



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

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**Written replies by the Government of MONTENEGRO\* to the list of issues  
(CAT/C/MNE/Q/1) to be taken up in connection with the consideration of the initial  
report of MONTENEGRO (CAT/C/MNE/1)**

[13 October 2008]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

## Article 1

### Question 1

1. According to the Criminal Code of Montenegro **torture and abuse** is prescribed as criminal offence and classified in the group of **criminal offences against human and citizen's rights and freedoms**. The nature of this criminal offence is defined in **Article 167** of the Criminal Code, which reads:

(a) Anyone who, by force, threat or in any other unlawful manner, causes great pain and suffering of other person with the aim to obtain a confession, statement or other information from that person or a third party, or to intimidate or to punish unlawfully that person or a third party, or who does it from some other motives grounded on any form of discrimination, shall be sentenced to imprisonment for a term of six months to five years.

(b) Anyone who abuses others or treats them in a humiliating and degrading manner shall be punished by a fine or sentenced to imprisonment for a term of up to one year.

(c) Should the offence referred to in paragraphs 1 and 2 above be committed by a person acting in an official capacity during performance of his/her duties, that person shall be sentenced to imprisonment for a term of one to eight years for the offence referred to in paragraph 1 above, and to imprisonment for a term of three months to three years for the offence referred to in paragraph 2 above.”

2. The issue of the application of international treaties has been regulated by Basic Provisions of the Constitution of Montenegro, i.e. by provision of **Article 9** of the Constitution (**Legal order**), which reads:

(a) The ratified and published international agreements and generally accepted rules of international law shall be an integral part of the domestic legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the domestic legislation.

## Article 2

### Question 2

3. The Constitution guarantees the dignity and security of the person, as well as inviolability of his/her physical and psychological integrity, privacy and individual rights. No one should be subjected to torture or inhuman or degrading treatment. Also, no one should be kept in slavery or in a position of a slave (Article 28).

4. The Constitution guarantees respect of the human personality and dignity in penal or other proceedings, in the event of detention or limitation of freedom and during a

prison sentence. Any violence, inhuman or degrading treatment against a detainee or a person in a position of limited freedom is prohibited and subject to punishment.

4. Deprivation of liberty is permissible solely for reasons and in a procedure stipulated by the law and person deprived of liberty must be immediately informed in his/her language, or a language they can understand of the reasons of detention. Concurrently, person deprived of liberty shall be informed that he/she is not obliged to give any statement. At the request of the person deprived of his/her liberty, the authority shall immediately inform about the deprivation of liberty the person of own choosing of the person deprived of his/her liberty. The person deprived of his/her liberty shall have the right to the defense counsel of his/her own choosing present at his interrogation. Unlawful deprivation of liberty is punishable (Article 29).

5. A person in regard of whom there is a reasonable doubt to have committed a criminal offence may on the basis of a decision of the competent court be detained and kept in custody only in the event that this is necessary for the purpose of conduct of the criminal proceedings. Detainee shall be given the explained decision of detention at the time of being placed in detention or at the latest 24 hours from being put in detention. Detainee shall have the right of appeal against the decision of detention, upon which the court shall decide within 48 hours. On the basis of the decision of the court of first instance the detention can last at the longest three months from the date of detention and on the basis of the decision of a higher court, it can be extended for additional three months. If no indictment is raised by that time, the detainee shall be released. A minor can be detained for a period of 60 days at the longest.

6. Criminal Procedure Code of Montenegro in Articles 147 – 160 prescribes exceptionality of measure of detention and urgency in acting as regards detention cases, identifies reasons of detention and treatment of detainees, supervision over execution of detention, as well as over the rights of a detainee. Articles 147-160 read as follows:

**(i) Detention**

**Exceptional reasons for ordering detention and urgent proceeding on the issues of detention. Article 147**

(a) Detention may be ordered only under the conditions set forth in the present Code and only if the same purpose cannot be achieved by another measure and it is necessary for undisturbed conducting of the criminal proceedings.

(b) The authorities taking part in the criminal proceedings and authorities providing the legal assistance therein shall be bound to proceed with exceptional urgency if the defendant is in detention.

(c) Throughout the proceedings, detention shall be terminated as soon as the grounds for which it was ordered cease to exist.

**(ii) Reasons for ordering detention. Article 148**

(a) If there is a reasonable suspicion that a person has committed a criminal offence, detention against this person may be ordered in the following cases:

- (b) If the person hides or his identity cannot be established, or if there, are other circumstances indicating a risk of flight;
- (c) If there are circumstances indicating that he will destroy, conceal, alter or falsify evidence or clues of the criminal offence or if indicate that he hinder the inquiry by influencing witnesses, accessories or accomplices;
- (d) If there is circumstance indicating that he will repeat the criminal offence or complete the attempted one, or perpetrate the criminal offence he threatens to commit;
- (e) In the case of the criminal offences punishable by imprisonment of ten years or a more severe punishment, if that is necessary due to the exceptionally grave circumstances of the offence;
- (f) If a duly summoned defendant obviously evades appearance at the trial.
- (g) Detention shall be ordered against the defendant sentenced by the first instance Court to a punishment of imprisonment of five years or more severe penalty, if the defendant is not already in detention, and if it deems justified because of the manner in which the criminal offence is committed or other special grave circumstances pertaining to the criminal offence.
- (h) In the case referred to in Paragraph 1, Item 1 of this Article, detention ordered only because it was not possible to establish the identity of the person, shall last until this identity is established. In the case referred to in Paragraph 1, item 2 of this Article, detention shall be vacated as soon as evidences on the grounds of which detention was ordered are secured. Detention ordered pursuant to Paragraph 1, Item 5 of this Article may last until the pronouncement, but not more than one month.

