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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 2207th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 19 July 2004, at 3 p.m.

Chairperson: Mr. AMOR

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Initial report of Serbia and Montenegro (continued) (CCPR/C/SEMO/2003/1; CCPR/C/81/L/SEMO)

1. At the invitation of the Chairperson, the members of the delegation of Serbia and Montenegro resumed their places at the Committee table.

2. The CHAIRPERSON invited the delegation of Serbia and Montenegro to respond to the questions raised by Committee members.

3. Mr. PEKOVIĆ (Serbia and Montenegro) said that, while the provisions of the Covenant were not directly invoked in court proceedings, its main tenets were embedded in the Constitutional Charter of the State Union. Pursuant to the Charter of Human and Minority Rights and Civil Liberties, everyone had the right of appeal or other legal remedy; a series of mechanisms guaranteed recourse to both regular and extraordinary remedies.

4. When assessing the adequacy of compensation awarded to the victim of a crime, it was important to take account of the economic situation of the country. Compensation could be considered adequate if it did not lead to the enrichment of the victim.

5. A question had been asked about the due processing of complaints lodged with the courts. In June 2004, a special advisory board had been established within the Supreme Court to process such complaints. If the presiding judge was found guilty of negligence or inadequate performance in the discharge of his duties, the board was competent to request retrial and, if such action was deemed appropriate, to dismiss the judge. The new proceedings were expected to improve the efficiency of the courts and expedite trials.

6. The State Union Court had been established in July 2004 and was currently in the process of reviewing cases to decide on possible referrals to member state courts. The competence of the different judicial bodies remained a contentious issue. Jurisdiction over human rights infringements committed at the State Union and republic levels would lie with the new court. Legislation provided for human rights protection mechanisms in all member states.

7. The Accountability for Human Rights Violations Act stipulated that the perpetrators of any human rights violations that had occurred after 23 March 1976, the date of entry into force of the Covenant, could be held accountable. Pursuant to the Act, the commission to investigate accountability for human rights violations had been established with the aim of instituting legal proceedings and vetting candidates for public office.

8. Concern had been expressed about derogations from Covenant provisions during the state of emergency. The Constitutional Court ruling of unconstitutionality of certain measures did not automatically render the evidence gathered in connection with “Operation Sabre” inadmissible. That evidence had been obtained in conformity with legal requirements in the presence of a legal representative and was thus admissible in court.

9. If asylum-seekers were found to be members of a terrorist organization or in any other way guilty of perpetrating acts that constituted an offence under domestic legislation, such persons would be extradited in compliance with the legislation governing extradition. A person could not be extradited to a country where he or she was liable to be subjected to the death penalty.

10. Serbia had no formal witness protection programme. The costs incurred by a change of identity and living abroad exceeded the country's available resources. However, the relevant body within the Serbian Government had been entrusted with drafting a bill to establish such a programme. The existing Criminal Code provided for protection of witnesses by the police at the request of a judge or public prosecutor.

11. In principle, it was permissible to use evidence provided by the International Criminal Tribunal for the former Yugoslavia (ICTY) in domestic courts. The public prosecutor was competent to judge any evidence adduced on its merits and decide on its use in a trial.

12. There were no statutory limitations relating to genocide, war crimes or crimes against humanity. Thus far, however, no legal provisions criminalizing command responsibility existed.

13. Victims who could not afford to institute civil proceedings were eligible for exemption from court fees or for legal aid.

14. Domestic legislation contained provisions that allowed for the institution of proceedings in relation to war crimes in domestic courts.

15. As to the moment at which a rape victim was expected to resist the assault, he said that for a sexual act to constitute rape, it was merely expected that the victim did not consent. No active resistance was needed and indictment for rape was issued irrespective of the victim's age.

16. Ms. SIMONOVIĆ (Serbia and Montenegro) said that the provisions of international human rights instruments were incorporated in Montenegrin domestic legislation. She was, however, unaware of cases where the Covenant provisions had been directly invoked in legal proceedings.

17. In Montenegro, the Court Council was the body responsible for ensuring the efficiency of the courts. The Court President was competent to monitor personnel, recommend measures to remedy possible shortcomings and submit monthly reports to the Council. He also considered the admissibility of complaints of undue delays in court proceedings. The Council's disciplinary panel decided on the imposition of disciplinary measures on judges found guilty of negligence. In serious cases, dismissal might ensue.

