

## ***Council of Europe contribution for the 15<sup>th</sup> UPR session regarding Serbia***

### **Prevention of Torture**

#### *CPT visit to Kosovo 2010*

On 6 October 2011, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report on its visit to Kosovo in June 2010, together with the response of the United Nations Interim Administration Mission in Kosovo (UNMIK). Both documents are attached below.

The aim of the visit was to review progress on the treatment and conditions of detention of prisoners and other detainees, following recommendations made after the Committee's visit in 2007. The delegation visited Dubrava Prison, several pre-trial detention centres and various police stations. It also examined the situation of persons deprived of their liberty in psychiatric and social welfare establishments.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.<sup>1</sup>

In its response, UNMIK outlines measures taken by the relevant authorities to implement the recommendations made by the Committee.



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**Kosovo 2010**  
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#### *CPT visit to Serbia 2011*

On 14 June 2012, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to Serbia in February 2011, together with the response of the Serbian authorities. Both documents are attached below.

In the course of the visit, the CPT's delegation received several allegations of ill-treatment by law enforcement officials, including in respect of juveniles. The alleged ill-treatment consisted of slaps, punches, kicks and truncheon blows and concerned the time of apprehension or when suspects were being interrogated in police stations. The CPT has recommended that police officers be reminded that all forms of ill-treatment are unacceptable and will be the subject of severe sanctions.

In the authorities' response, information is provided on criminal and disciplinary proceedings launched in recent years against law enforcement officials for acts of alleged ill-treatment. Reference is also made to a Plan for the construction and renovation of police detention facilities, taking account of recommendations made by the CPT.

Overcrowding was observed in all the prisons visited, especially at Belgrade District Prison. The report urges the authorities to redouble their efforts to counter this problem and to be guided in this respect by the relevant Recommendation of the Committee of Ministers of the Council of

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<sup>1</sup> pp. 37-45.

Europe. The CPT's delegation received allegations of ill-treatment of prisoners by staff at Belgrade District Prison and in the high security unit (Pavilion VII) of Požarevac-Zabela Correctional Institution: specific recommendations are made on this subject. The report is also critical of the impoverished regime for remand prisoners, who are confined to their cells for 23 hours a day for months on end.

In their response, the authorities provide information on steps taken to tackle overcrowding in prisons, including the planned construction of three new prisons. They also state that additional sports and vocational activities for remand prisoners are now being organised.

During a follow-up visit to the Special Prison Hospital in Belgrade, the CPT's delegation found that a combination of severe overcrowding, dilapidated facilities, lack of staff and limited therapeutic options was leading to conditions that could be considered as inhuman and degrading. The national authorities emphasise in their response that refurbishment of the hospital has been set as a priority and provide details of the work to be carried out.

The CPT's delegation observed that there was a considerable risk of inter-patient violence at the Gornija Toponica Special Psychiatric Hospital. Further, despite steps being taken to refurbish the establishment, living conditions in the large capacity dormitories left much to be desired, in particular in the long-term male ward. The delegation also found that certain patients had not had access to outdoor exercise for more than seven months. In their response, the authorities refer to the efforts invested by the Ministry of Health in improving material conditions through refurbishing several wards at Gornija Toponica and increasing outdoor movements of patients in the establishment.

The CPT's delegation heard no allegations of ill-treatment of residents by staff at the Juvenile Educational Institution in Niš. Juveniles interviewed spoke highly of the staff and the atmosphere in the establishment was relaxed.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.<sup>2</sup>



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[Serbia 2011  
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## **Fight against racism and intolerance**

On 31 May 2011, the European Commission against Racism and Intolerance (ECRI) published a report on Serbia. The report which includes Government observations is attached below.<sup>3</sup>

ECRI's Chair, Nils Muiznieks, said that, while there have been improvements, some issues of concern remain, for example the Law on Churches and Religious Communities and courts' practice relating to racist crime.

