minority Rights. New provisions and regulations are important for the improvement of current

situation, but their real value could be assessed only once they have been applied in practice and cease to be mere declarations.

PROCEDURE BEFORE NATIONAL BODIES

Under the national legal system, victims of torture and other inhuman or degrading treatment have recourse to two types of procedures for the protection of their rights: criminal and civil procedure. They do not exclude each other and it is possible to conduct both procedures, given that one ensures moral redress through establishing the responsibility of the perpetrator, while the other provides material compensation through indemnity for the sustained pain or injury.

CRIMINAL PROCEDURE

The Criminal Procedure Code (CPC) prescribes the manner and procedure for the protection against human rights violations. An individual alleging that damage has been inflicted upon him/her by action of state agencies, in our case the victim of torture or other forms of degrading or similar treatment (hereinafter: "the injured party"), files a criminal charges complaint with the competent state prosecutor.⁷ The plaintiff may file the complaint either personally or through a legal counsel or a lawyer from human rights NGO.

There is no standard prescribed form of the complaint, but it should contain the detailed information on persons (public officials who participated in the act of torture), a description of the event, time and place where it occurred and, if possible, the legal qualification of the offence. Upon receipt of the criminal complaint the state prosecutor is obligated to examine it. He shall reject the complaint if the stated offence is not prosecuted *ex officio*, if it exceeds the statute of limitation or is subject to amnesty⁸. If none of these grounds for dismissal apply, the state prosecutor will determine the veracity of allegations made in the complaint. Should the veracity of the allegations not be established or if there are insufficient grounds for prosecution, the state prosecutor may use other official bodies to gather the required information. If the complaint is filed against an unknown perpetrator, the prosecutor may initiate an investigation for the purpose of determining the identity of the perpetrator.

When the complaint contains all necessary information and the prosecutor concludes that reasonable doubt exists that the criminal offence has been committed, he shall file a motion to the competent court for conducting an investigation. Upon completion of the investigation, proceedings before the court are conducted based on the indictment by the state prosecutor and the complaint filed by the injured party as plaintiff. Since the

⁷ Article 224 of the CPC

⁸ Article 235 of the CPC

criminal offences that - pursuant to national legislation - substitute for the criminal offence of torture are prosecuted *ex officio*, the competent prosecutor⁹ in these cases is the state prosecutor. However, should the prosecutor find that there are no grounds for instituting or continuing criminal proceedings, the case can be taken forward by the injured party as the plaintiff. In the latter case the proceedings are carried out in the same manner as when the prosecution is represented by the state prosecutor.

The indictment is submitted to the court, which upon establishing its conformity with the requirements serves it on the accused for comments and response. The accused may lodge an appeal against the indictment within 8 days and the judicial panel of the criminal court subsequently rules on the admissibility of the appeal. If the panel should dismiss the appeal, the court schedules the main hearing.

At the main hearing the court reviews all evidence presented by the state prosecutor, the injured party and the accused. It also hears testimonies of witnesses who have information about the offence or have been present when the offence was committed. If the statements of the accused and the injured party are contradictory, the parties are confronted directly, so that the court could establish where to place its trust.

Upon completion of the main hearing, the court pronounces and publicly proclaims its verdict. The state prosecutor and the accused have the right to appeal against the verdict, while the injured party can only appeal against the part related to indemnity.

The right to appeal is a regular legal remedy lodged directly with a higher court, which subsequently decides on its admissibility. The appeal has to be filed by an authorised person within the given time-period in order to be considered by the second instance court. The appeal is lodged with the second instance court through the court of first instance. When deciding on the appeal, the court of second instance may adopt the appeal and dismiss or revise the decision of the first instance court, or may dismiss the appeal and confirm the decision of the first instance court. Should the court revise or confirm the decision of the first instance court, it becomes final and no regular legal remedy may be used against it.

CIVIL PROCEDURE

As another form of redress for victims, the legal system in Serbia and Montenegro provides the possibility to initiate and conduct legal proceedings for indemnity.

An individual may, alone or through a legal representative file a claim for compensation of damages with the competent municipal court. Given that the perpetrators of torture related offences are members of the Serbian state agencies, the claim for

⁹ Article 19 of the CPC

indemnity is to be filed against the Republic of Serbia. The plaintiff may request several forms of compensation for non-material damages sustained.¹⁰

The first form is the compensation for non-material damages for emotional and mental pain suffered due to violation of liberty and integrity of person. As stated in the introduction, the right to inviolability of physical and mental integrity of person is one of the fundamental individual rights, on the basis of which this form of compensation is sought.