18. Mr. ČOGURIĆ (Serbia and Montenegro) said that the state of emergency had been declared by the Acting President of the Republic of Serbia on the basis of the powers stipulated in the Constitution. The Constitutional Court had declared unconstitutional a number of special measures applied during the state of emergency such as unlawful detention, censorship and the ban on media reporting. The special powers vested in the Acting President of the Supreme Court and the Acting Public Prosecutor regarding the suspension of lower court judges had also been judged unconstitutional.

19. The prosecution of war crimes in domestic courts had been facilitated by the institution of the Special War Crimes Trial Chamber of the Belgrade District Court and the appointment of five Supreme Court judges for that purpose. In addition, the competence of the Office of the Special Prosecutor for Organized Crime included war crimes. The Code of Criminal Procedure contained special provisions for the prosecution of war crimes relating to, inter alia, testimony on closed-circuit television and non-disclosure to the public of case-related records. In camera hearings were held for witness associates.

20. Mr. ŠAHOVIĆ (Serbia and Montenegro) said that the cooperation of the State party with ICTY had undergone various stages. He reminded the Committee that such cooperation was a highly political issue in Serbia. The succession of elections could be held partly responsible for a certain lack of cooperation in recent times. A number of criticisms had been levelled at the authorities in relation to cooperation with ICTY, including the failure to apprehend four high-ranking fugitives and release witnesses from their duty of confidentiality. The indictments of the four generals had recently been submitted to the competent courts in order to expedite their transfer and, according to recent reports, some 200 witnesses were now free to testify.

21. Mr. BOŽOVIĆ (Serbia and Montenegro) said that action to arrest indicted war criminals had been stepped up. An order of 19 April 2004 calling on all law enforcement personnel to intensify efforts to that end had been distributed to all police units.

22. Mr. TOMOVIĆ (Serbia and Montenegro) said that following the appointment of an ombudsman in Montenegro in December 2003, 365 complaints had been received, mostly in relation to undue delays in judicial proceedings. A number of anonymous complaints, and complaints relating to acts that had occurred prior to effective implementation of the relevant human rights instruments, had been dismissed.

23. An “Ombudsman’s Day” had been held in three municipalities to increase public awareness of the new institution. Thus far, no data were available on the efficiency of the ombudsman’s office.

24. A new law on witness protection had been drafted, incorporating recommendations by a cross-sectional group of experts. It had been submitted to Parliament for consideration and was expected to come into effect in January 2005. Montenegro actively supported international cooperation in the field of witness protection.

25. The Criminal Code of Montenegro provided for prosecution of persons on grounds of command responsibility.

26. Ms. MARKOVIĆ (Serbia and Montenegro) said that the establishment of the ombudsman’s office had been somewhat hampered by the numerous changes in the country’s political organization. Ombudsman’s offices would be introduced at both republic and local levels; the competence of each ombudsman remained to be defined. The provincial ombudsman’s office would be competent to protect human rights and investigate violations of those rights at the provincial level and those perpetrated by institutions established by the province.

27. Mr. ŠAHOVIĆ (Serbia and Montenegro) said that the legal complexities of including Kosovo and Metohija in the reporting procedure under the Covenant should not discourage efforts to find ways to ensure that United Nations Mission in Kosovo (UNMIK) reported on the implementation of the Covenant in Kosovo. Similar mechanisms were being designed with respect to the implementation of the Council of Europe's instruments. His personal experience led him to believe that it would be difficult to have representatives of UNMIK present their report alongside a representative of Serbia and Montenegro. However, meetings within a European context had successfully been set up in that way. The issues were predominantly legal rather than political; his delegation would try to suggest ideas on to how the legal issues might be resolved.

28. Mr. BOŽOVIĆ (Serbia and Montenegro), replying to question 10 of the list of issues, said that as soon as it had been discovered that multiple remains of Kosovar Albanians were buried on Serbian territory, the Ministry of the Interior had taken measures to seal the sites and begin investigations. Mass graves had been discovered at three sites, in Batajnica, Perucac and Petrovo Selo, and 836 bodies had been exhumed. Post-mortem examinations had been carried out and, with the help of the International Commission on Missing Persons and the Hague Tribunal, the complex process of identification had begun. Using DNA analysis, the remains of 276 persons had been identified and handed over to UNMIK. There were also many mass graves situated on the territory of Kosovo and Metohija. However, UNMIK had removed the bodies of only 80 Serbs and other non-Albanians from the territory of Kosovo. All collected documentation had been transmitted to the competent prosecutor's offices in Belgrade, Negotin and Bajina Basta, and the process of identification was under way. The Ministry of the Interior had offered every assistance in that regard. The process was conditioned by the information needed by the public prosecutor. The police and the judiciary had an obligation to respond to all requests by the public prosecutor. Following investigations, charges had been brought against the former head of public security, Vlastimir Djordjević. With respect to the Batajnica case, investigations were under way to uncover possible accomplices in the serious crimes that had been committed.

