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The Universal Protection of Human Rights and Eastern Europe: Serbia

- **ABSTRACT:** *The Republic of Serbia is a state party to almost all major international treaties on human rights protection – both universal and regional – including UN human rights conventions and covenants. It has incorporated all of these documents into its Constitution and relevant national legislation. For example, Serbia has aligned its asylum system with relevant international standards. It has also carried out constitutional reform to further strengthen the independence of the judiciary, amended the Law on the Prohibition of Discrimination, and adopted numerous laws, strategies, and action plans related to the prevention of discrimination. Serbia regularly submits reports on the implementation of the relevant human rights treaties, as required by those treaties. It has also accepted the jurisdiction of committees established by international treaties to hear individual complaints. There are only four cases against Serbia before the Human Rights Committee, and it may be concluded that Serbia respects the human rights guaranteed by this instrument, although individuals often seek protection from the European Court of Human Rights instead of the Committee. Complaints have also been brought against Serbia before the Committee against Torture, concerning the treatment of complainants during detention, which was characterised as severe pain or suffering intentionally inflicted by public officials. Serbia has strong institutions for human rights protection, including the Constitutional Court and the Ombudsman. It can be said that the country remains determined to make further progress in democratisation, fulfil its international obligations, and achieve the highest standards of human rights.*
- **KEYWORDS:** *human rights, Serbia, UN Conventions, Human Rights Committee, Committee against Torture*

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1. Introduction

Human rights issues have been regarded as universal since the Second World War. Before that, they were considered internal matters of individual states. This study aims to elucidate how human rights protection developed in Serbia throughout history and what positive international legal norms have bound this country.

Serbia has been part of the Ottoman Empire since medieval times. After the Second Serbian Uprising (1815–1817), Serbia's autonomy or semi-independent position was confirmed by an act of the Ottoman Empire (*ferman*) in 1830. Five years later, in 1835, the first constitution, called *Sretenjski Ustav*, was enacted.¹ It was a significantly liberal constitution for its time but remained in force for only two weeks before being revoked. It was rejected by Ottoman Turkey, Austria, and Russia.² Nevertheless, this short-lived constitution in an important act, representing the first modern Serbian constitution and one of the earliest democratic constitutions in Europe. It contained a special chapter on human rights, intended to protect individuals against state authorities. Some of these rights included: prohibition of slavery, equality before the law, the principle of legality, certain aspects of the right to a fair trial, the *ne bis in idem* principle, the right to property, and freedom of religion.

A new, so-called 'Turkish constitution' was enacted in 1838. It was rigid and represented a step backward compared to its predecessor. It guaranteed only a limited set of human rights, such as freedom of trade, the right to property, freedom of religion, and certain personal rights. This constitution remained in force until 1869, when the third modern Serbian constitution was adopted. However, it did not meet the standards of its time regarding human rights protection. Political rights were formulated narrowly, such as the freedom of expression, while others, such as the freedom of the press and freedom of association, were not included at all. Personal freedom, the right to property, and freedom of religion were guaranteed. Moreover, the constitution introduced the division of power between Prince Miloš and a newly established state body, the Council (*Sovjet*). The Council was given an 'absolute veto' to block any bill proposed by the Prince, giving it great political authority. Its members sought to curtail the Prince's power as much as possible. In April 1839, Miloš was forced to promulgate a law on the Council, which further limited his legislative and executive authority.³

The next constitution, enacted in 1888 and known as the 'Radical Constitution', guaranteed more human rights than its predecessors.⁴ These provisions were broader and more detailed. For the first time, political rights were explicitly

1 *Ustav Knjaževska Srbije – Sretenjski ustav*, 15 February 1935, Kragujevac.

2 Svirčević, 2011, p. 584.

3 Hoare, 2024, part I.

4 Savić, 2023, p. 540.

included in the highest legal act, such as freedom of the press, freedom of assembly, freedom of association, and the right to petition and complain. Human rights were realised directly under the Constitution. This constitution was described as a 'bilateral contract between the Crown and the people', through which the king sought to show the radicals that they could not impose their views on the monarchy and that constitutional reform could only be achieved through compromise.⁵

The next constitution was enacted in 1901 and was unilaterally imposed by King Aleksandar Obrenovic. It did not contain provisions on human rights and was primarily a tool to strengthen the king's absolute power. However, it did establish a bicameral system, with the Senate as the upper chamber and the National Assembly as the lower chamber.⁶ Two years later, the king was assassinated, and the new Karadjordjevic dynasty was installed.⁷ The new National Assembly restored the 1888 Constitution, proclaiming it once again as the Constitution in 1903, with the same human rights provisions. This 'Parliamentary Constitution' established that the King and the Assembly shared legislative and budgetary powers equally. Executive power, however, remained under the exclusive authority of the head of state, who was not responsible for its exercise but carried it out through ministers whom he freely appointed and dismissed.⁸

After the First World War, a new state was created – the Kingdom of Serbs, Croats, and Slovenians – and a new Constitution (the Vidovdan Constitution)⁹ was adopted in 1921. Although there were various projects and drafts for the constitution, with very different concepts of what the parliament should look like, the version finally accepted was largely based on the Serbian Constitution of 1903, with a classical unicameral parliamentary model. In practice, however, the parliament was weak and often hampered by obstructions, while King Aleksandar Karadjordjević played the most important role.¹⁰ The Constitution proclaimed civil and political rights comparable to those guaranteed in democratic states of that period. Unlike previous constitutions, it also included social and economic provisions, such as protection of workers, the right to health for all citizens, and the right to marriage.

Due to political changes in the country, namely the establishment of King Alexander's dictatorship in 1931, a new 'September Constitution', also known as the 'Octroyed Constitution',¹¹ was adopted. Civil rights and freedoms were formulated similarly to the previous constitution. However, there were only four articles on economic and social rights, compared to 23 in the 1921 Constitution.

5 Popović, 1939, p. 85.

6 Svirčević, 2011, p. 591.

7 Tomić, 2024, p. 142.

8 Popović-Obradović, 2013, p. 176.

9 Vidovdan Constitution, 1921.

10 Kršljanin, 2020, p. 245.

11 Octroyed Constitution, 1931.

A general characteristic of this Constitution was that its provisions were mostly brief and vague. In addition, while it proclaimed fundamental rights of citizens, it simultaneously guaranteed them only 'within the limits of the law', meaning that freedoms and rights existed largely in principle.¹²

After the Second World War, the Communist Party of Yugoslavia established the government of the Federative People's Republic of Yugoslavia. Its first Constitution was enacted in 1946,¹³ modelled on the 1936 Constitution of the USSR, and reflected the dominance of state property. In 1953, significant amendments were adopted through a Constitutional Law, introducing the concept of self-management into Yugoslavia's constitutional doctrine and practice. Social property was also established as dominant. This Constitution is notable in at least two respects. First, it represented a near-complete transplantation of a political structure previously foreign to Yugoslavia, bearing little resemblance to earlier Yugoslav constitutions. Second, it addressed not only the political structure but also socio-economic aspects of society to an unusual degree for a fundamental law.¹⁴

A new constitutional text was adopted in 1963, based on the same principles.¹⁵ In 1974, the last socialist constitution was enacted.¹⁶ This Constitution marked the completion of Yugoslavia's constitutional reform and granted the republics greater decentralisation. Article 1 described the Yugoslav Federation as a 'state commonwealth of voluntarily united peoples and their socialist republics'. Simultaneously, Article 224 defined the Federation as 'an association of citizens, peoples and nationalities in which they secure their historical direct interests through joint democratic agreement'.¹⁷ The Constitution preserved social property and self-management and introduced significant changes in the country's territorial structure. Human rights and freedoms were limited by the interests of socialist society. It proclaimed freedom of scientific, cultural, and artistic work, and required education to be based on scientific socialism. It also guaranteed social security and, notably, protection and improvement of the environment.