Second form of non-material damages is the compensation for the fear experienced, which includes fear experienced by the victim during the act of torture (primary fear) and the secondary fear that develops in the victim subsequently (in contacts with persons wearing a uniform, when watching films or broadcasts with elements of violence). Since the court does not have the necessary professional knowledge to determine the actual amount of the compensation, in this part of the proceedings it involves specialists (court appointed experts) in the field of psychiatry who issue a medical certificate on the length and intensity of the fear and the consequences of such fear for the victim.

The third form of damages is the compensation for physical pain endured and it may be sought if the victim had sustained physical injuries during torture. If the injuries have caused permanent damage to the physical integrity of the victim, compensation for the diminished life capacity can also be sought. The assessment of the severity of injuries and the degree to which life capacity is diminished is also done by court experts.

Upon receipt of the claim, the competent court determines whether it is in conformity with requirements, and if so, serves it on the opposite party for response and schedules a hearing. During the proceedings, each party proposes evidence for its case, and upon examining such evidence, the court closes the main hearing and sends a written notification on its decision to the parties.

An appeal may be lodged against this decision by the dissatisfied party with the competent higher court through the first instance court. The higher court subsequently determines whether the appeal is founded or not. Once the second instance court has either confirmed or revised the first instance decision it becomes final and no further appeals may be lodged against it.

The following case study will show how these two different procedures are applied in practice.

THE CASE OF "MARKO NIKOLIC"¹¹

In November 2000, Marko Nikolic (19) was summoned by the Internal Affairs body to report on 19th November 2000 to the Pancevo police station for an informative interview.¹²

¹⁰ The forms of compensation for damage are regulated by the Code of Obligations

¹¹ The names and place have been changed

The same summons was served on Marko's friend, Goran Tadic (20). On 17th November 2000 they went together to the police station and reported to the reception office. A few minutes later an inspector came in without introducing himself and called Goran Tadic for an interview in an office located on the first floor of the police station. The interview lasted for about ten minutes, after which Goran was released, and Marko Nikolic was called in. There were two inspectors in the office who introduced themselves to Marko by their nicknames Neša and Gaga. They explained they have information that he had participated in a theft and resale of a mobile telephone and told him that it would be better if he should confess immediately or otherwise they would find a way to get the confession out of him sooner or later. Marko stated he knew nothing about a mobile telephone and that it probably was some mistake. Then the inspectors began to take turns insulting him on ethnic grounds (Marko comes from a mixed Serbian-Muslim marriage), cursing his Muslim mother and constantly coercing him into writing a statement confessing that he had stolen the mobile telephone. Since he did not do it, inspector Gaga slapped him across the face throwing him on the floor from the chair he had been sitting on. Meanwhile, inspector Neša kicked him repeatedly. They continued threatening him that he was only about to see what a real beating was when they take him into custody where other prisoners would sexually abuse him, again insisting that he should confess to the criminal offence. Then they hit him with the police truncheon on the hands. This insulting and ill-treatment lasted for about 2 hours, after which Marko Nikolic decided to write the statement as requested by the inspectors. After the statement was written, the inspectors let him go. Throughout Marko's interrogation, his friend Goran Tadic was sitting in the corridor in front of the office and heard the blows and Marko's cries. A few other persons who happened to be in the police station that day also heard the noise from the office. When he left the office Marko had a large bruise on his face, a bump on the head and his hands were swollen and red. As his friend suggested, Marko immediately went to the hospital for a medical examination, where his injuries were diagnosed.

A few days later, Marko went to a non-governmental organisation for assistance. The NGO lawyer immediately filed criminal charges with the competent prosecutor, as well as initiated civil proceedings for indemnity.

Criminal proceedings

After the criminal charges were filed and the investigation conducted determining the identity of the inspectors (since Marko only knew their nicknames) the public prosecutor found that there were grounds for prosecution and raised an indictment against inspectors Gaga and Neša for the criminal offence of extracting a confession by force, pursuant to Article 65 of the Serbian CC (Serbian Criminal Code). The court scheduled the main hearing at which the injured party and witnesses were heard, as well as the accused inspectors, who denied the offence. Medical report on the injuries sustained by Marko

12 The bodies of the Ministry of Internal Affairs have the right to collect information necessary for detecting criminal offences and identifying their perpetrators by means of informative interviews with citizens.