29. Ms. WEDGWOOD said she wished to respectfully remind the delegation to include in its replies information about Mr. Ratko Mladić and Mr. Radovan Karadjić.

30. Mr. WIERUSZEWSKI said that he fully understood that the necessary legal provisions were in place with regard to the matter of remedies for victims. However, the problem was that, owing to inaction or inadequate action on the part of the State prosecutor and other government officials, those remedies were not being used effectively.

31. Sir Nigel RODLEY wished to know the legal basis on which the Constitutional Court of Serbia and Montenegro could be considered to have jurisdiction over human rights violations by member states, as well as over violations by the State of Serbia and Montenegro.

32. Mr. PEKOVIĆ (Serbia and Montenegro), responding to the Committee's comments on inaction by the public prosecutor, said that the State had the right to be a subsidiary complainant. He had described the oversight measures relating to public prosecutors, but he could not provide information about specific cases. He was surprised that the Committee should be particularly concerned about discrimination against Roma, when the number of cases involving Roma was

insignificant in comparison with cases in which other ethnic groups were discriminated against. The authorities did everything possible to ensure that such cases were prosecuted. A public prosecutor who suppressed a case would be liable to disciplinary action.

33. Article 46 of the Constitutional Charter did not allow citizens to bring complaints before the Court of Serbia and Montenegro in respect of violations by member states, except in relation to article 9. However, it would only be possible to know what position the Court would take in that regard when a case was brought. The matter must be viewed in the context of the relations between member states as determined under the Belgrade Agreement, which accorded the Court of Serbia and Montenegro constitutional, juridical, and administrative functions in relation to the courts, and administrative functions in relation to the Council of Ministers. The Court was not a higher instance and comprised an equal number of judges from each member state.

34. Mr. BOŽOVIĆ (Serbia and Montenegro) said that the adoption of the new Code of Criminal Procedure in 2002 had significantly improved the position of the suspect during pre-trial detention: the maximum length of time a person could be held in police custody had been reduced from 72 to 48 hours. Moreover, the person in custody now had the right to have his or her lawyer present from the moment questioning began. The presence of the suspect's lawyer throughout also had the effect of making it impossible for force or coercion to be used. The new legal regulations provided that interrogation must be carried out in such a manner as to ensure that the evidence obtained would be admissible in court.

35. However, that provision had been suspended under the Order on Special Measures during the State of Emergency, which had since been ruled unconstitutional. Operation Sabre had been set up following the terrible shock of the assassination of Prime Minister Djindić. During that operation, 11,364 persons had been arrested, of whom 11 per cent had been released immediately and about a third had been charged with an offence. Through Operation Sabre, the police had broken up a number of serious crime rings, as a result of which there had been a significant decrease in the number of criminal acts in 2003 as compared with the same period in 2002, as well as a dramatic increase in the number of crimes solved.

36. Amnesty International had made allegations of torture involving 16 persons who had been detained during Operation Sabre. The investigations into those allegations had established that in six cases coercive measures had been used by police officers in a manner and to an extent that constituted violations. The respective local units had been ordered to identify the police officers involved and to take prompt action against them. Similar steps would be taken with respect to all such cases that came to the attention of the authorities; persons who believed they had been victims of such violations had been encouraged, through the media, to notify the Serbian Public Security Department. The number of allegations was negligible given the number of people who had been arrested. His delegation would submit specific information on the police officers involved and the disciplinary and punitive measures taken against them.

37. Ms. NIKOLIĆ (Serbia and Montenegro) said that her country attached great importance to cooperation with the Committee against Torture and with United Nations Special Rapporteurs. In September 2003, her Government had signed the Optional Protocol to the Convention against Torture and had subsequently embarked on the process of ratification. Her Government had replied to a confidential report produced by a delegation of the Committee against Torture and had provided the Committee with statistical data on measures taken against police officers

accused of torture. Investigations had been completed in 13 of the 25 cases, and 12 cases were still in the process of being investigated. Her country had made a commitment to implement the Committee's decisions.

