



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

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COMMITTEE AGAINST TORTURE
Forty-second session
(27 April – 15 May 2009)

DECISION

Communication No. 261/2005

<u>Submitted by:</u>	Mr. Besim Osmani (represented by counsel, the Humanitarian Law Center, Minority Rights Center and the European Roma Rights Center)
<u>Alleged victim:</u>	The complainant
<u>State party:</u>	Republic of Serbia ¹
<u>Date of complaint:</u>	17 December 2004 (initial submission)

* Made public by decision of the Committee against Torture.

¹ On 17 December 2004, the complaint was submitted against Serbia and Montenegro as a State party to the Convention. The National Assembly of the Republic of Montenegro adopted its Declaration of Independence on 3 June 2006, following the referendum carried out in the Republic of Montenegro on 21 May 2006, which took place pursuant to Article 60 of the Constitutional Charter of Serbia and Montenegro. In a letter dated 16 June 2006, the Minister for Foreign Affairs of the Republic of Serbia informed the Secretary-General that "the Republic of Serbia continues to exercise its rights and honour its commitments deriving from international treaties concluded by Serbia and Montenegro. Therefore, the Ministry of Foreign Affairs requests that the Republic of Serbia be considered a party to all international agreements in force, instead of Serbia and Montenegro. In a letter dated 30 June 2006, the Minister for Foreign Affairs of the Republic of Serbia confirmed that "all treaty actions undertaken by Serbia and Montenegro will continue in force with respect to the Republic of Serbia with effect from 3 June 2006. Therefore, all declarations, reservations and notifications made by Serbia and Montenegro will be maintained by the Republic of Serbia until the Secretary-General, as depositary, is duly notified otherwise."

Date of present decision: 8 May 2009

Subject matter: Ill-treatment of the complainant by police officials in the course of the execution of an eviction order and subsequent failure to obtain redress and compensation.

Procedural issues: article 22, paragraph 5 (b)

Substantive issues: Cruel, inhuman or degrading treatment or punishment; the right to a prompt and impartial investigation, wherever there is reasonable ground to believe that cruel, inhuman or degrading treatment or punishment has been committed; the right to complain to, and to have a case promptly and impartially examined by the competent authorities; the right to fair and adequate compensation.

Articles of the Convention: article 16, paragraph 1, read separately or in conjunction with articles 12 and 13, and article 14, read separately or in conjunction with article 16, paragraph 1.

[ANNEX]

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE
CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT

Forty-second session

Concerning

Communication No. 261/2005

<i>Submitted by:</i>	Mr. Besim Osmani (represented by counsel, the Humanitarian Law Center, Minority Rights Center and the European Roma Rights Center)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Republic of Serbia
<i>Date of complaint:</i>	17 December 2004 (initial submission)

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 8 May 2009,

Having concluded its consideration of complaint No. 261/2005, submitted to the Committee against Torture on behalf of Mr. Besim Osmani under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants,

Adopts the following decision under article 22, paragraph 7, of the Convention against Torture.

1. The complainant is Mr. Besim Osmani, a citizen of the Republic of Serbia of Roma origin, born in 1967, and residing in the Republic of Serbia. He claims to be a victim of violations of article 16, paragraph 1, read separately or in conjunction with articles 12 and 13, and article 14, read separately or in conjunction with article 16, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Republic of Serbia. He is represented by three non-governmental organizations: the Humanitarian Law Center (HLC), Minority Rights Center (MRC), both based in Belgrade and by the European Roma Rights Center (ERRC), based in Budapest.