**(iii) Ruling ordering detention. Article 149**

- (a) Detention shall be ordered by a ruling issued by the competent Court.
- (b) A ruling ordering detention shall contain: the first name and the surname, year and a place of birth of a person against whom a detention is ordered, the criminal offence he is charged with, the legal grounds for detention, the duration of detention, the time the person was deprived of liberty, instructions on the right to appeal, the statement of reasons with a separate statement on the grounds for ordering detention, the official seal and the signature of the judge who ordered detention.
- (c) A ruling on detention shall be served on a person to whom it relates immediately after he has been detained. The day and the time the ruling was received shall be noted in the files. A person served with a ruling shall acknowledge a receipt with his signature.
- (d) Against the ruling on detention a detainee may file an appeal with the Panel (Article 24, Paragraph 6) within a term of 24 hours from the moment of the receipt of the ruling. The appeal, the ruling on detention and other files shall

immediately be submitted to the Panel. The appeal does shall not stay the execution of the ruling.

(e) If the investigative judge disagrees with the State Prosecutor's motion to order detention, he shall ask the Panel to decide on this (Article 24, Paragraph 6).

Against the ruling on detention issued by the Panel, a detainee may file an appeal, which shall not stay the execution of the ruling. In regard with serving the ruling on detention and filing an appeal the provisions of the Paragraphs 3 and 4 of this Article shall be applicable.

(f) In the cases referred to in Paragraphs 4 and 5 of this Article, the Panel shall be bound to decide on appeal within 48 hours.

**(iv) Ordering detention and duration of detention in the course of investigation. Article 150**

(a) Detention ordered by the ruling of the investigative judge or the Panel referred to in Article 149, Paragraph 5 may last at the longest one month from the day the detainee was deprived of liberty. After this term has expired, the detainee may be detained only on the basis of a decision extending the custody.

(b) Detention may be extended by the ruling of the Panel (Article 24, Paragraph 6) for no longer than two months. The appeal shall be allowed against the ruling of the Panel and it shall not stay the execution of the ruling.

(c) If the proceedings are carried out for a criminal offence punishable by imprisonment for a term of five years or longer, the Panel of the Supreme Court may, upon a substantiated motion of the investigative judge or the State Prosecutor, if important reasons exist, extend the detention for no longer than another three months.

(d) The defendant shall be released if the indictment has not been brought until the expiry of the terms referred to in Paragraphs 2 and 3 of the present Code.

**(v) Termination of detention. Article 151**

(a) In the course of investigation, the investigative judge may terminate the detention if the State Prosecutor agrees. If the investigative judge and the competent Prosecutor disagree, the investigative judge shall request the Panel to decide thereof, which shall be bound to render a decision within a term of 48 hours.

**(vi) Duration of detention after the indictment is brought. Article 152**

(a) After the indictment has been submitted to the Court and up until the completion of a trial, detention may be ordered or terminated only by the ruling rendered by the Panel, provided that the opinion of the State Prosecutor is obtained if the proceedings are conducted upon his motion.

(b) The Panel shall be bound, upon the request of the parties or by virtue of an office, to review whether the grounds for detention still exist and to extend or

terminate, performing check ups every 30 days before the indictment has become final, and every two months from the moment the indictment becomes final.

(c) After the indictment has been brought detention may last three years at the longest. If within this period a first instance verdict has not been delivered to the accused, detention shall be terminated and the accused released.

(d) After the first instance verdict has been delivered, detention may last one year at the longest. If within this period a second instance verdict, by which the first instance verdict is annulled or confirmed, has not been delivered, detention shall be terminated and the accused released. If within a term of one year a second instance Court verdict is delivered to the detainee and that verdict has annulled the first instance verdict, detention may last at the longest for one more year from the day the second instance verdict has been delivered.

(e) The appeal on the ruling referred to in Paragraphs 1 and 2 of this Article shall not stay the execution of the ruling.

(f) Appeal shall not be allowed against the ruling of the Panel by which the motion to order or terminate detention is rejected.

**(vii) Obligation to inform on deprivation of liberty. Article 153**

(a) The police authority or the Court shall be bound immediately after a person has been deprived of liberty and within a term of 24 hours at the latest, to inform thereof a person's family or his extra-marital partner, unless he expressly objects that.

(b) A competent body of social care shall be informed about deprivation of liberty if it is necessary to take measures for securing children and other family members to whom the person deprived of liberty is a guardian.

**(viii) Treatment of detainees. Respect of human personality and dignity of detainees and their accommodation. Article 154**

(a) Detention must be executed in such a manner as not to offend the personal integrity and dignity of the detainee.

(b) The restrictions may be imposed against the detainee only to the extent necessary to prevent his flight, instigation of third persons to destroy, conceal, alter and falsify evidence or clues of a criminal offence or to prevent direct or indirect contacts among detainees for the purpose of influencing witnesses, accomplices and fences.

(c) Persons of different sexes shall be detained separately. As a rule, detainees against whom reasonable suspicion exists that they have participated in the same criminal offence shall not be accommodated in the same room neither shall detainees be accommodated in the same room as persons who are serving a prison sentence. If possible, detainees against whom a reasonable suspicion exists that they are repetitive offenders shall not be detained with other detainees towards whom they might have and adverse influence.

**(ix) Rights of detainees. Article 155**

(a) A detainee shall be entitled to at least eight hours of an uninterrupted night rest for every 24-hour period.

(b) At least two hours of movement in the open air daily shall be provided to a detainee.

(c) Detainees are entitled to wear their own clothes, to use their own bedding, as well as to obtain at their own expense food, books, professional reviews and periodicals, newspapers, stationary and drawing supplies and other things related to their daily needs, except those suitable for infliction of injuries, detrimental for health or preparation of flight.