38. With respect to the Ristić case, the court had made a decision to exhume the body and forensic analysis was under way. Her Government had maintained intensive communications with the special rapporteurs during the preceding year, in the course of which the Ministry of the Interior had provided prompt and satisfactory answers in the cases of alleged torture during Operation Sabre. Detailed accounts had been included in the reports by the special rapporteurs submitted at the sixtieth session of the Commission on Human Rights.

39. Mr. BOŽOVIĆ (Serbia and Montenegro) said that the Ministry of the Interior had investigated allegations of torture in 25 cases between 1994 and 2000. Unfortunately, the investigations had been hampered by the difficulty of establishing the identity of the perpetrators and by the passage of time, which meant that key witnesses could no longer accurately remember the details of events. It had been impossible to carry out the necessary checks with regard to persons from Kosovo and Metohija because the documentation that would have clarified the events and helped to identify the perpetrators had been destroyed during the NATO bombing campaign.

40. Despite such difficulties, the Ministry of the Interior had completed its investigation of 13 cases. In two cases it had not been possible to identify the perpetrators. In six cases it had been established that there had been no violation. In one case, the allegations had been found to be correct and disciplinary measures had been taken against the perpetrators, who had been sentenced to between two and five months' imprisonment. In one case, disciplinary measures had been ordered against employees of the Ministry, and criminal proceedings were in progress. In the remaining three cases the injured parties had initiated criminal proceedings against employees of the Ministry, which were still under way. The issue of compensation fell within the competence of the relevant judicial authorities.

41. Ms. LALOVIĆ (Serbia and Montenegro) said that her Government had paid 985,000 euros in compensation to the victims of an incident in Danilovgrad in 1995. The Committee against Torture considered that in that incident the police had been guilty of inaction for failing to prevent non-Roma residents from burning a Roma settlement to the ground in protest at an alleged rape. Steps had been taken to ensure that the Roma who had lost their jobs as a result of the incident were reinstated in their jobs in the utility services.

42. Mr. BOŽOVIĆ (Serbia and Montenegro), referring to police brutality against the Roma, said that under domestic law all citizens were equal, and discrimination on grounds of race, religion, ethnic origin or belief constituted an offence. A code of police ethics had been established and stipulated that the police must be impartial in their treatment of all citizens. The police carried out objective and fair investigations adapted to the specific needs of certain groups such as minors, members of ethnic minorities and other vulnerable persons. In 2003, a set of instructions had been issued under which the Ministry of the Interior monitored the protection of human and minority rights, by the police, in accordance with the Constitution. Measures were taken against law enforcement officials who infringed the code of police ethics. No cases of police brutality against Roma had been reported, and the allegations of such ill-treatment were unfounded. In the past, a report by Human Rights Watch had also made arbitrary accusations

against the police of the Federal Republic of Yugoslavia, stating that they had committed acts of violence against members of the Roma population. There had been a small number of isolated cases of ill-treatment, and accurate information could be found in reports compiled by the Ministry of the Interior.

43. According to information given by the Ministry of the Interior, the majority of racist attacks against Roma in Serbia were carried out by groups of skinheads. There were over 400 known members of skinhead groups, roughly half of whom were resident in Belgrade. Such groups were particularly aggressive towards Roma employed in utility services. The violence had increased following the murder of the Roma teenager Dušan Jovanović in 1997. However, in 1998 the Ministry of the Interior had taken measures which had resulted in a reduction in the number of violent incidents across Serbia. The Ministry had also implemented a community police project to establish new and modern methods of increasing public safety. Up-to-date statistics on cases of violence had been annexed to the report currently before the Committee.

44. Many Roma faced problems due to the lack of adequate accommodation for unemployed families. The Serbian authorities did not have the means to provide adequate assistance to Roma who had been evicted from Kosovo and refugees from other former Yugoslav republics. When considered proportionately to the large number of Roma residing on Serbian territory, the number of violent attacks against the Roma was in fact small, and not all attacks were racially motivated. However, investigations were being carried out into the causes of such attacks and the requisite measures were being taken.

