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Report of the Working Group on the Universal Periodic Review*

Serbia

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

* The present document was not edited before being sent to the United Nations translation services.

1. The Government of the Republic of Serbia has considered the 12 recommendations received from United Nations members states during the second cycle of the Universal Periodic Review of the Human Rights Council on 30 January 2013, and hereby submits the following responses:

133.1 Ratify ICRMW (Guatemala)

2. **Recommendation not accepted.**

3. The ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families would initiate the issue of the potential application of all provisions of the Convention in the Republic of Serbia, since the circumstances have considerably changed compared to the period when the Convention was signed. The ratification of the Convention requires, primarily, the adoption of the relevant legal regulations and other required measures, as well as the allocation of additional funds which would be, having in mind the current economic situation in the Republic of Serbia, hard to implement during the coming period. However, work is under way in the Republic of Serbia on creating an adequate legislative and economic framework to enable the ratification of the Convention.

133.2. Ratify Additional Protocol III of the Geneva Conventions of 12 August 1949 (Estonia)

4. **Recommendation accepted.**

5. The Republic of Serbia ratified the Additional Protocol of the Geneva Convention of 12 August 1949 and relating to the Adoption of an Additional Distinctive Emblem (Protocol III) in 2010.¹

133.3. Bring its definition of torture into line with that of CAT and accelerate judicial reforms so that acts of torture are not subject to negative prescriptions (Tunisia)

6. **Recommendation accepted.**

7. The term “torture” as per the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is fully implemented under the provisions of articles 136 and 137 of the Criminal Code.² The provision of Article 108 of the Criminal

¹ “Official Gazette of RS – International Treaties”, no. 1/10.

² “Official Gazette of RS”, no. 85/05, 88/05 - corr, 107/05 - corr, 72/09, 111/09 and 121/12
Provision 136 of the Criminal Code prescribes the criminal offence of extortion of statement as follows:

(1) Whoever acting in an official capacity uses force or threat or other inadmissible means or inadmissible manner with the intent to extort a confession or another statement from an accused, a witness, an expert witness or other person, shall be punished with imprisonment of three months to five years.

(2) If extortion of confession or statement is aggravated by extreme violence or if extortion of statement results in particularly serious consequences for the accused in criminal proceedings, the offender shall be punished with imprisonment from two to ten years.

The provisions of Article 137 of the Criminal Code prescribe the criminal offences of ill-treatment and torture, prescribing:

(1) Whoever ill-treats another or treats such person in humiliating and degrading manner, shall be punished with imprisonment up to one year.

(2) Whoever causes anguish to another with the aim to obtain from him or another information or confession or to intimidate him or a third party or to exert pressure on such persons, or if done from motives based on any form of discrimination, shall be punished with imprisonment from six months

Code prescribes that there shall be no statute of limitation for criminal prosecution and enforcement of penalties for offences that, pursuant to ratified international treaties, cannot be subject to limitations.

133.4. Adjust its definition of torture to the definition of CAT and carry out legislative reforms to adjust the penalties to the seriousness of the crime of torture and in order not to apply the statute of limitations to torture (Costa Rica)

8. Recommendation accepted.

9. The term “torture” is implemented in the Criminal Code. The penalties prescribed under articles 136 and 137 of the Criminal Code are appropriate for the seriousness of the criminal offences they relate to. There is no statute of limitation for criminal prosecution and enforcement of penalties for offences that, pursuant to ratified international treaties, cannot be subject to limitations.

133.5. Establish an independent and external oversight mechanism for alleged unlawful acts by police and that the Ombudsman monitor and investigate these cases independently and impartially (Hungary)

10. Recommendation accepted.

11. Laws and bylaws regulate the internal and external control of the work of the police (submission of regular reports, as well as responses to specific questions to competent committees and other bodies of the National Assembly, Government, President of the Republic, etc.), while the work of the Ombudsman is regulated by a special law. As for this recommendation, the request made therein is already regulated by law and is being implemented in practice.

