



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

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Committee against Torture

List of issues prior to submission of the third periodic report of Montenegro*

Specific information on the implementation of articles 1-16 of the Convention, including with regard to the Committee's previous recommendations

Follow-up questions from the previous reporting cycle

1. With reference to the Committee's previous concluding observations (see CAT/C/MNE/CO/2, para. 9)¹ and the information received from the State party in follow-up to the concluding observations (see CAT/C/MNE/CO/2/Add.1), please provide updated information on the measures taken to:

(a) Ensure that all persons deprived of their liberty are fully informed of their rights from the very outset of their detention;

(b) Ensure, in practice, the right of detained persons to have a relative or a person of their choice notified of their custody and to be informed of whether that notification was effective;

(c) Guarantee that all persons deprived of their liberty have access, irrespective of whether their cases qualify for mandatory defence as per article 69 (1) of the Criminal Procedure Code, to an ex officio lawyer as from the moment of detention and during interrogation by law enforcement officials;

(d) Ensure that custody registers are in place, that they are filled in on a regular basis and that they include information on the exact timing of the notification of custody to a third party;

(e) Ensure that detained persons are afforded access to examination and treatment by an independent doctor, including a doctor of their own choice, from the very outset of their deprivation of liberty, without conditioning such access on the permission of officials or any authority;

* Adopted by the Committee at its fifty-ninth session (7 November-7 December 2016).

¹ Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.



(f) Ensure that all public officials' compliance with fundamental legal safeguards is monitored and that those denying safeguards to persons deprived of their liberty are disciplined. Please include information on the number of complaints lodged and cases initiated during the period under review for failure to comply with fundamental legal safeguards and the outcome of those cases, including the penalties applied to officials and the compensation awarded to victims.

2. With reference to the Committee's previous concluding observations (para. 13), on war crimes, and the information received from the State party in follow-up to the concluding observations, please provide the following information:

(a) The number of registered allegations of human rights violations, including torture and ill-treatment, having occurred in the context of the armed conflicts in the former Federal Republic of Yugoslavia; the number of such allegations that have been investigated and have led to prosecutions, including of commanders and civilian superiors, as well as of persons or groups of persons acting with the authorization, support or acquiescence of State officials; and the convictions and the punishments imposed in those cases;

(b) The number of witness protection orders granted with reference to those cases and the number of protection orders requested by the victims;

(c) The number of registered allegations of threats or acts of intimidation against witnesses in war crimes trials, the number of such allegations that have been investigated and have led to prosecutions, the convictions and the punishments imposed in those cases;

(d) The number of requests for reparation that have been lodged by victims of war crimes and their families, including relatives of disappeared persons, the number that have been resolved, the number that have resulted in compensation and the average compensation granted per year;

(e) The measures taken to establish the truth and determine the fate and whereabouts of all the individuals reported missing following the armed conflicts in the former Federal Republic of Yugoslavia.

3. With reference to the Committee's previous concluding observations (para. 14), on investigations of cases of torture and ill-treatment, and the information received from the State party in follow-up to the concluding observations, please provide information on:

(a) The bodies that investigate allegations of torture, ill-treatment and excessive use of force committed by staff of the police, the prisons, the security agencies and the military, indicating how the independence of those institutions is guaranteed so that there is no hierarchical or institutional link between the alleged perpetrators and the investigators;

(b) How the independence of internal control bodies, such as the Division for Internal Control of the Police, is guaranteed during disciplinary investigations involving police or prison staff so that there is no hierarchical or institutional link between the suspected perpetrators and the investigators. Please provide information on whether the public prosecutor is always informed of the opening and closing of disciplinary investigations by disciplinary bodies regarding cases of torture or ill-treatment, or if the public prosecutor is informed only when the disciplinary body considers that the facts warrant a criminal investigation;

(c) Annual statistical data from 2014 onwards, disaggregated by crime and the minority group, age range and sex of the victim, on:

(i) The number of complaints filed and police reports initiated relating to torture, as well as the number of such complaints and reports relating to ill-treatment, including information on the attempted commission of, or complicity or participation in, such acts, and killings or excessive use of force allegedly committed

by or with the acquiescence or consent of law enforcement, security, military or prison personnel;

