

several lawyers met their clients for the first time after the investigative judge had already concluded the crucial stage of investigation; some defendants had lawyers assigned to them only after they entered the courtroom and thus did not have an effective opportunity to prepare a defence; and access to nearly all relevant trial documents was denied to defence lawyers until shortly before the start of the trial.

On the last point, the SR referred to a ruling by the investigative judge of the District Court in Pristina. The ruling applied to all indicted persons and their lawyers and stipulated that, for reasons of state security, all documents and records, objects gathered as evidence, presence during the examination of the indicted, and confrontation and examination of witnesses, would be denied to the defence. The report notes that the practical effect of this ruling was to prohibit defence lawyers from having access to any trial documents other than the statement made by their own clients to the investigative judge and also prevented their being present during the investigation of other accused persons. As a consequence, access to any statements by the co-accused or essential documentary evidence for the preparation of a defence was only granted to the defence about one or, at most, two weeks before the start of the trial.

Points covered in the report on the right to communicate with counsel included that: current legal standards prohibit a lawyer access to a client until the person is brought before an investigative judge, not later than 72 hours after arrest; the Constitution, in article 23, sets a higher degree of protection as it requires that arrested persons should have prompt access to counsel; in practice, the Constitution's higher standards are not enforced since the Constitution also permits, in article 67, ordinary legal standards to prevail; in practice, lawyers are often not granted access to their clients until three days after their arrest, at the time they are brought before the investigative judge; most allegations of torture and ill-treatment concern the three-day period preceding the defendants' appearance before the investigative judge, when they are interrogated and denied access to a lawyer; lawyers were not allowed to meet their clients in private and discuss defence confidentially; the law permits wide restrictions on free communication between legal counsel and clients, viz. article 74 (2) of the Code of Criminal Procedure permits the investigative judge to order "that the accused may converse with defence counsel only in his (the investigative judge's) presence or in the presence of some particular official"; article 74 (3) of the Code permits, and makes obligatory, free communication without surveillance between lawyer and clients after examination by the investigative judge or an indictment has been served; and information indicated that, notwithstanding the provision in article 74 (3), guards had received strict instructions from the State Security service to remain present throughout the interview between lawyer and client.

On other points related to the right to fair trial, the report notes that: the trials were held within a reasonable period

of time; assistance of interpreters was provided vis-à-vis questions from the judge or prosecutor and the defendants' answers, but discussions between the parties in court that were not addressed directly to the defendants were not translated; a number of defendants retracted previous statements made before the investigative judge, on the grounds that the statements were given under torture, ill-treatment or other forms of duress but the investigative judge declined to read these claims into the record, even though such statements are an essential component of testimony and inclusion of them is required under the Code of Criminal Procedure; available information indicated that no prompt and impartial investigations were carried out into any of the allegations that statements had been extracted by various forms of torture, ill-treatment or duress; procedural requirements to protect the authenticity of legal records and the quality of evidence were not met; and, no witness testimony was presented, the only material evidence produced was a machine gun and serious charges against the defendants were supported by little credible material evidence.

On the issue of the trials of two defendants in absentia, the report recalled that a strict interpretation of article 14.3 (d) of the ICCPR appears to prohibit trials in absentia, although the Human Rights Committee has held that such trials are permissible, in strictly limited circumstances.

The commentary on the second trial, held in Pristina in June/July 1997, notes that 12 of the 15 accused were tried in absentia and the defendants were indicted for having received military training in Albania and forming a terrorist organization in Kosovo with the aim of endangering the constitutional order and security of the state and forming a separate state to be joined to Albania. The accused were not only charged with preparing acts of violence, but also with responsibility for carrying out several attacks, as members of the "Liberation Army of Kosovo", including the killing four persons and attempting to kill 16 others. The report notes that the "Liberation Army of Kosovo" had claimed responsibility for these acts. Twelve of the 15 persons charged, including the chief defendant, received the maximum sentence of 20 years' imprisonment. The report stated that nearly all of the issues and concerns raised related to the first trial applied equally to the second trial.

Areas in which additional specific concerns arose, included that: the presiding judge did not promptly read into the record the claims by defendants that they had been subjected to torture although a summary of the defendants' claims was later included; two defendants claimed they were held for 16 days in unacknowledged detention and in breach of international human rights law and Yugoslav law; one defendant claimed he was held for six months without access to legal counsel; the report of medical experts on the mental fitness of one defendant to stand trial was not open to challenge by defence experts in court; and, none of the witnesses called by the prosecution produced credible material evidence linking the accused with the charges against them.