Nikolic was read out and a medical expert also testified to the severity of injuries and the manner in which they could have been inflicted. After the main hearing the court rendered its decision, finding inspectors Neša and Gaga guilty and sentencing them to 10 months of imprisonment and 2 years probation. Following the appeals procedure, this decision became final.

Civil procedure

Though a NGO lawyer Marko Nikolic filed a claim against the Republic of Serbia for compensation of non-material damages for the emotional distress caused by violation of his right to liberty and security of person, requesting the amount of 400.000,00 dinars. After the probate proceedings, in June 2001, the court rendered a decision ordering the Republic of Serbia to pay Marko Nikolic the sum of 60.000,00 in compensation for non-material damages. The decision is final.

Conclusion

Although the court has established the responsibility of the state officials beyond doubt in criminal as well as in civil proceedings, it was very lenient towards them in both cases. Such action of the court in fact allows state agencies to violate the rights of citizens with insignificant consequences. CRTV IAN Legal Department believes that a stricter penal policy and higher amounts of compensation awarded would compel the state agencies to respect the rights of all citizens, all the more so if they know that their violation would entail prison sentences and high amounts of compensation for damages.

PROCEDURE BEFORE INTERNATIONAL BODIES

UN COMMITTEE AGAINST TORTURE (CAT)

As mentioned above, the Committee against Torture (CAT) was established pursuant to Article 17 of UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, there was established.

CAT Composition

The CAT consists of 10 experts of high moral standing and recognised competence in the field of human rights. They are elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

CAT Competence

1. Monitoring the implementation of the UN Convention

One of the CAT responsibilities is to monitor the implementation of the UN Convention against Torture in the states parties. Namely, the states parties to the Convention are bound to report the CAT on all the measures they have taken to give effect to their undertakings under the Convention, within one year after the date of entry into force of the Convention for the State Party concerned.

Also, the CAT examines all reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party. Then, the CAT invites that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned. Taking into account all relevant information available to it, the CAT may designate one or more of its members to make a confidential inquiry and to report on it to the CAT. In agreement with the State Party concerned, such an inquiry may include a visit to its territory. After examining the findings of its member or members submitted, the CAT transmits these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation, including in its annual report a summary account of the results of the co-operation with the State Party.

2. Receiving and considering communications (Procedure before the CAT)

Pursuant to Article 22 of the UN Convention¹³ individuals, groups and non-governmental organisations have the right to submit communications to the CAT claiming to be victims of a violation of the provisions set forth in the UN Convention by a State Party to the Convention. The Procedure before the CAT comprises two stages.

The first stage refers to the admissibility of communications. In accordance with Article 22 of the UN Convention an individual or a non-governmental organisation submits a communication to the CAT alleging to be a victim of a violation of the provisions of the Convention by its State Party. The conditions of admissibility are the following:

- that the communication is submitted according to the provisions of the UN Convention and by an authorised person
- that the State Party concerned has committed a violation of the specified provision of the UN Convention
- that the same matter has not been, and is not concurrently being examined under another procedure of international investigation or settlement, and

¹³ The CAT is competent to deal with communications only if they are submitted by a State Party which has made a declaration recognising its competence in regard to itself.

- that the applicant submitting the communication has previously exhausted all available domestic remedies in the matter¹⁴

After pronouncing the admissibility of the communication, the CAT brings it to the attention of the State Party to this Convention, which is obligated to submit to the CAT an explanation or other statement in writing clarifying the matter including the remedy, if any, that may have been taken by that State in order to address the situation, within six months after the receipt of the communication.

The second stage involves examining admissible communications and reaching a solution to the case – rendering a decision. The CAT holds closed meetings when examining all information made available to it. Upon the examination of the matter, the CAT communicates its findings to the State Party and the individual concerned. The Committee makes comments and suggestions concerning the steps to be taken which seem appropriate in view of the given situation, also laying down a time limit within which they are to be undertaken.

The decisions made by the CAT are not binding on the State Party concerned, since it has no mechanisms to make a State Party enforce its decision. The CAT may only include in its annual report the statement of facts with regard to the conduct of that State Party throughout concrete stages of the proceedings, this all subsequently having an impact on the State's general position within the international community.