(ii) The number of investigations initiated as a result of those complaints and by which authority;

(iii) The number of those complaints that have been dismissed;

(iv) The number of those complaints that have led to prosecutions;

(v) The number of those complaints that have led to convictions and the penal and disciplinary sanctions that have been applied to guilty public officials, including the length of prison sentences;

(vi) The number of ex officio investigations into cases of torture and ill-treatment and the number of ex officio prosecutions carried out each year;

(vii) The number of cases of torture or ill-treatment reported by doctors following medical examinations of detainees and the outcome of those cases;

(d) The legislative or other measures taken to ensure that all suspects in prima facie cases of torture and ill-treatment are suspended or reassigned for the duration of the investigation, and, in that regard, please indicate the annual percentage of cases, for the period under review, in which State officials under investigation have been suspended from their duties;

(e) Measures taken to strengthen the prevention and the investigation of cases of torture and ill-treatment, the criminal investigation methods and the diligence of the criminal investigations, in the light of the case *Milić and Nikezić v. Montenegro*.

Articles 1 and 4

4. With reference to the Committee's previous concluding observations (para. 6) and its concluding observations on the initial report of the State party (see CAT/C/MNE/CO/1, para. 5), please indicate whether the State party intends to amend the definition of torture contained in article 167, paragraph 2, read in conjunction with paragraph 1, of the Penal Code to bring it into line with article 1 of the Convention. In that regard, please clarify if the State party will adopt legislative measures to:

(a) Include persons acting in an official capacity, not only public officials, as potential perpetrators;

(b) Raise the minimum prison term for acts of torture, in line with article 4 (2) of the Convention;

(c) Ensure that acts amounting to torture are not subject to a statute of limitations.

Article 2²

5. With regard to the Committee's previous concluding observations (para. 8) in relation to the provision of legal aid, please provide information on the measures taken to:

² The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent such ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

- (a) Provide for effective access to free legal aid in administrative proceedings, particularly to asylum seekers, refugees and persons at risk of statelessness;
- (b) Ensure sufficient resources for the effective provision of free legal assistance;
- (c) Increase public awareness about the Law on Legal Aid.

6. With reference to the Committee's previous concluding observations (para. 9), please provide updated information on the measures taken to provide the Protector of Human Rights and Freedoms of Montenegro with the financial, technical and human resources necessary to fulfil its broad mandate on a fully independent basis, in particular its functions as the national preventive mechanism and the capacity to handle complaints. Please also indicate the legislative and other measures taken to establish a clear, transparent and participatory process for the selection and appointment of the Protector of Human Rights and Freedoms of Montenegro and to empower the Protector so that he or she can determine his or her office's staffing structure and recruit staff according to an open, transparent and merit-based selection process that ensures pluralism.

7. In the light of the Committee's previous concluding observations (para. 10), please provide information on the legislative and other measures taken to introduce objective and precise evaluation criteria for the appointment, promotion and dismissal of judges. Please also comment on allegations that when detainees complain about ill-treatment by the police to a prosecutor or a judge, action is not always taken even though the prosecutor or judge concerned can see signs of torture on the detainee's body. In that respect, please indicate what measures have been put into place to monitor and sanction such behaviour and to combat impunity.

8. With reference to the Committee's previous concluding observations (paras. 19 and 24), please provide the following information on domestic and other gender-based violence for the period under review:

(a) Annual data, disaggregated according to the type of crime, the age range, the sex and ethnic origin of the victim, on the number of victims of domestic and other gender-based violence, including the number of those who have died as a result of such violence, the number of complaints lodged or allegations registered by the police, the number of such complaints that have been investigated and have led to prosecutions and convictions and the punishment imposed in those cases. Please indicate, with reference to these cases, how many protection orders have been ordered each year and the number of protection orders requested by the victims each year;

(b) A brief indication of the means of redress available to victims of domestic and other gender-based violence, including whether medical and psychosocial counselling is provided, the adequacy of the legal aid provided to victims, the type of social support schemes, the number of shelters and their occupancy rate, the procedure for obtaining compensation and the annual percentage of cases in which compensation has been awarded;

(c) Updates on the measures taken to strengthen reporting mechanisms and accountability of various sectors in contact with victims to react and provide immediate referral;

(d) Information on the steps taken to raise the awareness of and train law enforcement personnel, prosecutors, judges, lawyers, social workers and doctors, including forensic doctors, on domestic and gender-based violence, on how to investigate such violence and create the appropriate conditions for victims to report cases. Please also indicate the awareness-raising measures taken to fight gender stereotypes and domestic violence among the population at large.