45. Mr. ČOGURIĆ (Serbia and Montenegro) said that the Judiciary in Serbia were independent from the Executive: all attempts to influence the Judiciary were prohibited by law. There was a separate law on judges, which provided that all judges should be independent adjudicators whose judgements were based on constitutional law and their own conscience. Judges held permanent positions from the time of their appointment until their retirement. They could only be dismissed in specific circumstances defined by law. All judges had the right to remuneration to support themselves and their families, and were not accountable to anyone in fulfilling their duties or expressing their opinions. Judges were appointed on the nomination of the High Council of the Judiciary, and could only be transferred to other courts with their own consent. They were free to make decisions based on the facts of each case and were not obliged to give explanations of their understanding of those facts.

46. Mr. TOMOVIĆ (Serbia and Montenegro) said that apart from the provisions on the independence of the Judiciary contained in the Montenegrin Constitution, the permanent functions of judges in Montenegro were very similar to those of judges in Serbia. The Council of the Judiciary, whose members served a four-year term of office, nominated judges and prepared the annual court budget, which was passed by Parliament. Regarding civilians who were tried in courts martial, the new Criminal Code of Montenegro stipulated that criminal acts under the jurisdiction of military courts must be transferred to the jurisdiction of criminal courts. The use of courts martial did still exist however, and a bill had been prepared to resolve the issue; it was awaiting Serbian approval before being passed to Parliament for discussion.

47. Ms. NIKOLIĆ (Serbia and Montenegro), turning to the question on violence against women, said that until 1991 violence against women had been a taboo subject in Serbia. However, since the submission of the State's second periodic report to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), and with the assistance of NGOs, public awareness of the issue had been increased. Violence against women was a matter of extreme urgency and still required several legislative changes. Some such changes had been made, including an amendment to criminal legislation on domestic violence, under which violence against women, including marital rape, was a criminal offence.

48. According to research, nearly 50 per cent of women in Serbia were subjected to violence. However, many of those women were afraid to speak out, since there was still a considerable stigma attached to victims. Many women considered that the violence they were enduring was not serious enough to warrant reporting it to the police, and many were either ashamed of reporting domestic violence or afraid that reporting it would result in increased violence against them. A high percentage of women were financially dependent on their husbands and were therefore afraid to report violence, since they feared they would be unable to support themselves if their husbands were taken into custody. A very small percentage of women sought assistance from social welfare centres, and it was clear that a model for legislative and judicial protection must be established. The Victimology Society of Serbia had carried out appraisals of the situation with regard to violence against women in Serbia, and had produced a report based on the experience of Scandinavian countries, the United Kingdom and Canada, which the Government planned to use in order to develop Serbian family law. The Government had recently received instructions from CEDAW regarding the submission of individual complaints; they would be translated and forwarded to Serbian and Montenegrin authorities and NGOs as soon as possible.

49. Mr. DJOKOVIĆ (Serbia and Montenegro) said that until the Montenegrin Criminal Code had been amended, domestic violence had constituted a minor offence. The amendments had come into force in April 2004 and domestic violence was now treated as a serious offence.

50. Ms. VOJVODIĆ (Serbia and Montenegro) said that in 2001, the Government of Montenegro had appointed an anti-trafficking coordinator. Under the amended Montenegrin Criminal Code trafficking in persons was a criminal offence, which carried a prison sentence of 1 to 12 years. Statistics on criminal proceedings initiated and their outcomes had been provided in the written replies submitted by the delegation. In 2003, an anti-trafficking strategy and a working group responsible for its implementation had been established. The working group comprised NGO representatives, the Deputy State Prosecutor, the assistant Ministers of the Interior, Justice, Health, Labour and Social Care, and Education, and representatives of the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE). The United States consulate had observer status.

51. Action plans for implementing the strategy were being developed and a subgroup had been specifically charged with targeting trafficking in children. IOM, OSCE and the Montenegrin Government had opened a shelter for victims of trafficking. A new law on witness protection was currently being drafted, and until it was enacted, because of the lack of national mechanisms, protection was being provided in accordance with the European Convention on Human Rights, the Palermo declarations and the declarations made at conferences on human trafficking held in 2001 and 2002 in Tirana and Zagreb.

52. Mr. BOŽOVIĆ (Serbia and Montenegro) said that measures had been taken to combat trafficking in persons in Serbia, and there had been a significant improvement in the situation over recent years. A national team to combat trafficking had been established and included representatives of NGOs and the Ministry of the Interior. Four task forces had been set up to deal with trafficking in children, prevention and capacity-building, assistance and protection for victims, and law enforcement. A new anti-trafficking action plan was also being drafted, and part of it would be devoted to combating trafficking in children. A national action plan entitled "Action for Children" had been adopted by the Government, which aimed to promote respect for the basic rights of children, and a shelter had been opened for women victims of trafficking. It currently housed 116 women, 100 of whom were not Serbian nationals, and was intended to provide secure accommodation and medical and legal aid for victims.

