



**Concluding Observations of the Human Rights Committee :
Serbia and Montenegro. 12/08/2004.
CCPR/CO/81/SEMO. (Concluding Observations/Comments)**

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HUMAN RIGHTS COMMITTEE
Eighty-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

SERBIA AND MONTENEGRO

1. The Committee began its consideration of the initial report of Serbia and Montenegro (CCPR/C/SEMO/2003/1) at its 2206th to 2208th meetings (CCPR/C/SR.2206 and 2208), held on 19 and 20 July 2004, and adopted the following concluding observations at its 2221st meeting, held on 28 July 2004. Further consideration of the report in respect of Kosovo was adjourned to the eighty-second session of the Committee.

A. Introduction

2. The Committee welcomes the initial report submitted by Serbia and Montenegro and expresses its appreciation for the frank and constructive dialogue with the State party delegation. It welcomes the detailed answers, both oral and written, that were provided to its questions.

3. The State party explained its inability to report on the discharge of its own responsibilities with regard to the human rights situation in Kosovo, and suggested that, owing to the fact that civil authority is exercised in Kosovo by the United Nations Interim Administration Mission in Kosovo (UNMIK), the Committee may invite UNMIK to submit to it a supplementary report on the human rights situation in Kosovo. The Committee notes that, in accordance with Security Council resolution 1244 (1999), Kosovo currently remains a part of Serbia and Montenegro as successor State to the Federal Republic of Yugoslavia, albeit under interim international administration, and the protection and promotion of human rights is one of the main responsibilities of the international civil presence (para. 11 (j) of the resolution). It also notes the existence of provisional institutions of self-government in Kosovo that are bound by

the Covenant by virtue of article 3.2 (c) of UNMIK Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo. The Committee considers that the Covenant continues to remain applicable in Kosovo. It welcomes the offer made by the State party to facilitate the consideration of the situation of human rights in Kosovo and encourages UNMIK, in cooperation with the Provisional Institutions of Self-Government (PISG), to provide, without prejudice to the legal status of Kosovo, a report on the situation of human rights in Kosovo since June 1999.

B. Positive aspects

4. The Committee welcomes the significant progress accomplished in legislative and institutional reform following the regime change in October 2000. It notes the adoption of the Constitutional Charter forming the State Union of Serbia and Montenegro on 4 February 2003 and welcomes in particular the adoption of the Charter on Human and Minority Rights and Civil Liberties on 28 February 2003.

5. The Committee further welcomes the adoption of, inter alia, the Codes of Criminal Procedure applicable at the Republic level, particularly the enhanced human rights protections of detainees; the amendment of the electoral law of Serbia in May 2004; the Law on the Protection of the Rights and Freedoms of National Minorities at the State Union level; and efforts to address the issue of discrimination against Roma in all social spheres.

6. The Committee commends the State party for its abolition of the death penalty and its accession to the Second Optional Protocol to the Covenant.

7. The Committee welcomes the establishment of Ombudsman institutions in Montenegro and the autonomous province of Vojvodina.

8. The Committee has noted the cooperative spirit professed by the authorities of the State party vis-à-vis the participation of national non-governmental organizations in the process of monitoring, promoting and protecting the enjoyment of Covenant rights.

C. Principal subjects of concern and recommendations

9. The Committee is concerned at the persistence of impunity for serious human rights violations, both before and after the changes of October 2000. Although the Committee appreciates the declared policy of the State party to carry out investigations and to prosecute perpetrators of past human rights violations, it regrets the scarcity of serious investigations leading to prosecutions and sentences commensurate with the gravity of the crimes committed (arts. 2, 6, 7).

The State party is under an obligation to investigate fully all cases of alleged violations of human rights, in particular violations of articles 6 and 7 of the Covenant during the 1990s and to bring to trial those persons who are suspected of involvement in such violations. The State party should also ensure that victims and their families receive adequate compensation for violations. Persons alleged to have

committed serious violations should be suspended from official duties during the investigation of allegations and, if found guilty, dismissed from public service in addition to any other punishment.

10. While noting the effective work regarding exhumations and autopsies of some 700 bodies from mass graves in Batajnica, the Committee is concerned at the lack of progress in investigations and prosecutions of the perpetrators of those crimes (arts. 2, 6).

The State party should, along with the exhumation process, immediately commence investigations into apparent criminal acts entailing violations of the Covenant. The particular needs of the relatives of the missing and disappeared persons must equally be addressed by the State party, including the provision of adequate reparation.