9. With reference to the Committee's previous concluding observations (paras. 20 and 24), please provide the following information on trafficking in persons for the period under review:

(a) Annual statistical data, disaggregated by age, sex, country of origin and employment sector of the victim, on the number of victims of trafficking and the number of complaints lodged and reports registered by the police regarding this crime, the number of complaints that have been investigated and have led to prosecutions and convictions and the punishment imposed;

(b) A brief description of the means of redress provided to all victims of trafficking, including whether medical and psychological assistance is provided, the number of shelters and their occupancy rate, social support schemes, vocational training, the procedure for obtaining compensation and the percentage of cases in which compensation has been awarded;

(c) Measures taken to proactively identify trafficking victims, particularly children forced to beg and women forced to engage in prostitution;

(d) The initiatives taken to train migration and other law enforcement personnel, prosecutors, judges and labour inspectors to investigate cases of trafficking, prosecute and punish those responsible, assist and protect victims, and communicate with child victims;

(e) Any initiatives to strengthen regional cooperation to combat trafficking.

Article 3

10. With regard to the Committee's previous concluding observations (para. 11), please clarify if the draft law on asylum:

(a) Provides for an effective judicial remedy to challenge the merits of refused asylum applications with automatic suspensive effect in respect of deportation;

(b) Sets up a mechanism for the early identification at borders of victims of torture and trafficking among asylum seekers and other persons in need of international protection and for their immediate rehabilitation and priority access to the asylum determination procedure;

(c) Makes sure that asylum applications by persons from "safe countries of origin" and "safe third countries" are examined with due consideration for the applicant's personal situation and that the applicant has the possibility to rebut the presumption of safety in his or her particular case.

11. Please provide annual statistical data for the period under review, disaggregated by the sex, country of origin and age of the person concerned, on:

(a) The number of asylum applications registered and the number of applications processed;

(b) The number of applications for asylum, refugee status or subsidiary protection that were granted, indicating, when applicable, the number of cases in which protection was granted in application of the principle of non-refoulement;

(c) The number of persons extradited, expelled or returned and the countries to which they were extradited, expelled or returned;

(d) The number of appeals made against expulsion or extradition decisions on the basis that applicants might be in danger of being subjected to torture in their countries of destination, and the results of those appeals.

12. In the light of the Committee's previous concluding observations (para. 12), please provide information on the measures taken to prevent the risk of refoulement among refugees from the former Federal Republic of Yugoslavia who did not regularize their situation by obtaining a "status of foreigner" with permanent residence by 2015. Please also indicate the measures taken to facilitate and promote the civil registration of and documentation for all persons born in the State party's territory, in particular those of Roma ethnicity, and to establish a status determination procedure for stateless people.

Articles 5-9

13. Since the State party's previous report was considered by the Committee, please indicate whether the State party has rejected, for any reason, the request of a State for the extradition of an individual suspected of having committed torture and whether it has started prosecution proceedings against such an individual as a result. If so, please provide information on the status and outcome of such proceedings.

Article 10

14. With reference to the Committee's previous concluding observations (para. 16), please clarify whether law enforcement personnel at all levels, State security organs, prison staff, police officers, immigration officials, judges, prosecutors, medical personnel dealing with detainees or prisoners, forensic doctors and any other person who may be involved in the custody, interrogation or treatment of persons deprived of their liberty, receive training on:

- (a) The provisions of the Convention;
- (b) The guidelines used to detect and document signs of torture and ill-treatment in accordance with international standards, such as those outlined in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);
- (c) Non-coercive investigatory and restraint techniques, as well as the principle of the use of force as a last resort;
- (d) Identification and referral of victims of trafficking, torture and sexual violence among asylum seekers.