The Serbian authorities have adopted a law against discrimination and created a Commissioner for the Protection of Equality entrusted with monitoring compliance therewith. A Strategy for the Improvement of the Status of Roma, which includes measures in the areas of education, employment, displaced persons, personal documents, social insurance and social care, as well as healthcare, was adopted in 2009. The Ministry of Human and Minority Rights, established in

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<sup>2</sup> pp. 69-90.

<sup>3</sup> A summary of the report can be found on pp. 7-9.

2008, is in charge of coordinating and monitoring the 13-step action plan established under the Strategy, as well as the application of the law against discrimination.

The Law on Churches and Religious Communities continues to discriminate between “traditional” and non-traditional churches and religious communities. Moreover, previously recognised minority religious communities have to re-register in what has been described as an invasive and burdensome procedure. The practice of courts regarding racist crime is problematic as there are few prosecutions and the sentences meted out are usually low, mainly consisting in very small fines.

Roma continue to face high unemployment levels, discrimination in education and sub-standard living conditions. There have been evictions without prior consultation in and around Belgrade. The health situation of many Roma remains worrying and many of them lack identity papers. Very few measures have been taken to provide employment in the Preševo, Bujanovac and Medveda region where the majority of ethnic Albanians live; more than 70% of economically active people are unemployed there.

The report contains findings and recommendations regarding the following issues:

- I. Existence and implementation of legal provisions<sup>4</sup>
- II. Discrimination in various fields including employment, education, housing, health and administration of justice<sup>5</sup>
- III. Racist violence<sup>6</sup>
- IV. Racism in public discourse<sup>7</sup>
- V. Vulnerable/target groups including internally displaced Roma, Ashkali and Egyptians; Roma; Albanian minority; Bosniaks; religious minorities.<sup>8</sup>
- VI. Antisemitism<sup>9</sup>
- VII. Reception and status of non-citizens<sup>10</sup>
- VIII. Conduct of law enforcement officials<sup>11</sup>
- IX. The situation of the Autonomous Province of Vojvodina<sup>12</sup>
- X. Monitoring racism and racial discrimination<sup>13</sup>

ECRI selected the following three specific recommendations for which it requests priority implementation and which it will revisit in two years' time:<sup>14</sup>

- strengthen the institution of the Commissioner for the Protection of Equality by ensuring that it has the human and financial resources to function effectively;
- strengthen the training provided to the judiciary on racism and racial discrimination, inter alia, to ensure better sentencing practices for racist crime;
- take immediate measures to ensure that all Roma, Ashkali and Egyptians have identity documents.



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<sup>4</sup> pp. 11-17.

<sup>5</sup> pp. 18-22.

<sup>6</sup> p. 23.

<sup>7</sup> pp 23-24.

<sup>8</sup> pp. 25-29.

<sup>9</sup> pp. 29-30.

<sup>10</sup> pp. 30-31.

<sup>11</sup> pp. 31-32.

<sup>12</sup> pp. 32-34.

<sup>13</sup> p. 34.

<sup>14</sup> p. 35.

## Protection of Minorities

### *Framework Convention for the Protection of National Minorities*

On 30 March 2011, the Committee of Ministers adopted a resolution on the protection of national minorities in Serbia (attached below). The resolution contains conclusions and recommendations, highlighting positive developments<sup>15</sup> but also mentioning issues of concern<sup>16</sup>. Moreover it mentions a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

In addition to the measures to be taken to implement the detailed recommendations contained in Sections I<sup>17</sup> and II<sup>18</sup> of the Advisory Committee's opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- ensure that conditions are in place for the effective implementation of the newly adopted Laws on the Prohibition of Discrimination and on the National Councils of National Minorities;
- consolidate the legislative framework regarding minority media in a way that maintains the obligation of the state to provide national minorities with adequate conditions to create and use their own media;
- ensure that acts of violence and discrimination against persons belonging to national minorities are adequately investigated by law enforcement bodies and the judiciary, notably by increasing awareness and training measures;
- expand the measures aimed at promoting tolerance and interethnic dialogue throughout Serbia;
- expand opportunities for minority language education, including by addressing the needs expressed by the Vlachs and other national minorities and review the current optional character of some minority language teaching in consultation with national minority representatives;
- ensure that legal and practical conditions are such that signposts in minority languages in the areas concerned can be put in place;
- address the issue of recognition of diplomas from educational institutions from the region in a comprehensive way and take measures to tackle the problems of delay and complexity of procedure which have been identified;
- ensure that measures to be taken in the context of the National Strategy on Roma are given adequate support by both central and local authorities in order to eliminate obstacles to the participation of the Roma in employment, housing, health and education;
- address as a matter of priority, both at legislative and practical level, the lack of personal identification documents of the Roma;
- pursue further efforts to increase the representation of national minorities in the judiciary and in law enforcement bodies and take steps to obtain a clear view on the representation of national minorities in the public administration;