(d) A detainee may be obliged to maintain the premises he is detained in clean. On his request, the investigative judge or the Chair of the Panel with the consent of a prison administration may allow the detainee to work within the prison in accordance with his mental and physical capacity, providing that this is not prejudicial for the course of the proceedings. For such a work the detainee shall be entitled to a fee ordered by the administrator of the prison.

**(X) Receiving visits and correspondence of detainees. Article 156**

(a) Upon the approval of the investigative judge and when necessary and under his supervision or the supervision of a person designated by him, the detainee may, in accordance with internal regulation of the detention facility, receive visits from his close relatives and upon his requests from physician and other persons. Some visits may be prohibited if they could detrimentally affect the conduct of the proceedings.

(b) Subject to knowledge of the investigative judge, diplomatic and consular representatives of the foreign states which have signed relevant international conventions are entitled to visit and without supervision to communicate with detainees who are nationals of their state. The investigative judge shall inform the administrator of the detention facility about such visit.

(c) With the approval of the President of the Court, the detainee may receive visits from the representatives of domestic and foreign organizations for human rights protection.

(d) Subject to the knowledge and supervision of the investigative judge, a detainee may exchange letters with persons outside the prison. The investigative judge may forbid to the detainee the sending and receiving of letters and other shipments if this may detrimentally affect the conduct of the proceedings. The prohibition does not relate to the letters which the detainee sends to or receives from the international Courts and domestic parliamentary, judicial and executive authorities as well as to the letters which he sends or receives from his defense attorney, except when inspection of his correspondence with the defense attorney is proven to be justified (Article 73, Paragraph 2). The sending of a petition, complaint or appeal shall never be forbidden.

(e) After the indictment is brought and until the judgment becomes final, the responsibilities referred to in Paragraphs 1, 2 and 4 of this Article shall be performed by the Chair of the Panel.

**(xi) Disciplinary offences and disciplinary punishments. Article 157**

(a) In the case of a disciplinary offence the investigative judge or the Chair of the Panel may impose against the detainee a disciplinary penalty consisting of restrictions of visits. Such restriction shall not refer to the communications between the detainee and his defense attorney.

(b) An appeal may be filed against a ruling on the disciplinary measure referred to in Paragraph 1 of this Article with the Panel of the Competent Court (Article 24. Paragraph 6) within 24 hours from the moment the ruling was served on the detainee. The appeal shall not stay the execution of the ruling. The Panel shall decide on the appeal within a term of three days from the day the appeal was filed.

**(xii) Supervision over the execution of detention. Article 158**

(a) The President of the Competent Court shall carry out supervision over the execution of detention.

(b) The President of the Court or the judge designated by him shall be bound to visit the detainees at least once a month and, if he considers it necessary without the presence of the keepers and guards, and shall inquire how detainees are fed, how their other needs are satisfied and how they are treated. The President or the judge designated by him shall be bound to undertake measures necessary to remove improprieties spotted while touring the prison. The judge designated by the President of the Court may not be the investigative judge.

(c) The President of the Court and the investigative judge may at any time visit detainees, may talk to them and hear their complaints.

**(xiii) Rules regulating the execution of detention. Article 159**

(a) Having obtained approval of the President of the Supreme Court, the Minister of Justice shall issue detailed rules regulating the execution of detention in accordance with provisions of the present Code.

(b) Law on Police defines actions of the authorized persons regarding implementation of measure of deprivation of liberty, prescribes manner of conduct of police officer in implementation of measure of deprivation of liberty and defines hygiene and technical conditions of the detention premises. (Articles 27, 28 and 29 of the Law on Police).

7. Police Directorate of Montenegro has put in significant efforts with the aim of filling in the gaps as regards the treatment of detainees, and especially as regards improving hygiene and technical conditions of police detention premises. In accordance with the Rule Book on conditions that detention premises for detention of persons deprived of their liberty have to fulfill (Off. Gazette of Montenegro no 57/06) from 15



September 2006 specific activities have been undertaken as regards the reconstruction of detention premises.

8. Activities related to the introduction of video surveillance over detained persons have been initiated as well.

9. With the aim of effectuating legality in treating detained persons, in March 2008 a special form has been introduced ( Form no. 1 and 2 – A written report on detention of persons deprived of their liberty ) that contains following relevant information on detained person, starting from the moment a person was first received in the Duty Service: placement in detention premises, personal belongings taken away from the person, provided meals, medical help that was provided, information on eventual complaint on the decision on detention, information on noted injuries during the phase of handing over the person, as well as a part of a written report relating to handing over the detained person to the competent authorities for further processing of a case (Institution for Criminal Penalties Enforcement, competent courts, other authorities for interior affairs). Forms 1 and 2 are the basis of a detained person's file. A file contains a decision on detention based on the Criminal Code or Law on Police, report on a performed Alco test, doctor's report of the examined person, copy of a complaint of the detained person on the decision on detention, as well as decision on termination of detention.

10. Each detainee is handed the so-called "Detainee Information Paper", the receipt of which is certified by the detainee's signature. The Information Paper is printed in the Montenegrin, English and Albanian languages and it is designed to ensure that the detainee at the moment of detention is once again made aware of his/her rights, i.e. that each police officer must inform the detainee in his/her tongue or a language they understand that he/she has been detained, explain the reasons of the detention and inform the detainee that he/she is not obliged to make any statements, that he/she may engage a defense counsel of their choice, that at his/her request the next of kin can be notified of his/her detention, that he/she is entitled to receiving a meal at regular intervals in line with his/her religious beliefs and that he/she has access to drinking water.

11. District Units and Branch Units are informed about possible visits of the Committee for Prevention of Torture (CPT) of the Council of Europe and its right to perform an inspection without previous notification. All officers of Duty Services are informed on obligations deriving from the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and CoE Convention against Torture.