If they do receive such training, please indicate briefly, whether the training is regular and compulsory, the overall size of the target group and the percentage of those trained during the period under review.

15. Please indicate whether the State party has developed specific methodologies to evaluate the effectiveness and impact of such training on the prevention and absolute prohibition of torture.

Article 11

16. With reference to the Committee's previous concluding observations (para. 17), please provide the following information for the period under review:

- (a) Statistical data, disaggregated by ethnicity, on the number of pretrial detainees in relation to the total number of persons deprived of their liberty in criminal proceedings, the occupancy rate of all places of detention and the average and maximum duration of pretrial detention;
- (b) Measures taken to reduce the use of pretrial detention and enhance the use of alternative measures. Please also indicate the measures taken to enhance the use of non-custodial measures, such as parole, as an alternative to imprisonment. In that regard, please

provide statistical data on the percentage of cases in which alternatives to detention and non-custodial measures have been applied;

(c) Updates on the construction of a new prison in Podgorica and an additional building at Bjelo Polje prison. Please indicate the additional capacity these prisons will add to the prison system;

(d) Measures to improve the material conditions of detention in police custody and in the remand prison, including out-of-cell activities;

(e) Measures to ensure that adequate access to health care, including mental health care, is provided for all persons deprived of their liberty;

(f) Measures to increase the number of qualified staff in direct contact with prisoners;

(g) Measures to prevent violence among prisoners, including sexual abuse, and to protect their physical integrity;

(h) Measures in place to improve opportunities for access to work opportunities and rehabilitation, including for women and juvenile prisoners.

17. With reference to the Committee's previous concluding observations (para. 17), please provide annual statistical data for the period under review, disaggregated by the place of deprivation of liberty and the victims' sex, age and ethnic origin, on: (a) the number of deaths in custody, indicating the cause of death; and (b) the number of persons injured as a result of violence or the excessive use of restrictive measures inside places of detention, indicating whether the perpetrator was a State official or a fellow detainee. Please also provide detailed information on the outcome of investigations into such deaths or injuries, including the penalties imposed on the perpetrators of torture, ill-treatment or negligence that caused the death or the injuries. In particular, please provide information on the outcome of the investigations into instances of aggression that took place in Podgorica prison in January 2015 between prisoners and guards.

18. Please also indicate the measures taken to ensure that all newly arrived prisoners, or prisoners involved in a violent incident, receive a medical examination and that:

(a) Medical staff are in a position to examine detainees without delay, out of earshot and, unless the doctor concerned expressly requests otherwise in a given case, out of sight of prison guards;

(b) The report drawn up after the medical examination contains:

(i) A record of the relevant statements by the individual concerned, including a description of the state of health of the individual and any allegations of ill-treatment;

(ii) A full account of objective medical observations based on a thorough examination;

(iii) The doctor's conclusions, in the light of points (i) and (ii) above, regarding the consistency of any allegations of ill-treatment with the objective medical findings;

(c) The medical personnel are able to report, on a confidential basis, any signs of torture or ill-treatment to the public prosecutor.

19. Please indicate the maximum time during which restraints and solitary confinement can be imposed in non-medical settings, whether or not their use is regulated and recorded and what other alternative measures are in place as measures of control. Please also clarify the procedures that are followed and the conditions that must exist for such measures to be imposed and provide annual statistical data for the period under review on the number of

detained persons placed in solitary confinement, as well as on the maximum and average duration of such confinement. Please also clarify the safeguards applied to inmates in disciplinary procedures.

20. With reference to the Committee's previous concluding observations (para. 11), please provide information on the measures taken to improve the reception conditions of asylum seekers. In that regard, please provide information for the period under review on the number of reception centres for asylum seekers currently in use and their annual occupancy rate, indicating the number of persons in each cell.