Factual background

2.1 The complainant was one of the 107 Roma inhabitants of the “Antena” Roma settlement situated in New Belgrade (Novi Beograd) Municipality of Belgrade. The settlement existed since 1962. Four families resided there permanently, while the majority of its inhabitants were displaced Roma from Kosovo, who moved into the settlement in 1999 after their property in Kosovo was destroyed. On 6 June 2000, the “Antena” inhabitants were notified in writing by the Municipality of New Belgrade of its decision of 29 May 2000 to demolish the settlement, and that they should vacate the area by the following evening.² The inhabitants did not contest the Municipality’s decision but being very poor and unable to find another place to live at short notice, they did not leave. On 8 June 2000, at approximately 10 a.m., representatives of the Municipality of New Belgrade and a group of some ten uniformed policemen arrived at the settlement in order to execute the eviction order. Shortly after the bulldozers started demolishing the settlement, a group of five-six plainclothes policemen, all of whom, with the exception of the van driver who wore a white suit, were dressed in black, arrived at the scene in a blue Iveco cargo van with a police license plate number BG 611-542.³ They did not produce any identification documents and were not wearing any insignias. In the course of the eviction, the plainclothes policemen hit a number of the Roma while the uniformed policemen abused them with racist language. The complainant was twice slapped and hit with fists in the head and in the kidneys by a plainclothes officer who was gripping the complainant’s left arm, while the latter was holding his 4 year old son with the right arm. The child was also hit but did not sustain serious injury. The complainant fled the settlement and sought medical treatment for his injuries. The medical certificates of 12 June 2000 stated that he had a haematoma under his left arm and he was advised to see a specialist for an examination of his abdomen.

2.2 As a result of this operation, the complainant’s home and personal belongings, including a mini van, were completely destroyed and he was left homeless together with his wife and three minor children. The first six months after the incident, the complainant and his family lived in a tent on the site of the destroyed settlement. As of 2002, they have lived in the basement of a building where the complainant works on the heating system and maintenance.

2.3 On 12 August 2000, the HLC filed a complaint supported, among others, by five witness statements with the Fourth Municipal Public Prosecutor of Belgrade claiming that the complainant’s mistreatment by unidentified perpetrators and the conduct of the police in the course of the settlement’s demolition breached article 54 (causing light bodily injury) and article 66 (abuse of authority) of the Criminal Code.

2.4 According to article 19, paragraph 1, of the Criminal Procedure Code of the Republic of Serbia (CPC), formal criminal proceedings can be instituted at the request of an authorized prosecutor, that is, either the public prosecutor or the victim. All criminal offences established by law are prosecuted *ex officio* by the state through the public prosecutor service, unless the law

² The explanation given for the adoption of the decision was that the settlement has been situated on state-owned land and its inhabitants did not have legal title to reside there at the time in question.

³ According to the testimony of another witness, one M., the number of the van’s license plate is BG 611-549.

explicitly states otherwise, which is not the case as far as articles 54 and 66 of the Criminal Code are concerned. According to articles 241, paragraph 1, and 242, paragraph 3, of the CPC, a formal judicial investigation can only be undertaken against an individual, whose identity has been established. When the identity of the alleged perpetrator of a criminal offence is unknown, the public prosecutor can request the necessary information and/or take the necessary steps in order to identify the individual(s) at issue. According to article 239, paragraph 1, of the CPC, the prosecutor may exercise this authority through the law enforcement agencies or with the assistance of the investigating judge. If the public prosecutor finds, based on the totality of evidence, that there is reasonable doubt that a certain person has committed a criminal offence prosecuted *ex officio*, he requests the investigating judge to institute a formal judicial investigation in accordance with articles 241 and 242 of the CPC. On the other hand, if the public prosecutor decides that there is no basis for the institution of a formal judicial investigation, he must inform the complainant/victim of this decision, who can then exercise his/her prerogative to take over the prosecution of the case on his/her own behalf – that is, in the capacity of a “private prosecutor” as provided by article 61, paragraphs 1 and 2, and article 235, paragraph 1, of the CPC.