133.6. Ensure that LGBT people can express themselves freely for example, in the Belgrade Pride in 2013 (Netherlands)

12. Recommendation accepted.

13. The Constitution of the Republic of Serbia³ guarantees freedom of assembly.⁴ The organization of public assemblies is regulated by the Law on Citizens’ Assemblies⁵ wherein the practice of freedom of assembly is regulated in detail, the authorization and competencies of state bodies are clearly defined. A draft new law on citizens’ assemblies has also been designed, with the participation of international experts and incorporating the recommendations of the Venice Commission.

to five years.

(3) If the offence specified in paragraphs 1 and 2 of this Article is committed by an official in discharge of duty, such person shall be punished for the offence in paragraph 1 by imprisonment from three months to three years, and for the offence specified in paragraph 2 of this Article by imprisonment of one to eight years.

³ “Official Gazette of RS”, no. 98/06.

⁴ The provisions of Article 54 establish that Citizens may assemble freely, that assemblies held indoors shall not be subjected to permission or registering, as well as that gatherings, demonstrations and other forms of assembly held outdoors shall be reported to the state body, in accordance with the law. Freedom of assembly may be restricted by the law only if necessary to protect public health, morals, rights of others or the security of the Republic of Serbia.

⁵ “Official Gazette of RS” no. 51/92, 53/93, 67/93, 17/99, 33/99, 48/94, “Official Gazette of FRY”, no. 21/01, “Official Gazette of RS”, no. 29/01, 101/05.

14. According to the Constitution of the Republic of Serbia and the Anti-Discrimination Law⁶, everyone has equal legal protection, and all direct or indirect discrimination is prohibited on any basis, particularly based on race, sex, national affiliation, social origin, birth, religion, political or other belief, health status, property status, culture, language, sexual orientation, age, conviction history, appearance, disability and personal characteristics.

15. Chapter 14 of the Criminal Code threatens criminal offences against freedoms and rights of people and citizens protecting the following human rights: right to equality (Article 128), right to use of language and script (Article 129), freedom of expression of national or ethnic affiliation (Article 130), violations of the freedom of confession and holding religious ceremonies (Article 131) and violations of the freedom of speech and public address (Article 148).

133.7. Establish the International Commission for Investigation of Murders of Journalists and make sure the Commission will have a mandate appropriate to investigate the alleged case of murder of journalists (Netherlands)

16. Recommendation not accepted.

17. The Government of the Republic of Serbia adopted the Decree on Forming the Commission to Review the Facts obtained in the Investigations Held into the Murder of Journalists on 24 January 2013. Members of this Commission are representatives of journalist associations and public authorities (Ministry of the Interior and Security Information Agency). According to item 4 of the above Decree, the Commission may, with the aim of the more efficient and effective implementation of the entrusted task, form permanent or temporary working groups, and involve local and international experts, and/or international organizations with experience regarding the Commission's tasks, into the work of the Commission and working groups.

133.8. Publish and implement a plan for human rights defenders addressing how the government will allow them to operate freely, independently without any harassment or interference and with details of how investigations will be pursued (United Kingdom of Great Britain and Northern Ireland)

18. Recommendation not accepted.

19. The investigative procedure is closed due to the practice of presumption of innocence. The Criminal Procedure Code⁷ is in line with the highest global standards of protection of the defendant, as confirmed through the practice of the right to an attorney by official duty if the defendant is imprisoned, if they are tried in absentia or if an investigation is lead against them for a crime envisaging a penalty of imprisonment of over ten years.

20. The practice of the right to liberty was provided for in investigative procedures in accordance with the highest global standards, as well as the application of precedents of the European Human Rights Court. This is primarily reflected in making sure defenders of human rights are provided contact with the defendant while imprisoned, whom they may visit with court authorization, along with all types of contact and presence during the court proceedings following the coming into force of the indictment.

21. In accordance with the Criminal Procedure Code, the investigation is lead by the public prosecutor, with evidence they derive during the investigation phase available only

⁶ "Official Gazette of RS", no. 22/09.

⁷ "Official Gazette of RS", no. 72/2011, 101/2011, 121/2012 and 32/2013.

to the defendant and their attorney. This legislative solution is primarily in the interests of the defendant and the respect for the presumption of innocence in the proceedings under way, and when there is only reasonable doubt that the defendant committed the crime.