53. Measures had been taken to locate victims of trafficking in persons who were resident in Serbia, and criminal charges had been brought against those involved in trafficking networks. As a result of such measures, there had been a reduction in the number of people illegally crossing Serbia's borders. The Ministry of the Interior had carried out the so-called "Mirage" project aimed at combating trafficking in persons, which paid particular attention to trafficking in women and children. The Serbian police had implemented new measures in an effort to harmonize their procedures with European Union regulations. There had also been exceptional cooperation between the Government and NGOs in efforts to prevent trafficking. Victims of trafficking in persons were permitted to stay on Serbian territory for up to six months and could be granted temporary residence permits for humanitarian reasons. The NGO Astra had run a televised public awareness-raising campaign, the second part of which was currently being prepared. Human rights training for law enforcement officials had been provided by international organizations and had been integrated into police training curricula.

54. Mr. BRBORIĆ (Serbia and Montenegro) said that there were currently 250,000 internally displaced persons on Serbian territory. Such persons were equal to all other Serbian citizens before the law. The Serbian authorities often had problems returning displaced persons to Kosovo owing to the lack of stability in that region. Such people's former places of permanent residence were often damaged, destroyed or unlawfully inhabited by others. Those who had citizenship of former Yugoslav republics had been granted work and residence permits, and were not discriminated against.

55. Ms. VOJVODIĆ (Serbia and Montenegro) said that the law on Montenegrin citizenship provided that persons over the age of 18 who had been resident in the Republic for over 10 years and persons who were married to a citizen of Montenegro and had been resident in the Republic for over five years were entitled to apply for citizenship. It was also possible for internally displaced persons with temporary residence permits to apply for citizenship. The Government was making efforts to provide assistance to all internally displaced persons and refugees, in order to give them the opportunity to choose their own future independently and freely, and a new law on Montenegrin citizenship was currently being drafted.

56. Ms. MARKOVIĆ (Serbia and Montenegro), responding to question 18 of the list of issues, said that article 28 of the Charter of Human and Minority Rights and Civil Liberties provided for the right to conscientious objection. A decree amending that article and harmonizing Serbian law with European Union legislation had been adopted on 15 October 2003. Persons under a legal obligation to perform military service were

now given timely information of alternative ways to comply with their duty. Decisions on applications by recruits to perform civilian service were taken by a committee established by the Ministry of Defence, whose members included no professional soldiers. Applications to perform civilian service were not admissible where the recruit held a licence to bear weapons, had been convicted by a final judgement of a criminal act or a minor offence involving violence in the past three years, had applied for a licence to bear weapons during the same period, or was a member of a hunting or shooting association or employed in repairing weapons and ammunition. Civilian service could be performed in 370 institutions, including health-care institutions, institutions for older persons or people with mental disabilities, and pre-school facilities. The Ministry of Defence had also opened a training centre providing courses on core human rights treaties.

57. In response to question 19, she said that restrictions imposed by the Acting President of the Republic of Serbia on the right to freedom of information during the state of emergency declared in 2003 had included a ban on the distribution of press and other reports on the reasons for declaring the state of emergency except where such reports communicated official announcements issued by competent government authorities. The Ministry of Culture and Public Information had been assigned responsibility for enforcing the restrictions. Action had been taken against eight media organizations and some had been fined. In April 2004, the Ministry of Culture had abrogated the decisions taken during the state of emergency and ordered reimbursement of the fines that had been imposed. In October 2003, the Ministry of Culture had sent a letter to the competent Ministry proposing that the definition of the criminal act of libel and defamation applicable to the press, radio, television and other media be removed from the Criminal Code. Moreover, the notorious public information legislation that had been in force under the Milosević regime had been abrogated by the new Government as soon as it had come to power. All media fined under the legislation had been reimbursed (a total of 11 million dinars).