2.5 On 10 April 2001, in the absence of a reply from the Public Prosecutor’s Office, HLC sent a request for information concerning the investigation to the Fourth Municipal Public Prosecutor. In a letter dated 19 April 2001 and received on 16 May 2001, HLC was informed that the complaint had been rejected, as there was no reasonable doubt that any criminal acts subject to official prosecution had been committed. No information was provided about the steps taken by the Public Prosecutor’s Office to investigate the complaint. The victim’s representative was advised, in accordance with article 60, paragraph 2,⁴ of the CPC, to take over the prosecution of the case before the Municipal Court of Belgrade within eight days. To that end, the victim’s representative was invited to submit either a proposal to the investigating judge to conduct the investigation against an unidentified perpetrator or a personal indictment against the officials for the crimes proscribed by articles 54 and 66 of the Serbian Criminal Code. The Deputy Public Prosecutor listed the names of four members of the Department of Internal Affairs of New Belgrade who provided assistance to the Department of Civil Engineering and Communal Housing Affairs in carrying out the eviction and demolition: Sergeant Major B., Staff Sergeants A. and N., and Master Sergeant J. However, the letter did not mention the names of the plainclothes policemen who participated in the eviction, thus preventing the complainant from formally taking over the prosecution of the case.

2.6 On 23 May 2001, HLC filed a request before the Fourth Municipal Court of Belgrade to reopen the investigation into the matter. To help identify the perpetrators, HLC requested the Court to hear, in addition to the Roma witnesses, the policemen named in the Deputy Public Prosecutor’s letter of 19 April 2001, as well as the representatives of the Department of Civil Engineering and Communal Housing Affairs who had been present on 8 June 2000.

2.7 Between 25 December 2001 and 10 April 2002, the four uniformed policemen were heard by the investigating judge, making contradictory statements regarding the police’s participation in the demolition of the “Antena” settlement. Master Sergeant J. stated that due to the number of

⁴ As of 29 March 2002, when a new Criminal Procedure Code entered into force, the number of the article in the new Code is 61, paragraph 1. The substance of the provision remained the same.

the settlement's inhabitants and their reluctance to vacate the settlement, the group of policemen called for additional assistance and soon a vehicle with five or six colleagues in plainclothes from the Police Station of New Belgrade arrived at the scene.⁵ Sergeant Major B., who was the commander of the Bezanija Police Department,⁶ stated that police support was provided at two locations in the settlement and that no plainclothes policemen were present at his location. Sergeant A. declared that he was present at the destruction of the settlement but did not see any violence taking place. He did not recall whether the other Ministry of Internal Affairs' officers, other than those from the Bezanija Police Department, were present at the scene and stated that, as a rule, assistance is provided by the uniformed rather than by plainclothes policemen. Sergeant N. stated that he did not participate in this operation. None of the policemen who were present during the eviction and demolition of the "Antena" settlement, could remember the names of the colleagues or subordinates who also took part in it.

2.8 On 17 May 2002, the investigating judge heard the complainant. His testimony was supported by the statements of the other two inhabitants of the settlement who were also heard as witnesses by the investigating judge. All of them stated that they would be able to recognize the plainclothes policemen who hit them.

2.9 On 4 June 2002, in reply to the investigating judge's request for information on the policemen present at the eviction and demolition of the "Antena" settlement, the Department of Internal Affairs of New Belgrade stated that the execution of the decision of the New Belgrade Municipality started on 7 June 2000. On that day, police officials J., O. and T. visited the settlement and requested the inhabitants to start evacuating their homes. The operation continued the next day by the Sergeants A. and N. together with the Commander B.