12. Over the preceding year a media campaign has promoted the role of 9820 and 9821 call centers to which citizens can direct their representations and complaints against actions by the police with a special emphasis on the fact that each citizen has the right, among other things, to file a complaint if he/she believes to have been unlawfully detained.

### Question 3

13. Ministry of Interior has, in accordance with the provisions of the Law on Police, adopted the **Code of Police Ethics** on 10 January 2006.
14. Code contains a list of principles on lawful performance of duties of authorized police officers which are in accordance with norms of international and domestic law, and are needed for ethical conduct of police officers.
15. Code prescribes that in performing their official duties police officers are obliged to respect fundamental human rights and freedoms of all citizens regardless of their nationality, race, skin color, religious belief, sex, education, social position or any other personal characteristic or particularity.
16. Code also emphasizes that police officers are obliged to carry out their duties in politically unbiased way and they are encouraged to restrain from carrying out orders that are not in conformity with law provisions.
17. In order to examine the ethics of police conduct the Minister of Interior and Public Affairs has issued a Decision on establishment of an Ethnical Committee, which is tasked with implementing the provisions of the Police Act, the Code of Police Ethics, the European Police Ethics Code and the European Convention on Human Rights.
18. The Police Act introduces the institute of civic control of the police, which is conducted by the Council for Civic Control of the Police appointed by the Parliament. The Council is composed of five members nominated by the Bar Association, the Medical Association, the Association of Lawyers, the University of Montenegro and NGOs engaged in human rights issues. At the request of the Council the Police are obliged to provide the information needed.
19. In the period since the restoration of independence disciplinary proceedings have been conducted against 22 police officers due to overstepping of their authority, which resulted in violations of human rights. The measure of termination of the employment contract was pronounced in 7 and the maximum pecuniary sanction in 15 cases.

#### **Question 4**

20. Law on Police in Chapter 5 - Use of coercive means defines type of coercive means: physical strength (Art. 31); baton (Art.32); use of means to cuff up persons (Art. 33); devices to stop a motor vehicle by force (Art. 34); official dogs (Art. 35); chemical means to temporarily incapacitate a person (Art. 36); special vehicles (Art. 37); special type of firearms, explosive means (Art. 38); and firearm (Art. 40); and possibility of their use for:
  - (a) Prevention of escape of a person deprived of liberty or caught *in flagrante delicto* of a crime prosecutable *ex officio*;
  - (b) Overcoming resistance of persons violating public peace and order or persons needed to be taken away or deprived of their liberty in a law defined situations;
  - (c) Defense situations of self-defense, of defense of another person or defense of an object being secured;

### Article 3

#### Questions 5 and 6

21. Care for asylum-seekers and persons who have already been granted asylum includes assistance in regard of exercising rights to accommodation, education, health care and social welfare, along with the right to work, freedom of religion, legal and humanitarian assistance, family re-joining, integration into the community and other rights provided for by the Asylum Law.
22. The Asylum Law is adopted on 17 July 2006 (*Off. Gazette of the Republic of Montenegro* no. 45/06) and its application started on 25 January 2007. This Law is the first law in this field in Montenegro stipulating the principles, conditions and procedure of the asylum, recognition of refugee status and approval of additional and provisional protection, the rights and obligations of asylum-seekers who have been granted refugee status and additional and provisional protection, as well as the reasons for cessation and termination of the refugee status and provisional protection and termination of the provisional protection in Montenegro. This Law ensures protection of particularly vulnerable persons, including minors, persons fully or partially deprived of legal capacity, unaccompanied minors, persons with mental or physical disability, old persons, expectant mothers, single parents with under-age children, persons who have undergone torture, rape or other grave forms of psychological, physical or sexual violence and other vulnerable persons.
23. With the aim of consistent implementation of the Asylum Law competent authorities have enacted several bylaws: Regulation on taking photographs, fingerprints, signature and other data from asylum-seekers, Regulation on request forms for asylum and minutes of oral request for asylum, Directive on substance and form of records in the field of asylum (Ministry of Interior Affairs and Public Administration) and Directive on financial aid for asylum-seekers, persons to whom refugee status is recognized and persons to whom additional and provisional protection is approved.
24. In view of the fact that the Centre for Asylum-Seekers is under construction, the Office for Refugee Care managed to find alternative solutions for their accommodation. It is the Ministry of the Interior and Public Administration that is in charge of conduct of the asylum procedure of first instance. Under the Asylum Law the affairs within the remit of the Ministry are performed by the Asylum Office. The procedure relating to the complaints lodged against decisions of the first instance organ is conducted by the State Commission for Asylum Complaints. The Asylum Law respects the standards of the 1951 Geneva Convention on the Status of Refugees and the 1967 New York Protocol and abides by the principle of prohibition of expulsion.
25. Since the application of the Asylum Law has initiated in January 2007, statistical data on the asylum practice was collected only for the period 2007/2008. In 2007 and 2008, 9 persons submitted applications for asylum in Montenegro to the Asylum Office.

Out of these persons refugee status has been recognized to only one person, while the proceedings concerning two asylum-seekers have been stopped, in four cases the application was rejected and in one case the request is pending. In accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Asylum Law one person was approved additional and provisional protection since there were reasons to believe that by returning to the country of origin this person would be subjected to torture.