58. Ms. SIMONOVIĆ (Serbia and Montenegro), responding to question 20 on the 2002 amendment of the Criminal Code of Montenegro to remove the provision for imprisonment for defamation, said that the public prosecutor was no longer authorized to file charges for defamation. Pending cases initiated before the entry into force of the amendment had been dismissed on the ground that they had not been filed by an authorized petitioner. In future, defamation and libel could be prosecuted in Montenegro only in the context of a private action and criminal sentences for defamation had been abolished.

59. Mr. ČOGURIĆ (Serbia and Montenegro), responding to question 21, said that a bill on freedom of access to information in Montenegro was currently being scrutinized by experts. It would then be amended in the light of their comments and submitted for adoption. It was also expected that a bill on media concentration would be adopted by Parliament by the end of 2004.

60. Mr. WIERUSZEWSKI thanked the delegation for its data on cases of violence against women, including domestic violence. The Committee had heard from NGO sources, however, that official data on victims of such violence were not publicly available. He urged the authorities to publicize the data as an important aid in fighting that category of crime. The Draft Family Law would also be a crucial tool in combating domestic violence. As it had been drafted some 10 years previously, he wondered why it had not yet been enacted in Serbia and whether interim family law arrangements were adequate. He took it that a comparable law had already been enacted in Montenegro.

61. With regard to human trafficking, Amnesty International had laid the blame on the international community for the growth of the sex industry in Kosovo. The delegation had referred to a national plan of action to combat trafficking in the area where the State party had jurisdiction but had not specified whether it was already operational.

62. The Criminal Code of Serbia, particularly article 111 (b), covered numerous aspects of trafficking, especially smuggling, but the fact that smuggling had not been characterized as a separate criminal act might, in his view, impede the proper handling of that category of crime.

63. Special police and anti-trafficking teams were apparently operational only in the Belgrade area and the only shelters for victims were in Belgrade. Victims in other parts of the country were therefore liable to be expelled. What measures were the authorities taking to ensure that teams were operational all over the country? He also wished to know who was operating the telephone hotline for victims and to what extent it was being supported by the Government and whether the memorandum of understanding providing for mechanisms for identification, assistance and protection of victims was already operational.

64. Welcoming the new provisions on the right to conscientious objection, he asked why members of shooting associations were not allowed to apply for civilian service and whether any time limit for application was imposed. How many applicants had been rejected? He also wondered whether permanent members of the armed forces could invoke the new provisions.

65. Sir Nigel RODLEY welcomed, in particular, the abolition of the death penalty and the provision whereby confessions obtained during an interrogation in the absence of a lawyer were inadmissible in court.

66. Commending the thorough and effective exhumations and autopsies undertaken, he asked whether all bodies had now been subjected to autopsies and enquired about the results of the investigations. The Serbian military and the Ministry of the Interior must have been heavily involved in the acts that had led to the mass graves and the Committee needed to know how soon firm action would be taken on the findings.

67. With regard to police detention, he was unclear as to whether there was a 24-hour or a 48-hour limit on detention or whether such detention had been abolished. Under what circumstances could the police detain a suspect on their own premises and for how long? Were different conditions applicable to arrests with and without an arrest warrant?

68. The requirement that a lawyer should be present during interrogation was extremely important but was not a sufficient guarantee if law enforcement agencies were interested in obtaining information for ends other than use of a confession in court. Was there any other disincentive for interrogation without the presence of a lawyer and could action be taken against law enforcement officials who questioned suspects under those circumstances?

69. Enquiring about the findings in the six cases of alleged ill-treatment of detainees by security forces mentioned by Amnesty International, he wondered why the issue had been addressed solely in terms of the excessive use of force, a concept that did not in all cases sufficiently reflect the gravity of the treatment described in some of the allegations. Why had it

not been possible to identify the officials responsible for the abuse and what had been the response to the order to local organizational units to identify the police officers concerned as soon as possible? Had the State party informed Amnesty International of the results?

70. Question 12 of the list of issues was not exclusively concerned with cases raised by the Committee against Torture. It also referred to cooperation with extra-conventional mechanisms such as the Special Representative of the Commission on Human Rights on the situation of human rights in the former Yugoslavia and the Special Rapporteur on torture, for instance in connection with the dearth of investigations leading to criminal proceedings against serious violators of human rights. Mention had been made of a case of abuse of authority with application of coercive measures and of a case in which disciplinary measures had been taken. It would be interesting to have more details regarding those cases. Sentences in criminal proceedings of between two to five months were perhaps not commensurate with the gravity of the offence. Moreover, he wondered why most proceedings seemed to be brought by NGOs and asked whether any had been brought by the prosecutorial services.