The next constitution in Serbia was adopted in 1990, following the collapse of the communist system. It included almost all individual and political rights and freedoms. Socio-economic rights and freedoms were listed but left to legislation to define in detail.¹⁸ With this Constitution, Serbia reestablished the liberal-democratic model. However, it did not explicitly define the legal nature of the relationship between voters and their elected representatives. This lack of clarity caused numerous problems in the functioning of the National Assembly between

12 Jevtić, 1988, p. 117.

13 Constitution of 1946.

14 Dragnich, 1946, p. 420.

15 Constitution SFRY, 1963.

16 Constitution SFRY, 1974.

17 Popovych, Topolnytska, and Telep, 2023, p. 104.

18 Constitution of 1990.

1990 and 2006. It was expected that a new constitution would resolve the question of the parliamentary mandate, but this did not happen.¹⁹ This was the constitution of one federal state – the Federal Republic of Yugoslavia – which adopted its own Constitution in 1992.²⁰ That Constitution included the same human rights and freedoms, with the addition of abolishing the death penalty in Yugoslavia. This abolition did not become Serbia's international obligation until 2004, when the European Convention on Human Rights and its additional protocols entered into force for Serbia and Montenegro, then a single state,²¹ which represents an international agreement between states to protect individuals whose rights have been violated.²²

The Federal Republic of Yugoslavia ceased to exist in 2003, when a new state – Serbia and Montenegro – was created through the adoption of the Constitutional Charter.²³ This marked the end of Yugoslavia after 74 years. An integral part of the Charter was the Charter on Human Rights,²⁴ which guaranteed the same civil, political, economic, social, and cultural rights as the Constitution of Serbia of 1990. The Charter established a State Union of Serbia and Montenegro and, importantly, allowed Montenegro to hold a referendum on independence after three years.

In 2006, Montenegro left the State Union of Serbia and Montenegro, and in the same year Serbia adopted a new Constitution,²⁵ which is still in force. This Constitution has two main characteristics. First, although newly enacted, it cannot be truly regarded as a new constitution. Second, it had a primarily political aim.²⁶ Nevertheless, it is a modern constitution that guarantees a full range of contemporary human rights and freedoms, in line with ratified international human rights conventions, as will be discussed in the following chapters.

2. UN Human Rights Conventions in Serbia

Serbia is a party to the following UN human rights Conventions and Covenants:²⁷

1. Convention relating to the Status of Refugees;
2. International Covenant on Civil and Political Rights;

19 Marković, 2013, p. 49.

20 Constitution of FRY, 1992.

21 Krivokapić, Krstić, and Paunović, 2018, p. 95.

22 Petrović, 2001, p. 20.

23 Constitutional Charter of Serbia and Montenegro, Official Gazette of Serbia and Montenegro, no. 1/03.

24 Charter on Human Rights, Official Gazette of Serbia and Montenegro, no. 6/03.

25 Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021.

26 Marković, 2006, p. 5.

27 United Nations Treaty Collection, no date.

3. International Covenant on Economic, Social, and Cultural Rights;
4. International Convention on the Elimination of All Forms of Racial Discrimination;
5. Convention on the Elimination of All Forms of Discrimination against Women;
6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
7. Convention on the Rights of the Child;
8. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
9. Convention on the Rights of Persons with Disabilities;
10. International Convention for the Protection of All Persons from Enforced Disappearance.

3. The 1951 Convention relating to the Status of Refugees

Since the Socialist Federal Republic of Yugoslavia ratified the 1951 Convention relating to the Status of Refugees in 1967, Serbia became a successor to the Convention in 2001. Serbia also ratified the 1967 Protocol. Yugoslavia was one of the 26 states that sent representatives to the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, held in Geneva from 2 to 25 July 1951, at which the Convention was drafted and signed.²⁸ The 1951 Refugee Convention made lasting contributions to the international legal regime on refugee rights, including a single universal definition of ‘refugee’ and the core principles of non-discrimination, non-penalisation,²⁹ and non-refoulement.³⁰

Yugoslavia actively participated in drafting the Convention, with some of its proposed amendments adopted. For example, in Article 6 of the Convention, Yugoslavia proposed: ‘After the words “and subsequently returned there”, insert: until the date of entry into force of this Convention’.³¹ Moreover, the importance of the Refugee Convention for Serbia can be seen in the fact that it influenced the adoption of the Law on Asylum in the Republic of Serbia and the Law on Asylum and Temporary Protection, even though the Convention does not explicitly provide for the right to asylum.³²

28 Weiss, 1995, p. 12.

29 Davinić, 2013, p. 23; Janmyr, 2021.

30 Raičević, 2018, p. 185; Beogradski centar za ljudska prava, 2020.

31 Weiss, 1995, p. 60.

32 International Organization for Migration – Mission to Serbia, 2012, p. 56.

4. The 1966 International Covenant on Civil and Political Rights

The Socialist Federal Republic of Yugoslavia signed the Covenant on 8 August 1967 and ratified it on 2 June 1971. Serbia succeeded to the Covenant in 2001.

The Human Rights Committee is the United Nations treaty body responsible for overseeing the implementation of the International Covenant on Civil and Political Rights (ICCPR). It does so by considering State reports, individual complaints, and inter-State complaints, as well as preparing general comments, substantive statements, and general discussions on topics addressed in the ICCPR. Currently, 174 States are parties to the ICCPR.

The Human Rights Committee consists of 18 independent experts elected for a four-year term by States Parties to the ICCPR.³³ Each member must be a national of a State Party, of high moral character, and possess recognised competence in the field of international human rights.³⁴ No more than one national from any State may serve on the Committee.³⁵

One year after the ICCPR's entry into force, each State Party must submit a report to the Human Rights Committee detailing the status of implementation of the Covenant's provisions.³⁶ After the initial report, States submit periodic reports when requested by the Bureau of the Committee. On the basis of these reports, replies to the list of issues, and input from civil society, the Committee prepares its concluding observations.³⁷

In March 2024, the delegation of the Republic of Serbia presented its report on the implementation of the International Covenant on Civil and Political Rights.

5. The 1966 International Covenant on Economic, Social and Cultural Rights

The Socialist Federal Republic of Yugoslavia signed the Covenant on 8 August 1967 and ratified it on 2 June 1971. Serbia succeeded to the Covenant in 2001.

The Committee on Economic, Social and Cultural Rights (CESCR) was established to oversee the implementation of the Covenant³⁸ through its consideration

³³ International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407, Arts. 28, 32.

³⁴ Ibid., Art. 28.