**YEAR 2007**

<b>Country of origin of the person submitting the request</b>	<b>Age</b>	<b>Gender</b>	<b>Decision upon request</b>	<b>Decision upon appeal</b>
Macedonia	49	Male	Refugee status approved	
Serbia - Kosovo	57	Male	Request for asylum rejected	Appeal rejected
Albania	26	Male	Request for asylum rejected	Appeal rejected

**YEAR 2008**

<b>Country of origin of the person submitting the request</b>	<b>Age</b>	<b>Gender</b>	<b>Decision upon request</b>	<b>Decision upon appeal</b>
Serbia - Kosovo	42	Male	Request for asylum rejected	Appeal rejected
Albania	59	Male	Request for asylum rejected	Appeal rejected
Afghanistan	31	Male	The proceeding was stopped	
Belarus	34	Male	additional and provisional protection approved	
Albania	46	Male	The proceeding was stopped	
Georgia	34	Female	Proceeding is pending	

26. Although the practice of the asylum system in Montenegro is relatively modest, all the asylum-seekers were enabled to submit an application for asylum, make a statement on facts and circumstances relevant for the decision-making, as well as submission of the petition in a language that asylum-seekers have said to understand through a translator provided by the Asylum Office. They have also been given information on the conditions and procedure of the asylum, their rights and obligations and explained how to maintain communication with persons providing legal assistance and the UNHCR.

#### **Article 4**

##### **Question 7**

27. There have been 92 reports on criminal offence of torture and abuse referred to in Article 167 of the Criminal Code filed to State prosecutors' offices in Montenegro in 2007. Along with 65 reports from previous years, 157 reports on criminal offence of torture and abuse were processed in total. The Police Directorate filed 46 reports, 33 reports were filed by victims, while cases against 13 persons were initiated on the initiative of the State prosecutor on reasonable doubt that they had committed this criminal offence.

28. Acting upon reports on criminal offence, State prosecutors passed decisions rejecting reports against 34 persons, brought indictments against 30 persons, so that along with the pending indictments from previous years (against 66 persons), a total of 96 persons were charged with committing criminal offence of torture and abuse in 2007.

29. Acting upon indictments brought, Montenegrin courts rendered 46 judgments: 25 were condemnatory judgments, 9 were acquitting judgments, and 12 dismissing indictment after State prosecutor refrained from prosecution for the reason of non-existence of relevant evidence that the criminal offence was committed. The structure of condemnatory judgments consists of 2 judgments sentencing the defendant to imprisonment, 5 imposing a fine and 18 suspended sentences.

30. In 2007, there were no appeals of State prosecutors against the rulings of the courts.

#### **Articles 5, 6 and 7**

##### **Question 8**

31. After restoring its independence, Montenegro maintained good cooperation with the International Criminal Tribunal for ex Yugoslavia and has continued with practice of respect and fulfillment of all obligations towards the Tribunal, especially the ones related to the demands of the Office of Prosecution.

32. The Supreme State Prosecutor of Montenegro is, from the beginning, involved in the so called “Palički process” which, through the cooperation of the OSCE missions in the Republic of Serbia , Republic of Croatia, Bosnia and Herzegovina and Montenegro with the Hague Tribunal, supports and facilitates cooperation of relevant Ministries of Justice and Judicial instances of these countries on realization of the commitments to the mandate of the Hague Tribunal and transfer of jurisdiction of further processing of charges for crimes committed on the territory of ex Yugoslavia at the level of national instances responsible for this issue.

33. Office of the Supreme State Prosecutor has signed agreements of cooperation with Croatian and Serbian Prosecution Offices. Memorandum of Understanding between the Office of the Prosecutor for ICTY and the Office of the Supreme State Prosecutor that was signed on 6 December 2007 granted Montenegrin prosecutors access to the ICTY’s database.

34. Commitment towards full respect of international obligations Montenegro has demonstrated by extradition of one person and voluntary surrender of two individuals sought by the Tribunal.

35. Fulfilling of the obligations towards the Tribunal, Montenegrin judicial authorities undertake necessary activities in determining criminal responsibility for crimes against humanity and other rights guaranteed under International Law.

36. Particularly, in case “Štrpci”, criminal procedure was finalized and one person was found guilty for war crime against civil population and sentenced to 15 years of imprisonment, and is serving the penalty at the time.

37. At this moment, there are four ongoing criminal procedures against several persons in each of the cases, for crimes against humanity and civil population and other rights guaranteed by International Law. These procedures are: “Kaluderski laz”, “Morinj”, “Deportation of Muslims” and “Bukovica”.

38. Indictments are brought in “Kaluderski laz” and “Morinj” cases, and trials are expected.

39. Investigation was finalized in “Deportation of Muslims” case and file was forwarded to the State prosecutor for pressing charges.

40. “Bukovica” case is in a late phase of investigation.

## **Article 10**

### **Question 9**

41. The issue of professional training of civil servants and state employees is contained in the Basic Provisions of the Law on Civil Servants and State Employees,

defining professional training as both the right and the obligation.<sup>1</sup> This Law also contains specific provisions on professional training which, *inter alia*, prescribe that a civil servant and state employee shall improve their professional knowledge in accordance with the professional training program, that the Human Resources Management Authority shall adopt, that the program shall particularly determine the contents of training, and the amount of resources necessary for the implementation of the program (**Article 93**), and that a civil servant and a state employee shall be entitled to apply for special training, when this is of importance for the work of the state authority (**Article 94**).

42. For example the professional training program that was recently adopted (for the period September-December 2008) by the Human Resources Management Authority envisages several courses in the field of basic principles and the constitutional concept of protection and promotion of human rights and freedoms.

43. The Law on Enforcement of Criminal Sanctions, in the provisions regulating employee relations and powers, prescribes that professional education and testing of knowledge are mandatory for all employees in accordance with the plans and programs of training, professional education, professional training and development (**Article 177b**), that training, special courses and other forms of professional training are carried out in the Center for Education of Human Resources of the Organization<sup>2</sup>, and that the plans and programs of training, professional education, professional training and development, and the regulations on the examination methods and composition of the examination commission are issued by the Head of the Organization at the proposal of the director of the Center (**Article 177**).