2.10 On 17 July 2002, the investigating judge interviewed P., one of the Building Construction inspectors present during the operation. He stated that the "Antena" inhabitants had been aware of the plan to demolish their settlement a month before the actual demolition was to take place and that on 7 June 2000 they had been given a last 24 hours vacation notice. On 8 June 2000, the "Antena" inhabitants gathered at the settlement and it seemed to him that they had brought Roma from other settlements to prevent the demolition. Building Construction inspectors requested assistance from the Bezanija Police Department, which sent to the settlement uniformed and plainclothes policemen. The witness confirmed that a few kicks and slaps in the faces of the Roma inhabitants had taken place but stated that he did not recall that truncheons were used on them. He declared, however, that the plainclothes policemen did not interfere in the conflict; they were taking a Roma resisting the settlement's demolition into police custody. He

⁵ In his testimony before the court, Master Sergeant J. stated that 'the force and clubs were used by officers and colleagues in plainclothes from the Department of Internal Affairs of New Belgrade', whereas his colleagues and him 'did not use force on that occasion'. For a part of Master Sergeant J.'s testimony referred to by the State party in support of its arguments, see paragraph 4.7 below.

⁶ Bezanija Police Department is a sub-department of the Department of Internal Affairs of New Belgrade.

further stated that the demolition did not proceed before the inhabitants took their belongings out of the barracks.⁷

2.11 On 12 September 2002, the Fourth Municipal Court of Belgrade informed the HLC⁸ that the investigation had been concluded and that, according to the provisions of Article 259, paragraph 3, of the CPC, the victims' representative could lodge an indictment in the case⁹ within 15 days or otherwise it would be deemed that they have waived the prosecution.

2.12 On 2 October 2002, the complainant's and the other victims' representative filed a new request to supplement the investigation with the Fourth Municipal Court of Belgrade, in accordance with the procedure established by article 259, paragraph 1, of the CPC. The motion stated that, in breach of article 255 of the CPC, the investigating judge did not provide the parties with the names of the plainclothes policemen and therefore, they were unable to formally take over the prosecution of the case. It was proposed, *inter alia*, that the court conduct a new hearing of Master Sergeant J. and that it resend a request to the Department of Internal Affairs of New Belgrade to provide information on the identity of the plainclothes policeman involved in the incident.

2.13 On 6 November 2002, in response to this request, the Fourth Municipal Court of Belgrade sent an inquiry to the Department of Internal Affairs of New Belgrade regarding the names of the Department's officers who provided assistance to the Municipality of New Belgrade and to the Bezanija Police Department but indicated by mistake an erroneous date for the incident, that is, 8 June 2002. As a result, the Department of Internal Affairs replied on 20 November 2002 that it had not provided any assistance to the abovementioned bodies on the said date. On 22 November 2002, a second similar request was sent to the Department of Internal Affairs by the Fourth Municipal Court of Belgrade. This time, the letter did not mention the date of the incident but required the names of the plainclothes policemen who had assisted the policemen from the Bezanija Police Department during the destruction of the "Antena" settlement. On 4 December 2002, Master Sergeant J. replied that he did not know the names of the plainclothes policemen who intervened during the destruction of the "Antena" settlement but he did not deny that such intervention occurred. Also, on 13 November 2002, Master Sergeant J. was re-interviewed by the Court. He repeated his previous statement adding that "[...] if necessary, I could try to find out precisely which police officers were present and inform the court about it".

2.14 On 26 December 2002, the Fourth Municipal Court of Belgrade informed the victims' representative that the investigation has been concluded and recalled that, according to the provisions of Article 259, paragraph 3, of the CPC, the victims' representative could lodge an indictment in the case within 15 days. Otherwise it would be deemed that they had waived the prosecution.

2.15 On 10 January 2003, the victims' representative notified the Court that the involvement of the plainclothes policemen in the physical abuse of Roma on 8 June 2000 was clearly supported

⁷ For a part of P.'s testimony referred to by the State party in support of its arguments, see paragraph 4.7 below.

⁸ The Court's letter was received on 18 September 2002.

⁹ See paragraph 2.5 above.

by the victims' statements, as well as by the witnesses P. and Master Sergeant J. and requested the Court to continue its investigation until the perpetrators had been identified. On 6 February 2003, the Department of Internal Affairs of New Belgrade, in response to a third request from the Court dated 30 January 2003, sent a letter providing the names of two officers G. and A., who had provided assistance during the incident of 8 June 2000.