³⁵ Currently, one of the members of the Committee is a Serbian national. That is Prof. Tijana Šurlan, judge of the Constitutional Court of Serbia.

³⁶ International Covenant on Civil and Political Rights, Art. 40.

³⁷ Etinski, Djajic, and Tubic, 2024.

³⁸ International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

of State reports, individual complaints, inter-State complaints, and inquiries, as well as by preparing general comments.

Initially, States must submit a report on implementation two years after acceding to the ICESCR. Following the initial report, periodic reports are requested every five years. In July 2019, the Chairs of the human rights treaty bodies agreed that the CESCR would adopt a standard eight-year reporting cycle.

The CESCR may consider individual complaints alleging violations of rights protected under the ICESCR if the State considered is a party to the First Optional Protocol to the ICESCR (adopted 10 December 2008; entered into force 5 May 2013).³⁹ Serbia ratified this Protocol on 22 September 2023.

The CESCR has been authorised to accept individual complaints since May 5 2013, provided that the requirements set out in Articles 1 through 4 of the Optional Protocol are met. Currently, 29 states have ratified the Optional Protocol.

6. The 1965 International Convention on the Elimination of All Forms of Racial Discrimination

The Socialist Federal Republic of Yugoslavia signed the Convention on 15 April 1966 and ratified it on 2 October 1967. Serbia succeeded to the Convention in 2001.

The Committee on the Elimination of Racial Discrimination (CERD) was established for the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) through its consideration of State reports, individual complaints, inter-State complaints, and early-warning and urgent procedures, as well as its preparation of general comments. This is also an instrument that is widely accepted, with 182 States parties.

The CERD is composed of 18 independent experts who are elected for a term of four years,⁴⁰ with membership considering an equitable geographical distribution of principal legal systems.

State parties are required to submit an initial report within one year after acceding to the ICERD, and later to submit regular periodic reports on how rights are being implemented every two years. With regard to Serbia, the Committee noted that the report covered the period from 1992 to 2008, including the period of great loss and gross violations of human rights in the former Yugoslavia prior to 2000.⁴¹

³⁹ Optional Protocol to the International Covenant on Social, Economic and Cultural Rights, New York, 10 December 2008, United Nations, Treaty Series, vol. 2922, p. 29. Doc. A/63/435; C.N.869.2009.TREATIES-34 of 11 December 2009.

⁴⁰ International Convention on Elimination of All Forms of Racial Discrimination, New York, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, Art. 8.

⁴¹ United Nations, 2011, p. 1.

7. The 1979 Convention on the Elimination of All Forms of Discrimination against Women

Since the Socialist Federal Republic of Yugoslavia ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1982, Serbia became a successor to that Convention in 2001.

The Committee on the Elimination of Discrimination against Women was created for the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁴² through its consideration of State reports, individual complaints, inter-State complaints, and inquiry requests, as well as its preparation of general recommendations, statements, and general discussions. At present, 189 States are parties to CEDAW.

The Committee on the Elimination of Discrimination against Women is composed of 23 independent experts on women's rights who are elected for a term of four years.⁴³

State parties are required to submit an initial report within one year after acceding to CEDAW, and then to submit regular periodic reports on how rights are being implemented every four years, or at the request of the Committee.⁴⁴

Article 29 of CEDAW provides a mechanism for States to resolve inter-State disputes concerning the interpretation or application of the Convention.⁴⁵ However, the Committee does not have a mechanism in place for urgent interventions.

The Committee on the Elimination of Discrimination against Women may consider individual complaints that allege a violation of an individual's rights under CEDAW if the State is a party to the Optional Protocol to CEDAW.⁴⁶ Articles 2 through 4 of the Optional Protocol set out the Committee's criteria for considering an individual complaint. At present, 115 States are parties to the Optional Protocol.

8. The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Socialist Federal Republic of Yugoslavia signed and ratified the Convention on 18 April 1989 and 10 September 1991, with the following declaration:

⁴² Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

⁴³ Ibid., Art. 17.

⁴⁴ Ibid., Art. 18.

⁴⁵ Ibid., Art. 29.

⁴⁶ Optional Protocol to the Covenant on the Elimination of All Forms of Discrimination against Women, New York, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83.

‘Yugoslavia recognises, in compliance with article 21, paragraph 1 of the Convention, the competence of the Committee against Torture to receive and consider communications in which one State Party to the Convention claims that another State Party does not fulfil the obligations pursuant to the Convention;

Yugoslavia recognises, in conformity with article 22, paragraph 1 of the Convention, the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.’

Serbia became a successor to the Convention in 2001.

The Committee Against Torture (CAT) was established to supervise and protect the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁴⁷ (‘Convention against Torture’) through its consideration of State reports, individual complaints, inter-State complaints, and inquiry requests, as well as its preparation of General Comments, statements, reprisal letters, and general discussions. At present, 174 States are parties to the Convention against Torture.

The CAT consists of 10 independent experts who are elected for a term of four years by States parties to the Convention.⁴⁸ Each member must be a national of a State party, of high moral character, and have recognised competence in the field of international human rights.⁴⁹

State parties are required to submit an initial report within one year after acceding to the Convention against Torture, and thereafter to submit regular periodic reports every four years on how rights are being implemented.

The CAT may consider individual complaints that allege a violation of an individual’s rights under the Convention against Torture if the State has made the necessary declaration under Article 22 of the Convention, which also identifies the requirements any complaint must meet in order to be considered by the Committee.⁵⁰

⁴⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

⁴⁸ *Ibid.*, Art. 17.

⁴⁹ Kelly, 2009.

⁵⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 22.

9. The 1989 Convention on the Rights of the Child

The Socialist Federal Republic of Yugoslavia signed the Convention on 26 January 1990 and ratified it on 3 January 1991 with the following reservation:

‘The competent authorities (ward authorities) of the Socialist Federal Republic of Yugoslavia may, under article 9, paragraph 1 of the Convention, make decisions to deprive parents of their right to raise their children and give them an upbringing without prior judicial determination in accordance with the internal legislation of the SFR of Yugoslavia.’

Serbia succeeded to the Convention in 2001.

The Committee on the Rights of the Child (CRC) oversees implementation of the Convention on the Rights of the Child (‘the Convention’)⁵¹ and its Optional Protocols on the involvement of children in armed conflict⁵² and on the sale of children, child prostitution, and child pornography,⁵³ through its consideration of State reports and inquiry requests, and its preparation of general comments, substantive statements, and general discussion days. Currently, 196 States are parties to the Convention.

The CRC consists of 18 independent experts who are elected for a term of four years by States parties to the Convention.⁵⁴ Each member must be a national of a State party, of high moral character, and have recognised competence in the field of international human rights.

Initially, a State must present a report two years after acceding to the Convention. After the initial report, a State must submit periodic reports every five years. Reports shall not exceed 120 pages. The reporting system requires each State party to submit: (1) a common core document, which provides general information about the reporting State, a framework for protecting human rights, and information on non-discrimination and equality, and (2) a treaty-specific document, which provides specific information on the implementation of the Convention and its Optional Protocols, as well as any national laws or policies taken to implement them.⁵⁵

⁵¹ Convention on the Rights of the Child, New York, 20 November 1989, United Nations, Treaty Series, vol. 1577.