44. Organizing in-service professional education and training and testing of knowledge of the staff of the Institution for Criminal Sanctions Enforcement has also been treated as a separate objective in the Judiciary Reform Strategy (2007-2012), which prescribes continuous actions for accomplishment of this objective (*Implementing professional training in accordance with the regular activity program; Training Program Improvement*).

### **Question 10**

45. Law on the Protection of Rights of Mental Health Patients entered into force on 1 January 2006. Provisions of this Law are implemented in Special Psychiatric Hospital Dobrota which is the only one of this kind in Montenegro. In accordance with the recommendations of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT inspection from 2004) and the

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<sup>1</sup>The Law on Civil Servants and State Employees applies also to persons employed within the system of enforcement of criminal sanctions, who are also regulated by the Law on Enforcement of Criminal Sanctions.

<sup>2</sup> "Organization" means the Agency for Enforcement of Criminal Sanctions, and the "Center for Education of Human Resources of the Organization" is an organizational unit of the Agency.

Law on the Protection of Rights of Mental Health Patients, Committee on Ethics and Council for the Protection of Rights of Mental Health Patients were established on 12 September, 2006.

46. The Ethic Committee and the Council meet on regular basis and when necessary to discuss all possible omissions and patients' complaints which must be recorded in the archive.

47. In each ward of the Hospital there are boxes set for complaints which enable patients to anonymously explain their remarks on personnel's work or existing conditions. Remarks made in these complaints are reviewed by the members of the Council for Protection of Rights of Mental Health Patient.

48. From the beginning of 2007, the competent court, the Center for Social Work and the Council for Protection of Rights of Mental Health Patient has to be informed of each case of forced hospitalization. Forms for voluntary and forced hospitalization are filled out in the hospital's ambulance at each reception.

49. In accordance with guidelines defined in the CPT report (line 47, 48 and 50 of the Eight general report of the CPT), the Hospital has acquired assets for the restriction of movement which are used in compliance with the protocol for their usage ( each particular case immobilization, with all information required by the guidelines of the CPT must be recorded in a special register; a separate room for isolation is provided and all technicians are acquainted with the details of the above mentioned guidelines).

## **Article 11**

### **Question 11**

50. Health care is provided to convicts and detainees at the level of the Institution for Criminal Sanctions Enforcement and at the level of public health care institutions.

51. Health care at the level of the Institution is provided in clinics of the organizational units of the Institution (Penal and Correctional Institution, Prisons), as well as in the prison hospital. In the prison hospital, within the Ward for Somatic Diseases, the following units are equipped and operational: ultrasound clinic, dental clinic, gynecological clinic, X-ray clinic, clinic for minor surgical interventions, clinic for physical therapy, ECG Cabinet, gynecological counseling service and a pharmacy. The hospital also includes the Ward for Addiction Diseases and the Ward for Psychiatric Diseases, as well as counseling services within these wards.

52. In 2007, 117 convicts were treated in the prison hospital, of which 58 were admitted for treatment of addiction to psychoactive substances, while 10 convicts underwent psychiatric treatment. The remaining patients were mainly treated for pulmonary diseases or cardiovascular problems.



53. Health care services which cannot be provided at the level of the Institution are provided in the Clinical Center of Montenegro and in other public health care institutions in Montenegro.

54. The convict who becomes mentally ill or shows signs of serious psychological disorders or who starts to serve the sentence in such condition, and there are no conditions for treatment of such disorders in the Institution, will be accommodated in a suitable health care institution for treatment and care. Such a decision passed by the Head of the Institution at the proposal of a Medical commission appointed by the Minister of Health, and the costs of treatment until the expiration of the convict's sentence are borne by the Institution.

### Question 12

55. Food is provided to detained persons through the restaurant – cafe of District Units, i.e. through Services for food and accommodation of Police Directorate.

### Question 13

56. As of 30 June 2008, in the Institution for Criminal Sanctions Enforcement, there were a total of 979 persons deprived of liberty, and their number in individual organizational units is as follows:

(a) Penal and Correctional Institution (Podgorica): **402** male convicts and **9** female convicts,

(b) Prison (Podgorica): **391** detainees, **80** persons sentenced within criminal procedure to imprisonment for a term of up to 6 months, and **9** persons punished for misdemeanors,

(c) Prison (Bijelo Polje): **47** detainees, **41** persons sentenced within criminal procedure to imprisonment for a term of up to 6 months.

57. The age structure of convicts serving imprisonment sentences in the Penal and Correctional Institution is as follows:

from 18 to 26 years of age – **160** persons,

from 27 to 36 years of age – **155** persons,

from 37 to 46 years of age – **56** persons,

from 47 to 57 years of age – **25** persons,

from 58 to 67 years of age – **9** persons,

and **6** persons older than 68 years of age.

58. As regards the nationality, the composition of the convicts is as follows:

Montenegro – **360** persons,

Bosnia and Herzegovina – **10** persons,

Republic of Serbia – **26** persons,

Romania – **1** person,

Albania – **4** persons,

Ukraine – **1** person,

and 9 persons with a refugee status.

59. In 2006, occupancy rate in the Institution for Criminal Sanctions Enforcement was as follows:

- (a) In the Penal and Correctional Institution, the imprisonment sentence was served, on average, by 299 men and 10 women, of whom 179 served their sentences in the closed section of the Institution and 120 served their sentences in the semi-open section. The closed section of the Penal and Correctional Institution has an area of 1,260 m<sup>2</sup> and the sentence was served, on average, by 179 persons. The semi-open section has an area of 1,680 m<sup>2</sup> and the sentence was served, on average, by 120 persons. Women's Section has an area of 260 m<sup>2</sup>, and the sentence was served, on average, by 10 persons.
- (b) The Prison (*Podgorica*) has an area of 2,340 m<sup>2</sup>, and, on average, 422 persons (375 detainees and 47 persons sentenced within criminal procedure to imprisonment for a term of up to 6 months) were held there.
- (c) The Prison (*Bijelo Polje*) has the capacity for 200 persons, and, on average, 50 detainees and 30 persons punished for misdemeanors and persons sentenced within criminal procedure to imprisonment for a term of up to 6 months were held there.