2.16 On 25 March 2003, HLC sent a letter of concern to the Minister of Internal Affairs, complaining about the lack of cooperation of the Department of Internal Affairs of New Belgrade in the investigation and asking the Minister to disclose the names of the plainclothes policemen who provided assistance during the incident of 8 June 2000 at the "Antena" settlement in New Belgrade.

2.17 On 8 April 2003, the Court interviewed policeman G., who stated that he was not present at the destruction of "Antena" settlement and had no direct knowledge of the incident of 8 June 2000. He confirmed that, as a rule, assistance in such situations was provided by the uniformed rather than by plainclothes policemen but, in emergencies, policemen in plainclothes could be dispatched. He further stated that the names of the policemen assigned to different tasks were kept in a registry in the police department. Should the Court require such information, it would receive a report based on the information contained in the registry.

2.18 By letter dated 6 May 2003,¹⁰ the victims' representative was again informed that the investigation has been terminated by the Fourth Municipal Court of Belgrade and that he could lodge an indictment within 15 days to proceed with the criminal prosecution in the case. However, once again, the perpetrators were not identified by name. On 27 May 2003, the representative requested the Court not to finalize the investigation in the case until the Ministry of Internal Affairs had sent its response to HLC's request that it provide the names of the plainclothes policemen involved in the incident. On 3 June 2003, HLC sent a reminder to the Ministry of Internal Affairs. On 20 June 2003, an adviser to the Minister of Interior informed HLC that the criminal investigation conducted by the Fourth Municipal Court of Belgrade was not able to confirm the participation of plainclothes policemen in the incident of 8 June 2000. The letter concluded that, upon the request of the Court, the Secretariat of Belgrade¹¹ should present all required information regarding the conduct of the policemen.

2.19 On 20 December 2003, the victims' representative was notified for the fourth time that the Court had concluded the investigation in the case and was invited to lodge the indictment within 15 days. As before, the names of the perpetrators were not identified, thus making it impossible for the victims to formally take over the prosecution of the case.

2.20 Pursuant to domestic law, the complainant had two different procedures for seeking compensation: (1) criminal proceedings, under Article 201 of the CPC, which should have been instituted on the basis of his criminal complaint, or (2) a civil action for damages under Articles 154 and 200 of the Serbian Law on Obligations. Since the prosecutor failed to identify the perpetrators and no formal criminal proceedings were instituted by Fourth Municipal Public Prosecutor of Belgrade, the first avenue remained closed. Concerning the second avenue, the

¹⁰ The letter was received by the victims' representative on 12 May 2003.

¹¹ Police Headquarters in Belgrade.

complainant did not file a civil action for compensation given that it is standard practice of the Serbian courts to suspend civil cases for damages arising out of criminal offences until prior completion of the respective criminal proceedings.

2.21 Had the complainant decided to sue for damages immediately following the incident, he would have faced another procedural impediment. Articles 186 and 106 of the CPC require that both parties to a civil action – the plaintiff and the respondent alike – be identified by name, address and other relevant personal data. Since the complainant was unable to provide this information, instituting civil action for compensation would clearly have been procedurally impossible and would have been rejected by the civil court out of hand.

The Complaint

3.1 The complainant submits that the State party has violated article 16, paragraph 1, read separately or in conjunction with articles 12 and 13; and article 14, read separately or in conjunction with article 16, paragraph 1, of the Convention.