71. Although most of the allegations did not refer to recent cases, except with respect to Operation Sabre, a certain amount of impunity seemed to persist, both for the Milosević period and for the post-Milosević period. The security forces clearly still had many people within their ranks who had a great deal to account for. It would be useful to know what measures were being contemplated to purge those elements from the forces responsible for maintaining the rule of law in the new Serbia and Montenegro.

72. Mr. SCHEININ, referring to the claim in the written and oral answers to the list of issues that there was little police harassment of Roma, noted that the Belgrade Centre for Human Rights had indeed reported a decrease in police brutality in its annual report, but it had also depicted an alarming overall situation. According to several indicators, the Roma were the most vulnerable group in Serbia and Montenegro, and the courts rarely offered protection to Roma victims of discrimination. The European Roma Rights Center listed a number of cases of violence and harassment in which the police seemed to have been involved. Most of the victims had not sought remedies through the courts. The written replies referred to sources of law that he found somewhat peculiar in the context of anti-discrimination measures, such as the Law on Internal Affairs, the Instructions on Police Ethics, and the Instructions for Execution of Duties in a Manner Conducive to Easier Exercise of Rights by Ethnic Minorities issued by the Ministry of the Interior. He suggested that there was a need for comprehensive legislation against ethnic discrimination that would provide for effective remedies and access to the courts as part of those remedies. Apparently a draft law was under consideration. He asked what steps were being taken to ensure its enactment.

73. Turning to question 14 of the list of issues, he welcomed the fact that the dismissal of a number of judges under the state of emergency had been declared unconstitutional. He understood, however, that Serbia had not yet enacted proper legislation to transfer all trials of civilians from military to ordinary courts in accordance with the Charter of Human and Minority Rights and Civil Liberties. Was it true that revelation of State secrets by civilians still fell within the jurisdiction of military courts?

74. He shared Mr. Wieruszewski's concern that the exclusionary grounds for conscientious objection seemed somewhat broad and unusual.

75. Mr. KÄLIN associated himself with Mr. Scheinin's concern regarding the small number of registered cases of violence against Roma, either because the victims were advised by representatives of the State that it was preferable not to register cases or because the victims and their families were fearful of the consequences.

76. He noted with appreciation the efforts of Serbia and Montenegro to accommodate a large number of refugees and internally displaced persons, who clearly placed a heavy burden on a country faced with severe economic difficulties. He was also pleased to hear that displaced persons were equal in terms of rights to other citizens of the Republic of Serbia, although that claim had been contradicted by information submitted to the Committee. Many displaced persons from Kosovo apparently still had trouble securing equal treatment because they had no identity cards owing to difficulties in deregistering from their municipalities of origin and re-registering in Serbia. According to the report by the ombudsman's office in Kosovo, displaced persons had in many cases been living in very poor conditions for almost five years, a fact that the office had raised with the Prime Ministers of both Serbia and Montenegro. Moreover, it reported that some displaced persons in Montenegro who were citizens of Serbia had been unable to take part in elections in Serbia.

77. While he was pleased to note that some of the measures taken against the media during the state of emergency had been declared null and void and that fines had been reimbursed, he wished to be assured that such action had been taken in all the eight cases concerned. If corrective measures had not been applied to all media, how could that restriction be reconciled with the declaration of unconstitutionality of measures taken during the state of emergency?

78. While welcoming the revision of the defamation laws, he was concerned about reports from the Independent Association of Journalists in Serbia to the effect that in November 2002 more than 2,000 private prosecutions for defamation and other similar allegations, many brought by politicians, were pending in the courts. He asked how many such prosecutions were still pending in Serbia and Montenegro and how many had been brought by public figures at the republic and local level.

79. Ms. WEDGWOOD asked for more details regarding the content of the legislation on internally displaced persons. She was concerned that there might be an unconscious reluctance to resettle people comfortably because they would then be unlikely to return to their original homes. According to NGO material, some 88 per cent of displaced persons lived below the poverty line, compared with 10 per cent of the local population, and 44 per cent were unemployed, compared with 22 per cent of the local population. Roma and others in collective centres in remote country areas reportedly had little access to public assistance or welfare or to identity documents.

80. She took it that the refugees from the Kraina would be able to draw on vested Croatian pension rights, but progress was slow and there seemed to be no prospect of obtaining back payments.

The meeting rose at 6.05 p.m.