⁵² Optional Protocol on the Involvement of Children in Armed Conflict, 25 May 2000, United Nations.

⁵³ Optional Protocol on the sale of children, child prostitution and child pornography, 25 May 2000, United Nations.

⁵⁴ Convention on the Rights of the Child, p. 3, Art. 43.

⁵⁵ Molloy, 2024.

Following the submission of a periodic report, the CRC first engages in a pre-session working group, where it drafts a list of issues to send to the State party. The State party must then respond with additional information if requested. At the session, the CRC engages in a constructive dialogue with a representative of the State party about the list of issues and concerns. The Committee elects two of its members to act as 'country rapporteurs' to lead the discussion.

The final phase of the process is for the CRC to draft and adopt concluding observations, which normally include: an introduction, positive aspects, factors and difficulties impeding the Convention's implementation, principal subjects of concern, and suggestions and recommendations. The concluding observations also request dissemination of the information within the State party and submission of additional information on specific points mentioned in the observations. A provisional due date for the next periodic report is also provided.

Article 12 of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure⁵⁶ sets out a mechanism for a State party to complain about violations committed by another State party to the Convention. This procedure is broad in scope, as it does not require individual child victims to come forward. However, both States concerned must have made declarations accepting the procedure; otherwise, the complaint will not be considered.

As of April 2014, the CRC may consider individual complaints alleging a violation of an individual's rights under the Convention or its Optional Protocols if the State is a party to a separate agreement establishing a complaints procedure. Article 7 of the Optional Protocol details the admissibility requirements for communications.⁵⁷ Currently, 52 States are parties to the Optional Protocol. Serbia has not yet ratified it; however, on 28 February 2012 Serbia signed the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, which includes a provision on individual complaints.⁵⁸

10. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, also known as the Committee on Migrant Workers (CMW), oversees implementation of the International Convention on the

⁵⁶ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, New York, 19 December 2011, United Nations, Treaty Series, vol. 2983, p. 135.

⁵⁷ Ibid., Art. 7.

⁵⁸ Ibid., Art. 5.

Protection of the Rights of All Migrant Workers and Members of Their Families.⁵⁹ It considers State reports and inter-State complaints, and also prepares general comments and substantive statements. Currently, 59 States are parties to the Convention. Serbia is not among them, as it has not yet ratified the Convention. Serbia signed it in 2004.

11. The 1990 International Convention on the Rights of Persons with Disabilities

The Committee on the Rights of Persons with Disabilities (CRPD) oversees implementation of the Convention on the Rights of Persons with Disabilities⁶⁰ through its consideration of State reports, individual complaints, early-warning and urgent actions, and inquiry requests, as well as its preparation of general comments and general discussion days. At present, 191 States are parties to the Convention, including Serbia, which signed the Convention on 17 December 2007 and ratified it on 31 July 2009.

States parties are required to submit an initial report within two years of acceding to the Convention and then submit regular periodic reports every four years on the implementation of rights.

The CRPD may consider individual complaints alleging a violation of rights under the Convention if the State has ratified the Optional Protocol to the Convention on the Rights of Persons with Disabilities.⁶¹ Currently, 106 States are parties to the Optional Protocol. Serbia has ratified the Protocol; however, no case has yet been discussed before the Committee against Serbia.

12. Incorporation of UN Covenants and Conventions into Serbian Law

■ 12.1. *Convention relating to the Status of Refugees*

The 1951 Refugee Convention influenced the adoption of the Law on Asylum and Temporary Protection in the Republic of Serbia, adopted in 2018.⁶² This law defines

⁵⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, New York, 18 December 1990, United Nations, Treaty Series, vol. 2220, p. 3.

⁶⁰ Convention on the Rights of Persons with Disabilities, New York, 13 December 2006, United Nations, Treaty Series, vol. 2515, p. 3.

⁶¹ Optional Protocol to the Convention on the Rights of Persons with Disabilities, New York, 13 December 2006, United Nations, Treaty Series, vol. 2518, p. 283. Doc.A/61/611.

⁶² Law on Asylum and Temporary Protection in the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 24/2018. The Law on Asylum was adopted in 2007, but as Serbia adopted the Law on Asylum and Temporary Protection in 2018, the Law on Asylum is no longer in force.

the principles, conditions, and procedures for granting and terminating asylum, as well as the status, rights, and obligations of asylum seekers and persons granted asylum in the Republic of Serbia.⁶³

The law has brought the Serbian asylum system closer to relevant international and EU standards, leading to improvements such as ensuring merits-based assessment of all asylum claims and introducing enhanced procedural guarantees for persons with specific needs (e.g., recognition of gender-based refugee claims and child-specific claims). However, state-funded interpretation in the asylum procedures and free legal aid are not yet independent. They require strengthening through the adoption of missing bylaws and improved harmonisation and integration.⁶⁴

Moreover, the Constitution of the Republic of Serbia states that generally accepted rules of international law and ratified international treaties form an integral part of the national legal system and should be applied directly.⁶⁵ Article 57 of the Constitution prescribes that every foreigner has the right to seek asylum.⁶⁶

■ 12.2. *International Covenant on Civil and Political Rights*

Serbia carried out a constitutional reform during the reporting period to further strengthen the independence of the judiciary. In 2018, the State adopted the Law on the Planning System to regulate the creation and monitoring of public policies. It also amended the Law on the Prohibition of Discrimination and adopted numerous laws, strategies, and action plans related to the prevention of discrimination.

To promote gender equality, the State adopted the 2021 Law on Gender Equality and began implementing the 2021–2030 Strategy for Gender Equality along with its action plan. Since the adoption of the Law on the Prevention of Domestic Violence in 2016, significant efforts have been made to improve the work of all actors in the domestic violence protection system. Intensive work is ongoing to establish a single central record of cases of domestic violence. The work of the Council for the Prevention of Domestic Violence is also of great importance. After the tragic events in Belgrade on 3 and 4 May last year, the Government adopted a set of emergency measures, including amendments to the Criminal Code and the Law on Arms and Ammunition, to prevent similar tragedies.

Promising efforts have also been made to build the capacity of prison officers in the fields of deprivation of liberty and the prohibition of torture. The Government has improved the capacities of the Protector of Citizens, the national preventive mechanism.

63 International Organization for Migration – Mission to Serbia, 2012, p. 56.

64 United Nations High Commissioner for Refugees, 2023, Human Rights' Compilation Report, Universal Periodic Review: Fourth Cycle, 43rd Session.

65 Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021, Art. 16, para. 2.

66 Ibid., Art. 57.

It can be said that Serbia remained determined to achieve further progress in democratisation, the fulfillment of international obligations, and the attainment of the highest standards of human rights.

The Human Rights Committee concluded its consideration of the fourth periodic report of Serbia on implementation of the provisions of the International Covenant on Civil and Political Rights (ICCPR).⁶⁷

The Human Rights Committee may consider individual complaints alleging violations of rights under the ICCPR if the State is a party to the First Optional Protocol to the ICCPR, which establishes the complaints mechanism.⁶⁸ Articles 1 through 5 of the Optional Protocol identify the requirements for the Committee's consideration of individual complaints.⁶⁹ Currently, 116 States are parties to the Optional Protocol, which entered into force for Serbia on 6 December 2001.