THE "RISTIC" CASE¹⁵

Facts of the case *Ristic vs. Federal Republic of Yugoslavia*

On 13th February 1995, Milan Ristic from Šabac passed away under mysterious circumstances, which have never been fully clarified.

According to the official police report, Ristic committed suicide by throwing himself from a commercial building in a wider centre of Šabac. Parents of the late Ristic, considering their son not to be prone to suicide, and based on several other indications, believed that the policemen who allegedly found his corpse after suicide were in fact responsible for their son's death.

According to Ristic's parents, that critical evening the policemen were in pursuit of a suspect and they mistook Milan Ristic for the wanted person. While trying to place him under arrest, they killed Milan by hitting him on the head with a rifle butt and subsequently attempted to cover this murder up by alleging that Milan committed a suicide.

¹⁴ This is not the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the individual who is the victim of the violation of the UN Convention

¹⁵ The submission to the Committee was made by the Humanitarian Law Centre on behalf of Radivoje Ristic.

In the criminal complaint submitted to the competent prosecutor, Milan's parents charged the suspected policemen with committing the criminal offence of murder, failure to report a criminal offence as well as aiding and abetting the perpetrator of a criminal offence. Throughout the proceedings, Milan's parents sent several written notifications to the competent Prosecutor's office pointing out serious omissions, among the gravest being the following:

- the inspector in charge of the whole case took over 3 months to collect the necessary data,
- only 7 months after the complaint had been filed did the Prosecutor's Office request that certain investigative steps be taken,
- organs of the Ministry of Internal Affairs failed to submit to the competent court the photographs taken at the scene,
- additional expert and forensic examination has never been ordered,
- the Court failed to hear several proposed witnesses

On 19th February 1996 the competent Prosecutor's office dismissed the complaint. On 25th February 1996, acting in accordance with the Criminal Procedure Code, the parents filed charges before the competent court against the reported policemen. On 10th July 1996, taking these charges as a motion to conduct an investigation, the investigating judge interrogated all of the accused and some of the proposed witnesses, subsequently dismissing the motion to conduct an investigation. Such decision by the investigating judge was upheld by the judicial panel outside hearing proceedings, as well as by the Supreme Court of Serbia in processing the appeal of the plaintiff.

On 22nd January 1997, Milan's parents filed another complaint against the reported policemen, but the competent court dismissed it as already adjudicated. The Supreme Court of Serbia confirmed this decision.

On 22nd July 1998, parents of the late Milan Ristic submitted a communication to the CAT through the Humanitarian Law Centre, alleging that in the aforementioned case the Federal Republic of Yugoslavia acted in violation of the provisions of Articles 12, 13 and 14 of the UN Convention against Torture.

At its twenty-sixth session held on 11th May 2001, the CAT completed the examination of the communication and adopted it as admissible. The CAT concluded that the investigation carried out by the organs of the State Party was neither effective nor thorough. In the opinion of the CAT the State has had enough time, given that 6 years have passed since the incident, to conduct a proper investigation. The CAT also concluded that the State Party has committed a violation of its obligations set forth in Articles 12 and 13 of the UN Convention by failing to investigate promptly and effectively the applicant's allegations on the incident of torture, that is, serious police brutality. Also, the State has violated Article 14 of the UN Convention by failure to conduct the investigation and

thereby prevented any possibility to determine whether the right to indemnity of the injured party, that is, of his family, has also been violated.

Subject to Rule 111 (5) of the Rules of Procedure, CAT invited the State Party to the Convention to provide an effective judicial remedy to the applicant and inform the CAT of the measures it has taken in accordance with its findings within the period of 90 days (the official FRY bodies, later bodies of the State Union of Serbia and Montenegro still have not acted in accordance with recommendations put forward by the CAT).

EUROPEAN COURT OF HUMAN RIGHTS (COURT)¹⁶

Pursuant to Article 1 of the Convention on Human Rights of 1950 the Contracting Parties undertake to secure to everyone within their jurisdiction the rights and freedoms laid down in this Convention. By ratifying the European Convention on Human Rights and the protocols thereto the Contracting Parties accept to safeguard the compliance of their respective national law and practice with the Convention and undertake to bring effective relief in the event of a violation of any of the rights and freedoms protected by the European Convention.