11. The Committee notes the State party's public statements emphasizing its commitment to cooperate with the International Criminal Tribunal for the Former Yugoslavia (ICTY) in order to ensure that all persons suspected of grave human rights violations, including war crimes and crimes against humanity, are brought to trial. However, it remains concerned at the State party's repeated failure to fully cooperate with ICTY, including with regard to the arrest of indictees (art. 2).

The State party should extend to ICTY its full cooperation in all areas, including the investigation and prosecution of persons accused of having committed serious violations of international humanitarian law, and by apprehending and transferring those persons who have been indicted and remain at large, as well as granting ICTY full access to requested documents and potential witnesses.

12. While welcoming the measures taken to establish a system for trying war crimes before domestic courts, including the creation of a special war crimes trial chamber of the Belgrade District Court, and the establishment of the Office of a Special War Crimes Prosecutor, concern remains as to the absence of provisions in domestic legislation implementing the principle of command responsibility, the absence of an adequate system for witness protection, and the absence of investigators assigned solely to the prosecutor's office (arts. 2, 6, 7)

The State party should take all necessary measures to ensure that those responsible for war crimes and crimes against humanity are brought to justice, to ensure that justice is carried out in a fair manner and to establish an adequate system for witness protection.

13. The Committee is concerned at the measures taken under the state of emergency, which included substantial derogations from the State party's human rights obligations under the Covenant. The Committee notes the ruling of the Constitutional Court of Serbia of 8 July 2004, declaring unconstitutional some of the measures derogating from the Covenant taken by the Republic of Serbia under the state of emergency, and steps taken to punish violations that have occurred during this period and to provide compensation to all victims. Nevertheless, the Committee regrets that several concerns remain, particularly with regard to allegations of torture of detainees in the context of "Operation Sabre" (arts. 4, 7, 9, 14, 19).

The State party should take immediate steps to investigate all allegations of torture during "Operation Sabre" and take all necessary steps to ensure adequate mechanisms to prevent such violations and any abuse of emergency powers in future. The Committee draws the attention of the State party to its general comment No. 29 for the assessment of the scope of emergency powers.

14. The Committee is concerned about continued allegations of ill-treatment of persons by law enforcement officials. It also notes the preliminary statement by the Committee against Torture, referred to in the initial report of the State party, to the effect that torture had been applied systematically in the Federal Republic of Yugoslavia prior to October 2000. The Committee is concerned that sufficient information has not been provided as to concrete steps taken to investigate such cases, punish those responsible and provide compensation to victims (art. 7).

The State party should take firm measures to eradicate all forms of ill-treatment by law enforcement officials, and to ensure prompt, thorough, independent and impartial investigations into all allegations of torture and ill-treatment, prosecute and punish perpetrators, and provide effective remedies to the victims.

15. While taking note of the establishment in Serbia of the Office of Inspector General of the Public Security Service in June 2003, the Committee is concerned that no independent oversight mechanism exists for investigating complaints of criminal conduct against members

of the police, which could contribute to impunity for police officers involved in human rights violations (arts. 2, 7, 9).

The State party should establish independent civilian review bodies at the Republic level with authority to receive and investigate all complaints of excessive use of force and other abuse of power by the police.

16. The Committee notes that Serbia and Montenegro is a main transit route for trafficking in human beings and increasingly a country of origin and destination. It welcomes the efforts made by the State party and the measures taken to address the situation regarding trafficking in women and children, including the establishment of national teams to combat trafficking in Serbia and in Montenegro, as well as the introduction of a criminal offence in the criminal codes of Montenegro and of Serbia directed to trafficking in human beings, although some concerns regarding the definition of trafficking remain. The Committee is also concerned at the lack of effective witness protection mechanisms and notes the apparent lack of awareness about trafficking in women and children on the part of law enforcement officials, prosecutors and judges. The Committee notes that shelters and SOS hotlines are managed by non-governmental organizations, which have also organized awareness campaigns, and regrets the lack of adequate involvement by the authorities in these initiatives (arts. 3, 8, 24).

The State party should take measures to combat trafficking in human beings, which constitutes a violation of several Covenant rights, including articles 3 and 24 and the right under article 8 to be free from slavery and servitude. Strong measures should be taken to prevent trafficking and to impose sanctions on those who exploit women

and children in this way. Protection should be extended to all victims of trafficking so that they may have a place of refuge and an opportunity to give evidence against the persons responsible in criminal or civil proceedings.

17. The Committee is concerned at reports of high rates of domestic violence. While noting the efforts made by the State party to combat domestic violence, particularly in the area of legislative reform, the Committee regrets the lack of statistics and detailed information provided on the nature and extent of the problem (arts. 3, 7, 26).