The following section of this study presents cases brought before the Committee against Serbia.

In one case, a communication was submitted by Z.S. in September 2023 concerning the suspension of payments for pension and disability insurance. In July 2024, the Committee decided to discontinue consideration of this communication due to loss of contact with the author.⁷⁰

In another case, the author was Dobrivoje Mladenović, a national of the Republic of Serbia, who claimed that the State party had violated his rights under Article 14 (1), read alone and in conjunction with Article 26 of the Covenant. The Committee found that the author had not demonstrated, for the purpose of admissibility, that the decision of the Constitutional Court was manifestly arbitrary or erroneous, or amounted to a denial of justice. Accordingly, the Committee declared this aspect of the communication under Article 14 (1) of the Covenant inadmissible under Article 2 of the Optional Protocol.⁷¹

The third case dealt with Communication No. 1355/2005 submitted by the Humanitarian Law Center, a non-governmental organisation that monitors and investigates human rights violations in Serbia. It submitted the complaint on behalf of X, a minor born in 1992, a citizen of Serbia. The author claimed violations of articles 7, 17, and 24, paragraph 1, each taken alone and read in conjunction with article 2, paragraphs 1 and 3, of the Covenant by Serbia.

In the absence of express authorisation, the author should provide evidence that it has a sufficiently close relationship with the child to justify acting without

⁶⁷ CCPR/C/SRB/CO/4: Concluding observations on the fourth periodic report of Serbia.

⁶⁸ First Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966; entered into force 23 March 1976).

⁶⁹ Ibid., Arts. 1 to 5.

⁷⁰ Decision adopted by the Committee under the Optional Protocol, concerning communication No. 4318/2023, adopted by the Committee at its 141st session (1-23 July 2024).

⁷¹ Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2869/2016.

such authorisation. The Committee notes that the author acted as counsel for the child in the domestic proceedings between January and August 2003, with several interruptions. Since the author ceased to represent the child in the domestic proceedings in August 2003, it has had no contact with him, his legal guardian, or his parents. In such circumstances, the Committee cannot even assume that the child does not object, let alone consent, to the author proceeding with a communication to the Committee. Consequently, notwithstanding that the Committee is gravely disturbed by the evidence in this case, it is precluded by the provisions of the Optional Protocol from considering the matter since the author has not shown that it may act on the victim's behalf in submitting this communication. Accordingly, the Committee decided that the communication was inadmissible under article 1 of the Optional Protocol.⁷²

The fourth case discussed Communication No. 1180/2003, submitted by Zeljko Bodrožić, a Yugoslav national. He claimed to be a victim of a breach by Serbia and Montenegro of his rights under article 19 of the Covenant.⁷³

The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol, stated that, in accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including quashing of the conviction, restitution of the fine imposed on and paid by the author, restitution of court expenses paid by him, and compensation for the breach of his Covenant right. The State party was obliged to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant. It was also requested to publish the Committee's Views.

■ 12.3. *International Covenant on Economic, Social and Cultural Rights*

The Constitution of Serbia contains economic, social, and cultural rights under Section Two – Human and Minority Rights and Freedoms.⁷⁴ All international standards regarding the right to work,⁷⁵ right to strike,⁷⁶ right to healthcare,⁷⁷ social protection,⁷⁸ pension insurance,⁷⁹ and others have been applied in the Constitution. It could be said that the Republic of Serbia has accepted rights relevant and prescribed in the Covenant.

72 Communication No. 1355/2005.

73 Communication No. 1180/2003.

74 Constitution of the Republic of Serbia, Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021.

75 Ibid., Art. 60.

76 Ibid., Art. 61.

77 Ibid., Art. 68.

78 Ibid., Art. 69.

79 Ibid., Art. 70.

Serbia has adopted a number of laws in the field of economic, social, and cultural rights,⁸⁰ in particular:

- a. The Employment Act (2005);⁸¹
- b. The Strike Law (1996);⁸²
- c. The Family Act (2005);⁸³
- d. The Law on Employment and Unemployment Insurance (2009);⁸⁴
- e. The Law on Professional Rehabilitation and Employment of Persons with Disabilities (2009);⁸⁵
- f. The Law on Employment of Foreigners (2014);⁸⁶
- g. The Law on Social Protection (2011);⁸⁷
- h. The Law on Healthcare (2019);⁸⁸
- i. The Law on Financial Support to the Family with Children (2017);⁸⁹
- j. The Law on Pension and Disability Insurance (2003);⁹⁰
- k. The Law on the Protection of Persons with Mental Illness (2013);⁹¹
- l. The Law on the Education System Foundations (2017).⁹²

80 Milenković, 2010, pp. 18–19.

81 Employment Act, Official Gazette of the Republic of Serbia, Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017- Decision of the Constitutional Court, 113/2017 and 95/2018 – authentic interpretation.

82 The Strike Law, Official Gazette of the Federal Republic of Yugoslavia, No, 29/96 and Official Gazette of the Republic of Serbia, Nos. 101/2005 – other law and 103/2012 – Decision of the Constitutional Court.

83 Family Act of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 18/2005, 72/2011 – other law and 6/2015.

84 Law on Employment and Unemployment Insurance, Official Gazette of the Republic of Serbia, Nos. 36/2009, 88/2010, 38/2015, 113/2017, 113/2017 – other law and 49/2021.

85 Law on Professional Rehabilitation and Employment of Persons with Disabilities, Official Gazette of the Republic of Serbia, Nos. 36/2009, 32/2013 and 14/2022 – other law.

86 Law on Employment of Foreigners, Official Gazette of the Republic of Serbia, Nos. 128/2014, 113/2017, 50/2018, 31/2019 and 62/2023.

87 Law on Social Protection, Official Gazette of the Republic of Serbia, Nos. 24/2011 and 117/2022 – Decision of the Constitutional Court.

88 Law on Health Care, Official Gazette of the Republic of Serbia, Nos. 25/2019 and 92/2023 – authentic interpretation.

89 Law on Financial Support to the Family with Children, Official Gazette of the Republic of Serbia, Nos. 113/2017, 50/2018, 46/2021 – Decision of the Constitutional Court, 51/2021 – Decision of the Constitutional Court, 53/2021 – Decision of the Constitutional Court, 66/2021, 130/2021, 43/2023 – Decision of the Constitutional Court, 62/2023, 11/2024 – Decision of the Constitutional Court and 79/2024.

90 Law on Pension and Disability Insurance, Official Gazette of the Republic of Serbia, Nos. 34/2003, 64/2004 – Decision of the Constitutional Court, 84/2004 – other law, 85/2005, 101/2005 – other law, 63/2006 – Decision of the Constitutional Court, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014, 142/2014, 73/2018, 46/2019 – Decision of the Constitutional Court, 86/2019, 62/2021, 125/2022, 138/2022, 76/2023 i 94/2024.

91 Law on Protection of persons with mental illness, Official Gazette of the Republic of Serbia, No. 45/2013.

92 Law on the Education System Foundations, Official Gazette of the Republic of Serbia, Nos. 88/2017, 27/2018 – other law, 10/2019, 27/2018 – other law, 6/2020, 129/2021 and 92/2023.