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<sup>15</sup> Part 1 a) of the resolution

<sup>16</sup> Part 1 b) of the resolution.

<sup>17</sup> pp. 4-7.

<sup>18</sup> pp. 8-48.

- pay increased attention to the situation of persons belonging to national minorities living in economically disadvantaged areas and ensure that their representatives are adequately involved in both identifying priority projects to be funded and in their implementation in the areas concerned;
- take measures to increase the effectiveness of the councils of interethnic relations at municipal level, *inter alia*, by clarifying further their composition and functions.

The resolution is largely based on the corresponding Second Opinion of the Advisory Committee on the Framework Convention on Serbia<sup>19</sup>. The concluding remarks, contained in Section III<sup>20</sup>, serve as the basis for the Committee of Ministers' Resolution. The Opinion of the Advisory Committee and the comments on the Opinion by the government of Serbia are attached below.



CM Resolution  
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### *European Charter for Regional or Minority Languages*

On 6 May 2009, the Council of Europe Committee of Ministers made public the first report on the situation of minority languages in Serbia<sup>21</sup>. The report drawn up by a committee of independent experts, which monitors the application of the Charter, is contained in the attachment below. It includes the Committee of Ministers' Recommendation on the application of the European Charter for Regional or Minority Languages by Serbia.

On the basis of the report, the Committee of Ministers calls on Serbia to ensure that all minority languages of Serbia are taught at least at primary and secondary levels.

The Serbian authorities are also encouraged to promote awareness and tolerance in Serbian society at large vis-à-vis the minority languages and the cultures they represent.

Further recommendations concern the use of minority languages in relations with courts and local branches of the State authorities.



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### **Social and economic rights**

Serbia ratified the Revised European Social Charter on 14 September 2009 accepting 88 of its 98 paragraphs.

The first report was submitted by Serbia on 31 October 2011. The respective Conclusions by the European Committee of Social Rights will be published in December 2012.

Please see attached below the fact sheet.

<sup>19</sup> A summary of the report can be found on p. 1.

<sup>20</sup> pp. 49-51.

<sup>21</sup> Summary of the report can be found on pp 49-51



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## **Action against Trafficking in Human Beings and**

The evaluation of Serbia by the Group of Experts on Action against Trafficking in Human Beings (GRETA) will take place at the end of 2012 or beginning of 2013.

## **Preventing and Combating Violence against Women and Domestic Violence**

Serbia has signed but not yet ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. For this reason, it is not yet concerned by the monitoring procedure to be carried out by a Group of experts on action against violence against women and domestic violence (GREVIO) once the convention enters into force.

## **Council of Europe Commissioner for Human Rights**

On 22 September 2011, the Commissioner for Human Rights, Thomas Hammarberg, released a report following his visit to Serbia from 12 to 15 June 2011.<sup>22</sup>

The report attached below focuses on the following selected human rights issues:

- I. Post-war justice and reconciliation<sup>23</sup>
- II. Fight against discrimination<sup>24</sup>
- III. Freedom of the media, access to public information and personal data protection<sup>25</sup>

For each issue the Commissioner provides specific conclusions and recommendations.<sup>26</sup>

The Commissioner said that “important steps have been taken to overcome the legacy of the violent past. Sustained efforts are however necessary in order to achieve post-war justice and reconciliation, eradicate discrimination and enhance freedom of the media”.