3.2 With regard to exhaustion of domestic remedies, the complainant submits that international law does not require that a victim pursue more than one of a number of remedies which may be capable of redressing the violations alleged. Where there is a choice of effective and sufficient remedies, it is up to the complainant to select one. Thus, having unsuccessfully exhausted one remedy, a complainant "cannot be criticised for not having had recourse to legal remedies which would have been directed essentially to the same end and would in any case not have offered better chances of success".¹² The complainant refers to the jurisprudence of the European Commission which held that where domestic law affords both civil and criminal remedies for treatment allegedly contrary to article 3 of the European Convention on Human Rights, a complainant who initiated criminal proceedings against a police officer allegedly responsible need not also have filed a civil action for compensation.¹³ Moreover, the complainant submits that only a criminal remedy would be effective in the instant case; civil and/or administrative remedies do not provide sufficient redress.

3.3 The complainant claims that he was subjected to acts of cruel, inhuman and degrading treatment and punishment by state officials, in violation of article 16. He submits that the assessment of the level of ill-treatment depends, *inter alia*, on the vulnerability of the victim and should thus also take into account the sex, age, state of health or ethnicity of the victim. The level of ill-treatment required to be "degrading" depends, in part, on the vulnerability of the victim to physical or emotional suffering. The complainant's association with a minority group historically subjected to discrimination and prejudice¹⁴ renders the victim more vulnerable to ill-

¹² See *A v. France*, Judgment of 23 November 1993, Series A no. 277-B; *Mialhe v. France*, Judgment of 25 February 1993, Series A no. 256-C.

¹³ See *Bethlen v. Hungary*, Application 26692/95, admissibility decision of 10 April 1997.

¹⁴ Reference is made, *inter alia*, to the United Nations Human Rights Committee's Concluding Observations on Serbia and Montenegro in 2004, Human Rights Watch's World Report of 2003-2004, the International Helsinki Federation Annual Report on Serbia and Montenegro of 2004, Amnesty International's report "Serbia and Montenegro: Amnesty International's concerns in Serbia and Montenegro" of 2003, 2003 Global Survey on Forced Evictions of the Centre on

treatment for the purposes of article 16, paragraph 1, particularly where, as in the Republic of Serbia, law enforcement bodies have consistently failed to address systematic patterns of violence and discrimination against Roma. He suggests that a “given level of physical abuse is more likely to constitute ‘degrading or inhuman treatment or punishment’ when motivated by racial animus and/or coupled with racial epithets”.

3.4 The complainant submits that in violation of article 12, read in conjunction with article 16, paragraph 1, of the Convention, the Serbian authorities failed to conduct a prompt, impartial, and comprehensive investigation into the incident at issue, capable of leading to the identification and punishment of those responsible, despite reasonable grounds to believe that an act of cruel, inhuman and degrading treatment or punishment had been. He refers to the Committee’s findings in *Abad v. Spain* that “under article 12 of the Convention, the authorities have the obligation to proceed to an investigation *ex officio*, wherever there are reasonable grounds to believe that acts of torture or ill-treatment have been committed and whatever the origin of the suspicion.” The Committee also found that “a criminal investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might have been involved therein”.¹⁵ In order to comply with the requirements of article 12, read in conjunction with article 16, paragraph 1, the State party’s authorities had to conduct not a *pro forma* investigation but an investigation capable of leading to the identification and punishment of those responsible. Following the Deputy Public Prosecutor’s decision of 19 April 2001 to terminate the investigation, as prescribed by law, the victim had the right to take over the prosecution of the case and finally lodge the indictment. However, the failure of the prosecutor and the investigating judge to identify the perpetrators prevented the complainant from exercising this right.

3.5 The complainant also alleges a violation of article 13, read in conjunction with article 16, paragraph 1, because his right to complain and to have his case promptly and impartially examined by the competent authorities was violated. He submits that the ‘right to complain’ implies not just a legal possibility to do so but also the right to an effective remedy for the harm suffered.