■ 12.4. *International Convention on the Elimination of All Forms of Racial Discrimination*

CERD notes the Constitution of 2006, which contains a commendable chapter guaranteeing the protection of the rights of national minorities and includes provisions prohibiting discrimination in line with article 1 of the Convention.⁹³

CERD notes with appreciation that the Criminal Code of 2005 contains anti-discrimination provisions.⁹⁴

CERD also notes with appreciation the adoption of a number of laws aimed at preventing or combatting discrimination, including:

- a. The Law on National Minorities Councils (2009);⁹⁵
- b. The Law on the Prohibition of Discrimination (2009);⁹⁶
- c. The Law on Gender Equality (2009);⁹⁷
- d. The Law on Social Housing (2009);⁹⁸
- e. The Law on Offences (2013);⁹⁹
- f. The Law on the Prevention of Violence and Improper Conduct at Sports Events (2007 and 2009);¹⁰⁰
- g. The Law on the Ombudsman (2021);¹⁰¹
- h. The Law on the Prevention of Discrimination against Disabled Persons (2006);¹⁰²

93 Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021, Chapter 3.

94 Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2019, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019 and 94/2024, Art. 387.

95 The Law on National Minorities Councils of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 72/2009, 20/2014 – Decision of the Constitutional Court, 55/2014 and 47/2018.

96 The Law on the Prohibition of Discrimination of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 22/2009 and 52/2021.

97 The Law on Gender Equality of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 52/2021.

98 The Law on Social Housing, Official Gazette of the Republic of Serbia, Nos. 24/2011 and 117/2022 – Decision of the Constitutional Court.

99 The Law on Offences, Official Gazette of the Republic of Serbia, Nos. 65/2013, 13/2016, 98/2016 – Decision of the Constitutional Court, 91/2019, 91/2019 – other law and 112/2022 – Decision of the Constitutional Court.

100 The Law on Prevention of Violence and Improper Conduct at Sport Events, Official Gazette of the Republic of Serbia, Nos. 90/2007, 72/2009 – other law, 111/2009, 104/2013 – other law and 87/2018.

101 The Law on the Ombudsman, Official Gazette of the Republic of Serbia, No. 105/2021.

102 The Law on Prevention of Discrimination against Disabled Persons, Official Gazette of the Republic of Serbia, Nos. 33/2006 and 13/2016.

i. The Law on the Protection of Rights and Freedoms of National Minorities (2002).¹⁰³

Serbia has adopted a number of programmes and plans to prevent discrimination against persons belonging to national minorities, including through the 2009 National Strategy for the Promotion of the Position of Roma and increased opportunities for persons belonging to national minorities to learn their languages in certain areas of Serbia.

Serbia has also made efforts to support and promote understanding and tolerance among national minorities living in the Autonomous Province of Vojvodina.¹⁰⁴

The CERD may consider individual complaints that allege a violation of an individual's rights under the ICERD if the State party has made the necessary declaration under article 14 of the ICERD,¹⁰⁵ which also identifies the basic requirements a complaint must satisfy to be considered by the Committee.

Several cases were brought before the CERD. One of them was initiated by Communication No. 29/2003. The petitioner was Dragan Durmic, a national of Serbia and Montenegro and of Romani origin. He claimed to be a victim of violations by Serbia and Montenegro of article 2, paragraph 1 (d), read together with article 5 (f), as well as articles 3, 4 (c), and 6 of the International Convention on the Elimination of Racial Discrimination. The petitioner was legally represented by the Humanitarian Law Center and the European Roma Rights Center.

The Committee concluded that the State party had failed to examine the petitioner's arguable claim of a violation of article 5 (f). In particular, it failed to investigate his claim promptly, thoroughly, and effectively. Consequently, article 6 of the Convention was violated.

The Committee recommended that the State party provide the petitioner with just and adequate compensation commensurate with the moral damage he suffered. It also recommended that the State party take measures to ensure that the police, public prosecutors, and the Court of Serbia and Montenegro properly investigate accusations and complaints related to acts of racial discrimination, which should be punishable by law according to article 4 of the Convention.

The Committee asked to receive information from the Republic of Serbia about the measures taken in light of the Committee's Opinion. The State party was also requested to widely disseminate the Committee's Opinion.¹⁰⁶

¹⁰³ The Law on the Protection of Rights and Freedoms of National Minorities, Official Gazette of the SRJ, No. 11/2002, Official Gazette of the Serbia and Montenegro, No. 1/2003, Official Gazette of the Republic of Serbia, Nos. 72/2009 – other law, 97/2013 – Decision of the Constitutional Court and 47/2018.

¹⁰⁴ United Nations, 2011, p. 2.

¹⁰⁵ International Convention on Elimination of All Forms of Racial Discrimination, New York, 21 December 1965, United Nations, Treaty Series, vol. 660, Art. 14.

¹⁰⁶ Communication No. 29/2003.

■ ***12.5. Convention on the Elimination of All Forms of Discrimination against Women***

Article 15 of the Constitution of the Republic of Serbia stipulates that the State shall guarantee equality between women and men and shall develop a policy of equal opportunities.¹⁰⁷ Moreover, Article 60, paragraph 3, states that women, young people, and persons with disabilities shall be afforded special protection at work and special working conditions in accordance with the law.¹⁰⁸ The National Assembly shall ensure equality and representation of different genders and members of national minorities in accordance with the law.¹⁰⁹

Some of the most important documents relating to gender aspects of human rights, security, and violence against women are the Strategy for Preventing and Combating Gender-Based Violence against Women and Domestic Violence 2021–2025¹¹⁰ and the Strategy for Preventing and Combating Trafficking in Human Beings, Especially Women and Children, and Protecting the Victims 2017–2022.¹¹¹ These documents represent Serbia's strategy for promoting gender equality.¹¹²

■ ***12.6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***

Article 25, paragraph 2, of the Constitution of the Republic of Serbia states that no one shall be subjected to torture, inhuman or degrading treatment or punishment, or to medical or other experiments without free consent.¹¹³

Article 26 provides:

‘No person may be kept in slavery or servitude.

All forms of human trafficking are prohibited.

Forced labour is prohibited. Sexual or financial exploitation of a person in unfavorable position shall be deemed forced labour.

Labour or service of persons serving a sentence of imprisonment, if based on voluntariness with financial compensation; labour or service of military personnel; or labour or services during war or a state of emergency in accordance with measures prescribed on the

¹⁰⁷ Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021.

¹⁰⁸ Ibid., Art. 60, para. 3.

¹⁰⁹ Ibid., Art. 100, para. 2.

¹¹⁰ Strategy for Preventing and Combating Gender-Based Violence against Women and Domestic Violence, Official Gazette of the SRJ, No. 47/21.

¹¹¹ Strategy for Preventing and Combating Trafficking in Human Beings, Especially Women and Children and Protecting the Victims, Official Gazette of the SRJ, No. 77/17.

¹¹² The Gender Equality Strategy for the period 2021–2030, 2022.