60. This indicates that the overcrowding in 2006 was most prominent in the Prison (*Podgorica*) where there were 102 persons, or 32%, in excess of capacity.

61. In 2007 occupancy rate in the Institution for Criminal Sanctions Enforcement was as follows:

- (a) In the Penal and Correctional Institution, the imprisonment sentence was served, on average, by 385 men and 13 women. 280 convicts served their sentences in the closed section of the Institution and 105 convicts served their sentences in the semi-open section.
- (b) In the Prison (*Podgorica*), there were 385 detainees and 78 persons sentenced within criminal procedure to imprisonment for a term of up to 6 months. There were 115 persons, or 36%, in excess of capacity.
- (c) In the Prison (*Bijelo Polje*) 60 persons, on average, were held, of whom 45 were detainees and 20 were persons sentenced within criminal procedure to imprisonment for a term of up to 6 months.

62. The issue of overcrowding of prison capacities was addressed through specific objectives in the Judiciary Reform Strategy (2007-2012), i.e. through specific actions defined in the Action Plan for implementation of the Strategy. Namely, a separate segment of the Strategy, and of the Action Plan, relates to the objectives and measures aimed to improve the prison system. Accordingly, certain activities have already been implemented, such as:

- (a) a separate building was built within the Penal and Correctional Institution (*Pavilion D*) intended for the accommodation of convicts, having an area of 1,250 m<sup>2</sup> and a capacity of 144 places,

- (b) an existing building within the Penal and Correctional Institution (*Pavilion B*) intended for the accommodation of convicts and having a capacity of 144 places, was reconstructed and adapted,
- (c) an existing building within the Penal and Correctional Institution (*Pavilion C*) intended for the accommodation of convicts and having a capacity of 15 places, was reconstructed and adapted,
- (d) one building was built with separate sections for the accommodation of *juveniles, women and foreign nationals*, having an area of 1,250 m<sup>2</sup>, and a capacity of 56 places,
- (e) a separate building intended for the accommodation of *persons serving short-term sentences* was built, and this building has an area of 1,250 m<sup>2</sup> and a capacity of 92 places.

63. The Action Plan also envisages a number of other actions, such as: reconstruction and adaptation of prison units in Podgorica and Bijelo Polje, construction and equipping of facilities for enforcement of long-term imprisonment sentences, and facilities intended to meet religious needs of prisoners, as well as construction and equipping of the building of the prison unit for southern region.

#### **Question 14**

64. The above mentioned construction of the building having a separate section for the accommodation of *juveniles* created conditions to separate juveniles serving juvenile prison sentence from adult convicts.

#### **Question 15**

65. The provisions of the Law on Enforcement of Criminal Sanctions defining rights and obligations of persons serving the imprisonment sentence relate to all categories of persons sentenced to imprisonment, while some categories of sentenced persons due to certain characteristics (*gender, age, legal status...*) enjoy also a special treatment. This group certainly includes women, juveniles, foreign nationals and persons suffering from mental illness.

66. Women serve imprisonment sentence separately from men. Women are guarded and searched exclusively by female staff. They have access to adequate health care in the Institution clinics equipped with proper instruments, devices and other inventory, where the patients are received by a medical specialist for internal medicine and a medical specialist – gynecologist. If a pregnant woman or a mother with newborn baby (babies) is serving imprisonment sentence, special conditions necessary for their condition are provided (*conditions for necessary care and for raising the children*). A woman serving the sentence of imprisonment gives birth in a public health care institution, and if the child is born within the Institution that information is not recorded in the Register of Births.

67. As already mentioned, the construction of the building which has a separate section for the accommodation of *juveniles* created conditions for the juvenile offenders

to serve juvenile prison sentence separately from adult convicts. Primary education instruction is organized for convicts and especially for juveniles and young adults who have not completed primary school, while vocational education instruction can also be organized. They are enabled to communicate with their family through visits, letters and telephone calls. Juvenile offender can be granted leave to visit parents and other close relatives on the basis of good behavior and good results in studying and work. Correspondence between the juvenile offender and parents and other close relatives cannot be restricted.

68. The construction of the building which has a separate section for the accommodation of *foreign nationals*, created conditions for separate enforcement of imprisonment sentence imposed on this category of persons. When foreign nationals are admitted to serve the sentence of imprisonment, they are informed of all documents related to the enforcement of the sanction and their stay in the Institution, in their language. They are enabled to lead their own cultural and religious life and to use their language. They have the right to submit petitions to the diplomatic and consular mission of their country or the country protecting their interests, and stateless persons or refugees have the right to address the organization protecting their interests. A foreign national, a stateless person or a refugee is entitled to be visited by the consular representative of his/her country or of the country protecting their interests, as well as by the representative of the official organization protecting the interests of refugees.

### **Articles 12 and 13**

#### **Question 16**

69. Measures for protection of persons deprived of their liberty are undertaken in accordance with the Law on Police. If there is a misuse or excessive exceeding of one's powers, criminal, misdemeanor and discipline measures will be undertaken against those persons.

70. Organizational unit that is in charge of conducting inquiries of misuse of powers by officers of the Police Directorate is Department for Internal Control. The Department acts upon all cases of misuse of powers and it makes recommendation for measures to be taken towards responsible officers.

#### **Question 17**

71. The Law on Enforcement of Criminal Sanctions and the Criminal Procedure Code define the performing of control and of supervision over the enforcement of imprisonment sentence and of pre-trial detention (measures for ensuring the presence of the defendant in the criminal proceedings), respectively.