The Composition of the Court

The Court is composed of a number of judges equal to that of the members of the Council of Europe. The candidates must be persons of high moral character known for their competence in the field of law. The Court has one President and two Vice-Presidents.

Receiving and considering applications (Procedure before the Court)

Pursuant to Article 34 of the European Convention, apart from the Contracting Parties¹⁷, applications may be submitted by any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto.

Proceedings before the Court

The proceedings consist of two phases. The first phase relates to the admissibility of an application. The admissibility criteria are the following:

- it must be submitted by an authorised person, (that is, it must not be anonymous)

¹⁶ Set up by virtue of Article 19 of the European Convention

¹⁷ By joining the Council of Europe on 3rd April 2003 the State Union of Serbia and Montenegro and its citizens acquired the right to submit applications to the Court.

- the applicant must ascertain that it is not *res judicata* (a thing adjudicated) or that the same matter has not been, and is not being examined under another procedure of international investigation or settlement
- it must be submitted within a period of 6 months (from the date of the final decision after all available domestic remedies have been exhausted)

The State against which the application is made has the right to submit written comments and to take part in a hearing before the Chamber or the Grand Chamber.

The second phase involves the decision-making and pronouncing final judgments. Upon declaring the application admissible, the Court pursues the examination of the case and places itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter. If no friendly settlement or other solution is reached to the matter, a public hearing before the Chamber is scheduled. After the hearing, the court pronounces its decision. The Court decides by rendering a judgement. Judgements are final and binding, while their implementation is supervised by the Committee of Ministers. When the Court finds that a violation by the State concerned of the Convention or the protocols thereto has been committed, it is governed by the principle of just satisfaction. Pursuant to this principle, if the internal law of the Contracting Party concerned allows only partial reparation to be made, the Court, shall, if necessary, afford just satisfaction to the injured party.

The supervisory system of the European Convention allows the redress for particular violations and has undoubtedly resulted in significant improvements in the respect of human rights by the Contracting Parties to the Convention, with far reaching consequences often beyond the case or the state concerned.

ROLE OF NON-GOVERNMENTAL ORGANISATIONS AS APPLICANTS

Besides individuals and groups of individuals, non-governmental organisations (NGOs) are also authorised to submit applications to both the CAT and the European Court of Human Rights. NGOs as applicants can either play a positive or a negative role.

The positive aspect of NGOs submitting applications on behalf of individuals is that they deal with protection of human rights and are therefore well acquainted with domestic and international human rights standards and procedure before domestic and international bodies, so that they can represent the interests of an individual with more competence. In addition, the application sometimes carries more weight if it is submitted by an NGO, since it is assumed that the NGO had examined the case in detail before submitting the application, conducted an internal investigation as well as gathered relevant information about action undertaken by the agencies of the state where the incident of torture had occurred and about the general respect of international standards in the country.

Sometimes, however, the wish to present the NGO itself and use the case as means for self promotion in the country and beyond may take precedence over the protection of an individual's interests and his/her rights. This is usually achieved by issuing various public statements, publishing of bulletins, brochures, reports, etc. that focus more on the NGO's role in the whole case than on the victim and his/her suffering.

Fortunately such negative cases are rare, since most NGOs invest all their efforts, knowledge and skills to provide assistance to victims of torture in exercising their rights. The NGOs also try to influence the state agencies to the extent possible to harmonise their regulations and practices with international standards.

CONCLUSION

All relevant national acts (the Constitution, Charter on Human and Minority Rights, Serbian Criminal Procedure Code) provide guarantees related to the prohibition of torture and other degrading treatment or punishment, but none of them explicitly stipulates their prohibition, apart from the Criminal Procedure Code.

The Serbian Criminal Procedure Code still does not contain the specific criminal offence of torture; in addition, the criminal offences that substitute for this one do not include some important elements of "inflicting physical and mental suffering" and "intimidation", which is in contravention of international standards. Although these offences are prosecuted *ex officio*, which imposes a legal obligation to conduct an investigation against perpetrators, the effectiveness of such investigation is problematic, since the police regulations governing the procedure of reporting on the cases of excessive use of force do not explicitly require that charges for such cases be filed to the competent judicial body.

Given that the Federal Republic of Yugoslavia had signed and ratified the UN Convention, while the State Union of Serbia and Montenegro has signed and ratified the European Convention on Human Rights and the protocols thereto, the state is obligated to harmonise its legislation with these standards.