¹¹³ Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021, Art. 25, para. 2.

declaration of war or state of emergency, shall not be considered forced labour.¹¹⁴

Several complaints have been brought against Serbia before the CAT. In one case, the complainant was Jovica Dimitrov, a Serbian citizen of Roma origin, residing in Serbia and Montenegro. He claimed to be a victim of violations of articles 2, paragraph 1, read in connection with articles 1; 16, paragraph, 1; and 12, 13, and 14, taken alone and/or read in connection with article 16, paragraph 1, of the Convention. He was represented by two non-governmental organisations.¹¹⁵

The Committee noted the complainant's description of the treatment he suffered during detention, which constitutes severe pain or suffering intentionally inflicted by public officials in the context of a criminal investigation, as well as his sister's statement and a medical report. It also noted the State party's failure to adequately address the claim or respond to the allegations. In these circumstances, the Committee concluded that the facts, as submitted, constitute torture within the meaning of article 1 of the Convention.

Concerning the alleged violations of articles 12 and 13, the Committee noted that the Public Prosecutor did not request a preliminary investigation until 34 months after the criminal complaint was filed on 7 November 1996, and no further action was taken. The State party did not contest this claim. The Committee also noted that the failure to inform the complainant of the investigation results prevented him from pursuing a 'private prosecution'. Thus, the State party failed to comply with its obligations under articles 12 and 13.

The Committee further noted that the absence of criminal proceedings deprived the complainant of the possibility of filing a civil suit for compensation. Since the State party did not contest this allegation and significant time had passed, the Committee concluded that Serbia also violated its obligations under article 14.

The Committee urged the Republic of Serbia to conduct a proper investigation and, in accordance with Rule 112, paragraph 5, of its rules of procedure, to inform the Committee within 90 days of the steps taken.

In the second case, the complainant was Dragan Dimitrijevic, a Serbian citizen of Roma origin born on 7 March 1977. He claimed violations by Serbia and Montenegro of articles 2, paragraph 1, read in conjunction with article 1; article 16, paragraph 1; and articles 12, 13, and 14, taken alone and/or together with article 16, paragraph 1.¹¹⁶

The complainant was arrested on 27 October 1999 at his home in Kragujevac, Serbia, in connection with the investigation of a crime. He was taken to the

114 Ibid., Art. 26.

115 Communication No. 171/2000.

116 Communication No. 207/2002.

local police station, where he was handcuffed to a radiator and beaten by several police officers, some of whom the complainant knew by their first names or nicknames. The officers kicked and punched him all over his body while insulting his ethnic origins and cursing his 'gypsy mother'. One of the officers struck the complainant with a large metal bar. Some time later, the officers unfastened him from the radiator and handcuffed him to a bicycle. Then they continued punching and beating him with their nightsticks and the metal bar. At one point, the complainant began bleeding from his ears, yet the beating continued until he was released the same day.

The complainant alleged violations by the State party of article 2, paragraph 1, in connection with article 1, and of article 16, paragraph 1 of the Convention. The Committee noted in this respect the complainant's description of the treatment he was subjected to while in detention, which can be characterised as severe pain or suffering intentionally inflicted by public officials in the context of a criminal investigation, as well as the written testimonies of witnesses to his arrest and release provided by the complainant. The Committee also noted that the State party had not contested the facts as presented by the complainant, which occurred more than five years earlier. In these circumstances, the Committee concluded that due weight must be given to the complainant's allegations and that the facts, as submitted, constitute torture within the meaning of article 1 of the Convention.

Concerning the alleged violations of articles 12 and 13 of the Convention, the Committee noted that the public prosecutor never informed the complainant whether an investigation was being or had been conducted after the criminal complaint was filed on 31 January 2000. It also noted that the failure to inform the complainant of the results of any such investigation effectively prevented him from pursuing 'private prosecution' of his case before a judge. In these circumstances, the Committee considered that the State party failed to comply with its obligation under article 12 of the Convention to carry out a prompt and impartial investigation wherever there are reasonable grounds to believe that an act of torture has been committed. The State party also failed to comply with its obligation under article 13 to ensure the complainant's right to complain and to have his case promptly and impartially examined by the competent authorities.

Moreover, the Committee noted the complainant's allegations that the absence of criminal proceedings deprived him of the possibility of filing a civil suit for compensation. In view of the fact that the State party had not contested this allegation and given the passage of time since the complainant initiated legal proceedings at the domestic level, the Committee concluded that the State party also violated its obligations under article 14 of the Convention in the present case.

The Committee, decided that there was a violation of articles 2, paragraph 1, in connection with article 1, 12, 13, and 14 of the Convention. It also urged the State party to conduct a proper investigation into the facts alleged by the complainant

and to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken.

In the third case, the complainants were Slobodan Nikolić and his wife, Ljiljana Nikolić, nationals of Serbia and Montenegro. They claimed that the State party's alleged failure to conduct a prompt and impartial investigation into the circumstances of their son's death constituted a violation by Serbia and Montenegro of articles 12, 13, and 14 of the Convention.¹¹⁷

The Committee considered that there were reasonable grounds for the State party to investigate the complainants' allegation that their son was tortured prior to his death. The main question was whether there had been an adequate investigation of the events preceding the death of N. N., in line with article 12 of the Convention.

The deputy public prosecutor stated, before the autopsy, that he would not initiate criminal proceedings *ex officio*, as he considered the death an accident, and he did not examine any of the witnesses. Moreover, the investigating judge entrusted the same forensic experts who had conducted the autopsy to address the alleged inconsistencies in their own autopsy report, rather than engaging another institution to perform a forensic examination. On the basis of these facts, the Committee concluded that the investigation of the circumstances of the complainants' son's death was not impartial and therefore constituted a breach of article 12 of the Convention.

The Committee also held that the national courts dismissed the complainants' appeals without addressing their arguments and, by doing so, failed to examine the case impartially. This constituted a violation of article 13 of the Convention.

Article 21 of the Convention against Torture provides a mechanism for States to complain about violations of the Convention made by another State.¹¹⁸ However, this procedure for inter-State complaints has never been used.

Article 30 of Convention against Torture provides a mechanism for States to resolve inter-State disputes concerning the interpretation or application of the Convention, through negotiations, arbitration, or referral of the dispute to the International Court of Justice.¹¹⁹

In another case against Serbia, the CAT concluded in 2017 that Serbia's deportation of the complainant to Turkey constituted a violation of article 3 of the Convention against Torture.¹²⁰ The complainant, Cevdet Ayaz, was a Turkish national of Kurdish origin, born in 1973. At the time of submission of the communication, he was in danger of being extradited to Turkey. He claimed that his

¹¹⁷ Communication No. 174/2000.

¹¹⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, United Nations, Treaty Series, vol. 1465, Art. 21.

¹¹⁹ Ibid., Art. 30.

¹²⁰ Communication No. 857/2017.

extradition would amount to a violation by Serbia of article 3, read in conjunction with article 15, of the Convention. On 12 March 2001, Serbia had made the declaration under article 22 of the Convention.

On 11 December 2017, the CAT requested the State party to refrain from expelling the complainant to Turkey while it considered his complaint. On 5 November 2018, the State party informed the Committee that the request for interim measures was not brought to the attention of the Ministry of Justice of Serbia in time to prevent the complainant's extradition, as the request was delivered on 18 December 2018, while the decision on the complainant's extradition had been taken on 15 December 2018.