133.9. Adopt a more supportive policy with regard to human rights defenders and as part of it, form a network of independent and specialized lawyers to provide legal aid for them (Hungary)

22. Recommendation not accepted.

23. The state cannot organize or limit the work, nor finance human rights defenders. There are independent regulatory bodies in the Republic of Serbia, used by the state to aid in protecting the human rights of citizens. These bodies are the Defender of Citizens (Ombudsman), the Commissioner for Information of Public Importance and Personal Data Protection and the Commissioner for the Protection of Equality. Additionally, the Office for Cooperation with Civil Society of the Government of the Republic of Serbia is also competent to support defenders of human rights, undertaking professional work related to care over the harmonized activities of public administration bodies and stimulating cooperation between these bodies and associations and other civil society organizations.

24. All defenders of human rights who are attorneys by profession, are organized under bars, as individual and independent public services. As per articles 73 and 74 of the Law on Attorneys,⁸ a bar may organize free-of-charge provision of legal assistance to citizens within their territory or part of their territory, individually or based on a contract concluded with the local self-government unit, pursuant to the law, and a bar is also obliged to provide courts and other bodies within its territory with a list of attorneys who may provide legal assistance to parties in court or administrative proceedings.

133.10. Enforce the principle of separation between State and Church in accordance with its own Constitution and not to condition the fulfilment of the rights of some of its citizens by the agreement of a religious body (Romania)

25. Recommendation accepted.

26. The recommendation is fully acceptable since it instructs towards the consistent application of the principle of separation of church and state, as one of the principles of the Constitution of the Republic of Serbia, and already achieved in practice, particularly having in mind that the Diocese of Dacia Felix, with its seat in Deta (Romania) and administrative seat in Vršac, has already been inscribed in the Register of Churches and Religious Communities at the request of the Romanian Orthodox Church without any approval by religious institutions, other churches and religious communities.

133.11. Take necessary measures to allow access to religious services, as well as to education and the media in Romanian language to all persons requesting this all over its territory (Romania)

27. Recommendation not accepted.

28. The recommendation, under the section instructing towards access to religious services, cannot be implemented by measures undertaken by state authorities. Issues of service and the language they are held in are regulated by the autonomous rights of churches and religious communities that the state, respecting the principle of separation of church and state, cannot intervene with, nor can the state, without violating the principle of

⁸ "Official Gazette of RS", no. 31/11 and 24/12.

separation of church and state, order certain churches and religious communities to perform services in a given language. Access to religious services in the Romanian language cannot be achieved throughout the territory of the Republic of Serbia in practice, since persons speaking the Romanian language do not reside on the entire territory of the Republic of Serbia.

133.12. Publish and implement a plan to protect rights to freedom of assembly and expression ensuring the police have adequate powers to ensure the safety of those present and that any crimes committed in connection will be thoroughly and transparently investigated (United Kingdom of Great Britain and Northern Ireland)

29. Recommendation accepted.

30. The affairs of protection of personal and property safety of participants of public assemblies and other citizens, the maintenance of public law and order, traffic safety and other affairs regarding securing a public assembly are undertaken by the Ministry of the Interior. The Ministry, pursuant to its competencies and legal authorization, undertakes a number of activities regarding the organization of public assemblies, such as gathering operative knowledge and information on the number of participants, character and types of public assembly, safety risks and other factors of importance for the safe organization of a public assembly.

31. Based on data thus gathered, and in accordance with professional assessments, the police design adequate plans for securing public assemblies wherein measures and tasks to be undertaken in order to provide full protection of life, limb, human rights and public and private property of the participants of the public assembly and citizens may be provided.

32. When securing a public assembly, pursuant to the Law on Police⁹ (Article 69, paragraph 2), when there exists a hazard of endangering life and limb of people or property during a public assembly, an authorized official is authorized to undertake recording or photography of a public assembly (the police shall communicate this intention publicly), and the recorded materials may be used to uncover potential criminal and other illegal actions undertaken during the public assembly.

⁹ “Official Gazette of RS”, no. 101/05, 63/09-US and 92/11.