The State party should adopt the necessary policy and legal framework to effectively combat domestic violence. The Committee recommends in particular that the State party establish crisis-centre hotlines and victim support centres equipped with medical, psychological and legal support, including shelters for battered spouses and children. In order to raise public awareness, it should disseminate information on this issue through the media.

18. The Committee is concerned about the lack of full protection of the rights of internally displaced persons in Serbia and Montenegro, particularly with regard to access to social services in their places of actual residence, including education facilities for their children, and access to personal documents. It expresses its concern with regard to high levels of unemployment and lack of adequate housing, as well as with regard to the full enjoyment of political rights. While noting the State party's view that internally displaced persons have equal status with other citizens of Serbia and Montenegro, the Committee is concerned at the lack of enjoyment of their rights in practice. The Committee notes that Roma from Kosovo displaced during the 1999 conflict are a particularly vulnerable group (arts. 12, 26).

The State party should take effective measures to ensure that all policies, strategies, programmes and funding support have as their principal objective the enjoyment by all displaced persons of the full spectrum of Covenant rights. Furthermore, internally displaced persons should be afforded full and effective access to social services, educational facilities, unemployment assistance, adequate housing and personal documents, in accordance with the principle of non-discrimination.

19. The Committee takes note of efforts undertaken by Serbia to strengthen the independence of the judiciary. However, it is concerned at alleged cases of executive pressure on the judiciary in Serbia, and measures regarding the judiciary undertaken during the state of emergency (art. 14).

The State party should ensure strict observance of the independence of the judiciary.

20. The Committee is concerned at the possibility of civilians being tried by military courts for crimes such as disclosure of State secrets (art. 14).

The State party should give effect to its aspiration to secure that civilians are not tried by military courts.

21. The Committee takes note of the information provided by the delegation whereby conscientious objection is governed by a provisional decree, which is to be replaced by a law, which will recognize full conscientious objection to military service and an alternative civil service that will have the same duration as military service (art. 18).

The State party should enact the said law as soon as possible. The law should recognize conscientious objection to military service without restrictions (art. 18) and alternative civil service of a non-punitive nature.

22. The Committee is concerned at the high number of proceedings initiated against journalists for media-related offences, in particular as a result of complaints filed by political personalities who feel that they have been subject to defamation because of their functions.

The State party, in its application of the law on criminal defamation, should take into consideration on the one hand the principle that the limits for acceptable criticism for public figures are wider than for private individuals, and on the other hand the provisions of article 19 (3), which do not allow restrictions to freedom of expression for political purposes.

23. While noting the adoption of the Law on the Protection of the Rights and Freedoms of National Minorities, the Committee remains concerned that the practical enjoyment by members of ethnic, religious and linguistic minorities of their Covenant rights still requires improvement. In this context, the Committee notes the lack of a comprehensive non-discrimination legislation covering all aspects of distinction (arts. 2, 26, 27).

The State party should ensure that all members of ethnic, religious and linguistic minorities, whether or not their communities are recognized as national minorities, enjoy effective protection against discrimination and are able to enjoy their own culture, to practise and profess their own religion, and use their own language, in accordance with article 27 of the Covenant. In this context, the State party should enact comprehensive non-discrimination legislation, in order to combat ethnic and other discrimination in all fields of social life and to provide effective remedies to victims of discrimination.

24. The Committee is concerned that widespread discrimination against the Roma persists with regard to all areas of life. The Committee is particularly concerned about the deplorable social and economic situation of the Roma minority, including access to health services, social assistance, education and employment which has a negative impact on the full enjoyment of their rights under the Covenant (arts. 2, 26, 27).

The State party should take all necessary measures to ensure the practical enjoyment by the Roma of their rights under the Covenant, by urgently implementing all strategies and plans to address discrimination and the serious social situation of the Roma in Serbia and Montenegro.

25. While noting reports about the decrease in police violence against Roma, the Committee continues to be concerned at violence and harassment by racist groups, and inadequate protection against racially motivated acts afforded by law enforcement officers (arts. 2, 20, 26).

The State party should take all necessary measures to combat racial violence and incitement, provide proper protection to the Roma and other minorities, and establish mechanisms to receive complaints from victims and ensure investigation and prosecution of cases of racial violence and incitement to racial hatred, and ensure access to adequate remedies and compensation.

26. The State party should widely publicize the present examination of its initial report by the Committee and, in particular, these concluding observations.

27. The State party is asked, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding cooperation with ICTY (para. 11); torture and ill-treatment (para. 14); and

internally displaced persons (para. 18). The Committee requests that information concerning the remainder of its recommendations be included in the second periodic report, to be presented by 1 August 2008.



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