

On the basis of these and other considerations, the SR concluded that: the trials had been conducted in public, without delay, as international standards require; international and local observers had full access to the trial; the courts generally respected, with few exceptions, Yugoslav procedural rules for trial conduct; major breaches, however, occurred during the period of pre-trial detention; both trials failed to meet important minimum guarantees for fair trial provided in UN standards, notably the ICCPR and the Convention against Torture; and, by the international standards provided in human rights instruments to which the FRY is a party, the accused were definitely denied a fair trial.

The SR recommended that the government:

- ♦ promptly order an impartial investigation into the claims of defendants and their lawyers that statements upon which the prosecution relied were extracted under torture or duress and, if confirmed, retry the accused solely on the basis of evidence obtained by legal means; ensure that any statements obtained by such methods are not admitted in evidence and are removed from the record;
- ♦ hold trials of political prisoners for offences involving state security in courts consisting of judges, including lay judges, whose background and qualifications fully meet established criteria of impartiality and independence, and before rotating benches and prosecutors;
- ♦ ensure that constitutional standards which provide arrested persons with prompt access to a lawyer be immediately enforced and promptly brought into line with constitutional standards and legal provisions related to access to legal counsel;
- ♦ review legal provisions which permit broad restrictions on free communication between lawyers and their clients and ensure that they comply with international human rights standards;
- ♦ introduce clear rules for the duration of interrogation of arrested persons, for the intervals between interrogations and for the recording of the identity of the persons conducting the interrogation, make late evening or night interrogations the exception, and provide sanctions for authorities failing to abide by such rules;
- ♦ undertake an investigation into allegations that the authorities refused to acknowledge that two defendants in the second trial were held for 16 days in secret detention and tortured and, if the allegations are confirmed, bring those responsible to justice;
- ♦ if the impartial investigation into the allegations of torture, ill-treatment or duress confirms that these methods were used, ensure that those responsible are brought to justice;
- ♦ instruct investigative judges that torture allegations are essential elements of the testimony which should invariably be read into the record at all stages of the

criminal proceedings and introduce a mechanism to ensure that statements obtained from an accused person in violation of the law are immediately and invariably removed from the record and not admitted in evidence;

- ♦ ensure restrictive interpretation of broadly phrased legal provisions permitting wide restrictions to be imposed on lawyers' access to relevant trial documents and interrogations so that these restrictions are not applied in such a way as to unduly favour the prosecution and result in violations of the important fair trial principle of "equality of arms" between defence and prosecution;
- ♦ ensure that lawyers have unhindered access to medical records of the examination of their clients in custody;
- ♦ introduce a mechanism to ensure that sanctions are invariably imposed when procedural requirements regarding the taking and recording of evidence are not met, and ensure that failure to meet such requirements automatically result in the statements or documents concerned being excluded as evidence, unless supported by corroborative evidence;
- ♦ in all cases where the accused does not speak the language of the court, ensure that arrangements are made to provide that the court interpreter translates the entire proceedings for defendants and not only the questions addressed to them by the judge and the prosecutor and their answers; and
- ♦ ensure that, if trials must take place in absentia, the defendants so tried are guaranteed the strictest possible observance of their rights.

Resolution of the Commission on Human Rights (1998/79)

At the 1998 session the Commission adopted by roll call vote an omnibus resolution on the situation of human rights in the territory of the former Yugoslavia. Text relevant to the FRY included the following:

In Section I of a general nature, the CHR: stressed the need to focus international human rights efforts on the lack of full respect for the human rights of all individuals without distinction, the return of refugees and displaced persons, capacity-building in the areas of rule of law and administration of justice, the freedom and independence of the media, inadequate cooperation with the International Criminal Tribunal (ICTY), and missing persons.

In Section IV on the FRY, the Commission: welcomed the deployment of additional human rights officers in Kosovo; regretted the refusal of the government to allow a visit by the SR on summary/arbitrary executions; called on the authorities to comply with the recommendations contained in the reports of the SR on the former Yugoslavia, comply with its obligations to cooperate with the International Tribunal and undertake substantially