3.6 The complainant finally invokes a violation of article 14, read together with article 16, paragraph 1, because of the absence of redress and of fair and adequate compensation. He refers to the European Court of Human Rights jurisprudence on the interpretation of the term “effective remedies” that should be afforded at the domestic level, stating that whenever an individual has an arguable claim that he has been subjected to inhuman or degrading treatment by the police or such agents of the state, the notion of an effective remedy entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible.¹⁶

Housing Rights and Evictions, 2003 report on human rights in Serbia and Montenegro of the Belgrade centre for Human Rights and the HLC’s report “Roma in Serbia (1998-2003)”.

¹⁵ *Encarnación Blanco Abad v. Spain*, Communication No. 59/1996, Views adopted on 14 May 1998, paras. 8.2 and 8.8. See also, *Assenov and Others v. Bulgaria*, Judgment of 28 October 1998, para.102.

¹⁶ *Assenov v. Bulgaria*, *supra* note 15, para.102.

The State party's observations on admissibility and merits

4.1 In a submission dated 23 May 2005, the State party challenged the complainant's claim that the Fourth Municipal Public Prosecutor did not take any steps in response to the complaint submitted by the HLC on 12 August 2000 until 19 April 2001. The State party submitted that according to the case file available with the Fourth Municipal Public Prosecutor and an interview with the Deputy Case prosecutor, HLC's complaint was received on 15 August 2000. On 18 August 2000, the Prosecutor requested the Department of Internal Affairs of New Belgrade to provide information "on persons who assisted the Department of Civil Engineering and Communal Housing Affairs of New Belgrade in the demolition, on whether force was used, including which type and manner and for what reasons it was used, whether residents resisted the implementation of the decision of the Department".

4.2 On 9 November 2000, the Prosecutor received a report from the Secretariat of Internal Affairs of Belgrade, Internal Affairs Control Section. On 23 November 2000, the Prosecutor requested the Secretariat to return to him the original complaint, which was forwarded by the former on 13 February 2001. According to the report, on 7 June 2000, officers of the Bezanija Police Department visited the settlement and noted that the inhabitants were packing up slowly, dismantling their dwellings and looking for a new place to live. Accordingly, there was no police intervention against the inhabitants on that date. On 8 June 2000, the municipal administration authorities "demolished illegally built dwellings [...] which took place without disturbance of public peace and order. The police provided assistance, [...] but the assistance consisted of physical presence, short of taking any measure or form of intervention, either before or after the demolition of the dwellings".

4.3 On 19 February 2001, the Prosecutor decided to reject the complaint under article 153, paragraph 4, in connection with paragraph 2 of the Criminal Procedure Law (CPL). According to article 45, paragraph 2, subparagraph 1, of the CPL that was in force at that time, the Prosecutor was empowered to take the necessary measures to uncover criminal offences and to identify alleged perpetrators. Article 46, paragraph 2, subparagraph 1, of the CPC that subsequently entered into force makes the Prosecutor responsible for pre-trial procedure. The State party concludes that under the CPL, the Prosecutor had very limited powers in the pre-trial procedure and had to rely on the Ministry of Internal Affairs. According to the Ministry's report, there were no illegal activities in the case in question and taking into account the procedure for obtaining the evidence under the CPL, the Prosecutor correctly found that there was no reasonable doubt that a criminal offence under article 66 of the CPL, or any other offence prosecuted *ex officio* had been committed.

4.4 On 19 April 2001, the above decision with a remedy in the sense of article 60, paragraph 2, of the CPL was forwarded to the HLC. In this regard, the State party submits that the CPL and the CPC clearly distinguish between the complainant and the injured party. Only the injured party has the right, in the sense of article 60, paragraph 2, of the CPL and article 61, paragraph 2, of the CPC to take over criminal prosecution if the Prosecutor rejects the complaint. In this situation, the injured party has the right of the Prosecutor and not that of a private complainant. Since the HLC filed the complaint without submitting the full powers of attorney of the injured party represented in this case, the Prosecutor could not inform the HLC of the rejection of the complaint. Moreover, the injured party, the complainant, could not be informed either, since