At the time of submission of the present communication, the complainant claimed that his extradition to Turkey would constitute a violation of his rights under article 3 of the Convention against Torture, as he had been sentenced in Turkey to 15 years' imprisonment for a politically motivated crime on the basis of a confession extracted under torture. He further claimed that the risk of torture and ill-treatment was even greater in Turkey following the attempted military coup in July 2016, as those perceived to be political opponents of the current regime had been subjected to torture and other ill-treatment, as well as incommunicado detention and inhumane conditions in overcrowded prisons.

The CAT, acting under article 22 (7) of the Convention against Torture, found that the facts before it constituted a violation by the State party of article 22 of the Convention against Torture, due to its failure to cooperate with the CAT in good faith. This failure prevented the CAT from effectively examining the present communication, with regard to Serbia's non-compliance with the CAT's request of 11 December 2017 for interim measures not to extradite the complainant and his forcible removal to Turkey on 25 December 2017.

Another case was filed in 2019,¹²¹ in which the complainants were Milunka Cubrilov, Jasmina Cubrilov Jovic, and Marina Cubrilov, nationals of Serbia, born on 6 October 1948, 29 July 1974, and 15 December 1981, respectively. They are the widow and daughters of Bozidar Cubrilov, of undetermined nationality, who was born in 1948 and died on 16 June 1996. The applicants claimed that Serbia infringed their rights under articles 6, 12, 13, 14, and 16 of the Convention against Torture, as well as the rights of Bozidar Cubrilov under article 13 of the Convention. Although not explicitly invoked, the communication also raised issues under article 2 of the Convention against Torture.

The CAT noted the complainants' allegations that: (a) Bozidar Cubrilov was beaten, including on the head, by police officers upon his arrest and during his detention, which resulted in his death on 16 June 1996; (b) the Serbian authorities failed to adequately investigate the treatment inflicted on Bozidar Cubrilov or hold those responsible accountable; (c) Bozidar Cubrilov and his family members

¹²¹ Communication No. 939/2019.

were denied the opportunity to lodge a complaint or to have the case promptly and impartially investigated; (d) the Serbian authorities failed to compensate the complainants for the failure to investigate.

In light of the above, the Committee concluded that there has been no prompt and impartial investigation into the torture and death of Bozidar Cubrilov, in violation of article 12 of the Convention against Torture. The CAT also concluded that the judicial authorities of the State party failed to fulfill Serbia's obligation to take effective measures to prevent acts of torture under article 2 of the Convention against Torture. In addition, the CAT found that Serbia had failed to fulfill its duty under article 13 of the Convention against Torture to ensure that Bozidar Cubrilov and the complainants had the right to submit a complaint and to have his case investigated promptly and impartially by the competent authorities. However, in light of the facts before the CAT concerning the treatment inflicted on Bozidar Cubrilov and the complainants' claims for compensation, the Committee found insufficient basis to conclude that Serbia had violated its obligations under article 14 of the Convention against Torture.

■ 12.7. *Convention on the Rights of the Child*

According to the Constitution of the Republic of Serbia, the family, and mothers and children, enjoy special protection, under which children without parental care and mentally or physically handicapped children are protected. Children under 15 years of age may not be employed, nor may children under 18 years of age be employed in jobs detrimental to their health or morals.¹²² Children born out of wedlock have the same rights and obligations as children born in wedlock.¹²³ Education is available to all on equal terms, and primary education is compulsory and free, in accordance with the law.¹²⁴

The Constitution stipulates that everyone has the right to healthcare. Children, pregnant women, and older persons have the right to healthcare funded from public revenue when they cannot realise that right on other grounds, while other persons have that right under conditions determined by law.¹²⁵

Many important laws have been adopted in Serbia in the field of child protection, the most important of which are the following:

- a. The Family Act (2005);¹²⁶
- b. The Act on Juvenile Offenders and Protection of Minors in Criminal Proceedings (2005);¹²⁷

122 Ibid., Art. 66.

123 Ibid., Art. 64, para. 4.

124 Ibid., Art. 71.

125 Ibid., Art. 68.

126 Family Act of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 18/2005, 72/2011 – other law and 6/2015.

127 Act on Juvenile Offenders and Protection of Minors in Criminal Proceedings of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 85/2005.

c. The Law on the Education System Foundations (2017).¹²⁸

International organisations dealing with children (UNICEF, Save the Children, the World Bank) play a dual role in Serbia: some implement programmes and projects (UNICEF, Save the Children) and provide financial, logistical, and personnel support to local NGOs and state agencies and services, while others mainly finance reforms carried out within state services (World Bank). Their support has contributed to many successes in implementing the Convention.¹²⁹

■ **12.8. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

Some argue that Serbia has laid the groundwork for effective migration governance by acceding to various international conventions on the protection of migrants' rights, including the Convention on the Rights of the Child, the Convention relating to the Status of Refugees, and the Conventions on Statelessness. This is one of the reasons why Serbia has not ratified this Convention.¹³⁰

However, Serbia has adopted two conventions of the specialised agency of the International Labour Organisation (ILO) dealing with the status of migrant workers: the ILO Migration for Employment Convention (No. 97, 1949) and the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (No. 143, 1975).

■ **12.9. Convention on the Rights of Persons with Disabilities**

The Constitution of the Republic of Serbia stipulates that any direct or indirect discrimination based on any ground, in particular mental or physical disability, is prohibited.¹³¹ Moreover, persons with disabilities are entitled to special protection at work and special working conditions in accordance with the law.¹³² Persons with disabilities, war veterans, and victims of war are afforded special protection under the law.¹³³

As mentioned above, in 2006 Serbia adopted the Law on Prevention of Discrimination against Persons with Disabilities, which aims to prohibit discrimination, emphasise the need to respect the human rights and dignity of persons with disabilities, ensure their inclusion in all spheres of social life on an equal basis,

128 Law on the Education System Foundations, Official Gazette of the Republic of Serbia, Nos. 88/2017, 27/2018 – other law, 10/2019, 27/2018 – other law, 6/2020, 129/2021 and 92/2023.

129 Koalicija nevladinih organizacija iz Srbije pod koordinacijom Centra za prava deteta, 2008, p. 14.

130 Migration Governance Snapshot: the Republic of Serbia, 2018.

131 Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/202., Art. 21, para. 3.

132 Ibid., Art. 60, para. 5.

133 Ibid., Art. 60, para. 5.

and involve them in all decision-making processes concerning their rights and obligations.

13. Conclusion

It can be concluded that all the conventions are widely ratified and acceptable to almost all countries in the world. However, the decisions of the committees are not binding, which affects the influence of these treaties on the position of human rights in member states.

Serbia has accepted almost all universal conventions guaranteeing human rights and has incorporated into its Constitution and legislation the norms from these instruments. There is also wide acceptance of the jurisdiction of the committees established by these treaties. There are only four cases against Serbia before the Human Rights Committee, which suggests that Serbia respects the human rights envisaged in this document. However, given the significantly larger number of applications before the ECtHR concerning the same rights also envisaged in the Covenant, it can be concluded that individuals prefer seeking protection from the European Court of Human Rights rather than Committee. Serbia is a stable country with strong institutions for human rights protection, including the Constitutional Court and the Ombudsman as the most important ones.

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