Articles 12-13

21. Please provide information on the outcome of the investigations, including the disciplinary or criminal sentences imposed on perpetrators, in relation to the alleged use of excessive force, tear gas and rubber bullets by police on: (a) 17 October 2015, to remove a camp outside Parliament established during the mass demonstrations that commenced on 27 September 2015; (b) 24 October 2015, in reaction to an attempt of members of the Democratic Front opposition party to force their way into Parliament after being denied entry; and (c) the alleged beatings of Miodrag Martinović by some 20 police officers.

22. With reference to the Committee's previous concluding observations (para. 15), please provide information on measures taken to:

(a) Establish an effective mechanism for receiving complaints of torture and ill-treatment, including in custodial facilities, that guarantees the confidentiality of complaints and the protection of complainants, including reporting officers, against intimidation and reprisals as a consequence of their complaints;

(b) Raise the awareness of detainees about the possibility of and procedure for filing a complaint of alleged torture or ill-treatment by State officials, and to publicize such information widely, including by displaying it in all places of detention.

Article 14

23. In the light of paragraph 46 of the Committee's general comment No. 3 (2012) on the implementation of article 14, please provide information with regard to measures for ensuring reparation to victims of torture and ill-treatment, specifically:

(a) The redress and compensation measures ordered by the courts since consideration of the State party's previous report. That information should include the number of requests for compensation made, the number granted and the amounts ordered and actually provided in each case;

(b) The kind of rehabilitation programmes provided to victims and whether they include medical and psychological assistance;

(c) The measures taken to provide other forms of redress (restitution, satisfaction, including restoration of dignity and reputation, and guarantees of non-recurrence) to victims of torture and ill-treatment, and how many of those measures have actually been granted to victims of torture and ill-treatment during the period under review;

(d) Whether victims of torture and ill-treatment have access to free legal aid.

Article 16

24. In the light of the Committee's previous concluding observations (para. 18), please provide information on:

(a) The steps taken to prevent violence, harassment and intimidation against journalists and media property;

(b) The work developed by the commission established under the Ministry of the Interior in December 2013 to monitor investigations into attacks on journalists and on media property, a brief description of its findings, its recommendations and measures taken to ensure their implementation. Please also provide information on the outcome of the cases considered by the commission, including the investigation into the murder of Duško Jovanović in 2004 and Tufik Softić in 2007;

(c) The number of complaints and police reports, investigations, prosecutions, convictions and punishments handed down for such crimes during the period under review, broken down by type of offence and investigating authority, the number of witness protection orders granted and the reparations provided to victims. In particular, please provide information on the outcome of the following cases:

- (i) The attack on Zorica Bulatović's car, in May 2015;
- (ii) The death threats against Marijana Bojanić and her children, in October 2015;
- (iii) The attack on Ivana Drobnyak and her offices, in October 2015;
- (iv) The alleged beatings by the police of Gojko Raičević, after his arrest in October 2015.

25. With reference to the Committee's previous concluding observations (para. 22), please provide information on measures taken to protect ethnic minorities, in particular Roma, Ashkali and Egyptians, from discriminatory treatment, including through increased awareness-raising and information campaigns, as well as by promoting the local integration and social and economic inclusion of vulnerable refugees, particularly residents in the Konik area.

26. In the light of the Committee's previous concluding observations (para. 23), please provide information on:

(a) The steps taken to prevent violence, threats, harassment and intimidation against lesbian, gay, bisexual and transgender persons;

(b) The number of complaints and police reports, investigations, prosecutions, convictions and punishments handed down for such crimes during the period under review, broken down by type of offence and investigating authority, and the reparations provided to victims. In that regard, please provide information on the outcome of the investigations into the attack on the social centre for lesbian, gay, bisexual and transgender persons in Podgorica in December 2014, despite the presence of police officers.

27. In the light of the Committee's previous concluding observations (para. 21), please provide information on the legislative measures taken to explicitly prohibit corporal punishment in all settings, including in the home and in alternative care settings, and to raise awareness of positive, non-violent and participatory forms of child-rearing throughout the State party.

General information on other measures and developments relating to the implementation of the Convention in the State party

28. Please provide information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the State party's previous report to implement the provisions of the Convention or the Committee's recommendations, including institutional developments, plans or programmes. Please indicate the resources allocated and statistical data. Please also provide any other information that the State party considers relevant.