“Greater determination is needed to effectively investigate and prosecute war-related crimes and all remaining obstacles to effective inter-state co-operation in this context should be removed. It is also necessary to provide adequate reparation to all victims for the gross human rights violations they suffered during the war time.” The Commissioner urges Serbia to improve the witness protection system and to promptly investigate and prosecute any threats and intimidation of witnesses.

Commissioner Hammarberg invites the authorities to continue with determination their efforts, at national and regional level, to clarify the fate of the approximately 14 000 missing persons in the region due to the wars. He also urges the authorities to pursue the efforts made to resolve the remaining problems of those forcibly displaced during the wars. “The most vulnerable are the approximately 4 000 persons living in collective centres. Further co-operation between Serbia,

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<sup>22</sup>A summary of the report appears on pp. 2-4.

<sup>23</sup> Section I, paras. 8-64.

<sup>24</sup> Section II, paras. 65-144.

<sup>25</sup> Section III, paras. 145-169.

<sup>26</sup> Paras 54-64, 131-144, and 165-169.

Bosnia and Herzegovina, Croatia and Montenegro is needed to solve the pending issues arising from forced displacement in the region.”

The Commissioner welcomes the strengthening of the Serbian legal and institutional framework against discrimination and racism, as well as the measures taken in recent years to counter hate crimes notably those committed by extremist groups. He urges the Serbian authorities to give priority to the prosecution of hate crimes and to undertake a comprehensive review of the court sentencing policies in these cases. He further calls for an enhanced protection of national minorities and recommends allowing the election process of the members of the national minority council of Bosniaks to begin in the near future.

As regards Roma, more and systematised efforts should be made to enhance protection and inclusion, in particular in the sectors of employment, education, housing and healthcare. The Commissioner remains deeply concerned by the very harsh living conditions of the displaced Roma from Kosovo<sup>27</sup> and the non-registration of Roma children upon their birth. He also recommends facilitating access to personal identity documents for Roma and the accession by Serbia to two important Council of Europe treaties concerning stateless persons.

Widespread homophobia remains a serious concern. “The authorities should intensify their efforts to fight violence and discrimination against LGBT persons, including by having the criminal provisions concerning hate crimes more vigorously implemented by courts.”

Whilst commending the adoption of legislation protecting and promoting the rights of persons with disabilities, the Commissioner remains concerned that a number of elderly and adults with mental disabilities are placed in institutional care without their consent. He is also worried by the reported abuse of the legal capacity proceedings, often by close family members, and calls for the amendment of the related law.

Finally, the Commissioner stresses that media freedom should be better secured. “Defamation should be decriminalised and unreasonably high fines in civil cases relating to media should be avoided. At the same time, the media community should promote and apply ethical professional standards and to develop a system of effective self-regulation.” He commends the authorities’ prompt reactions to recent attacks on journalists, but remains seriously concerned by the impunity regarding past cases of killings of journalists and calls for effective investigations into all these violent incidents.



CHR report  
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## **Execution of judgments and decisions at the European Court of Human Rights**

At 31 December 2011, there were 95 cases pending before the Committee of Ministers (CM) for supervision of their execution. 18 of these cases were “leading cases”, i.e. raising a new structural /general problem and requiring the adoption of general measures.

The main group of cases currently examined under the enhanced supervision procedure which is reserved in particular to cases raising important or complex structural problems or requiring urgent individual measures concern:

- Unfair trials and failures to enforce final domestic court decisions against “socially owned companies” (EVT Company group (application 3102/05))

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<sup>27</sup> “All reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.”

The document attached presents a brief description of the violations and the last detailed decision taken by the Committee of Ministers and the responses given thereto by the respondent state.



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### **European Commission for Democracy through Law (Venice Commission)**

The Venice Commission adopted between 2009 and 2012 a number of opinions on draft laws and on the constitutional situation in Serbia. The complete list of the opinions adopted during that period, with hyperlinks to the texts of the opinions, appears below.



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