72. The enforcement of the imprisonment sentence involves the control performed by the Ministry of Justice through an authorized officer, and it includes powers to examine the premises used by convicts, to talk to convicts, to have access to all general and

individual acts, files and documents referring to convicts, to establish necessary facts and to act upon convicts' complaints.

73. The enforcement of pre-trial detention involves the supervision carried out by court, and it includes the possibility to visit detainees, to inquire how detainees are fed, how their other needs are satisfied and how they are treated, to talk to detainees and to hear their complaints.

74. The Law on the Protector of Human Rights and Freedoms (Ombudsman) envisages that the Protector may, without prior notification, undertake an inspection of all premises in the prisons and in other premises in which individuals deprived of their liberty are held. The Protector is also entitled to communicate with individuals deprived of their liberty without the presence of an official. Individuals deprived of their liberty are entitled to file their complaint in a sealed envelope, and their correspondence shall be forwarded immediately to the Protector, unopened and unread. The reply of the Protector to the filed complaint is treated in the same manner.

75. Having restored its independence, Montenegro initiated a process of succession to all international treaties for the protection and promotion of human rights and freedoms. Montenegro became a party to the the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 6 June 2006. In accordance with Article 2 of the Convention each Party is obliged to permit to the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visits to any place within its jurisdiction where persons are deprived of their liberty by a public authority.

76. A delegation of the Committee for the Prevention of Torture carried out a two week visit to Serbia and Montenegro on 5 October 2004. This visit was the first time that the Committee examined the treatment of persons deprived of their liberty in Serbia and Montenegro. The CPT's delegation visited a variety of establishments, including prisons, police stations, a centre for foreigners, and psychiatric hospitals.

77. Council of Europe's Committee for the Prevention of Torture has notified Montenegrin authorities that it has intention to carry out a periodic visit to Montenegro. The visit will become effective on Monday, 15 September 2008.

### **Question 18**

78. The starting point for the operation of the Ombudsman is taking action on complaints of the citizens or on his/her own initiative in order to protect the citizens from unlawful, improper or maladministration of national or local administration, as well as other holders of public office. The Ombudsman acts in two directions: issues timely alerts against violations of human rights of the citizens and helps them exercise their rights, thus contributing to a democratic control of the public administration and its improvement.

79. Relevant provisions of the Law on the Protector of Human Rights and Freedoms (Ombudsman) read as follows:

**(a) Article 26 - Initiating the Constitutional Court proceedings**

The Protector may initiate a proceeding before the Constitutional Court of the Republic of Montenegro for the purpose of assessing the constitutionality and legality of the legislation and general regulations relating to human rights and freedoms.

**(b) Article 27 - Opinion during the proceeding**

The Protector may provide his/her opinion on the protection and promotion of human rights and freedoms, upon request of the authorities deciding on such rights, notwithstanding the nature or degree of the procedure that is ongoing before these authorities.

**(c) Article 28 - Powers for the protection of individuals deprived of their liberty**

(i) The Protector may, without prior notification, undertake an inspection of all premises in the prisons and in other premises in which individuals deprived of their liberty are held.

(ii) The Protector is entitled to communicate with individuals deprived of their liberty without presence of an official. Individuals deprived of their liberty shall be entitled to file their complaint in a sealed envelope.

(iii) Correspondence addressed from persons deprived of their liberty shall be forwarded immediately to the Protector, unopened and unread, equally any response of the Protector shall follow the same procedure.

**(d) Article 40 - Duties of the Authorities**

(i) The authorities are obliged to provide to the Protector, upon his/her request, with access to all required information and notifications they are responsible for, regardless of the level of secrecy, as well as free access to all premises.

Should the authorities fail to proceed upon request of the Protector within the determined deadline, they are obliged to, without delay, inform the Protector of the reasons they have not proceeded.

(ii) The authorities are obliged to provide to the Protector, upon his/her request, with insight into the official files, documents, information, as well as to deliver copies of required files and documents, in compliance with the rules on handling official files and documents.

(iii) Failure to act upon request of the Protector shall be considered as an obstruction of his/her work, of which the Protector may inform the immediate superior of the authorities, the Assembly or the public.

**(e) Article 41 - Mandatory cooperation**

All authorities are obliged to provide to the Protector adequate assistance, upon his/her request.

**(f) Article 44 - Final Opinion**

(i) After the consideration of a complaint, the Protector shall issue his/her final opinion. The final opinion shall contain a judgment of whether, how and to what extent the violation of human rights and freedoms of a petitioner occurred, recommendations as to what needs to be done in order to remedy the said violation, as well as the deadline for authorities to take action.

(ii) The respondent authorities are obliged to submit to the Protector, within the deadline he/she has determined, a report stating what actions were taken in order to enforce the recommendations contained in the final opinion.

(iii) Should the authority fail to comply with the recommendation, the Protector may address the public, refer to the immediate superior authorities or submit the special report thereon.

**(g) Article 45 - Initiative**

The Protector may submit an initiative to the competent authorities for launching disciplinary proceedings or dismissal procedures against persons whose action had as a consequence violation of human rights and freedoms.

**(h) Article 46 - Annual report**

(i) The Protector submits an annual report to the Assembly.

Upon request of the Assembly, the Government of the Republic of Montenegro (hereinafter: the Government) is obliged to give its opinion on the annual report submitted by the Protector.

(ii) The annual report shall contain, namely, a general statistical review of all investigated cases, a general evaluation of the situation of human rights and freedoms in the Republic of Montenegro, and the Protector's recommendations and suggested measures to remedy the observed omissions.

(iii) The annual report for the previous year shall be submitted not later than 31 March of the current year.

(iv) The annual report shall be accessible to the public.

**(i) Article 47 - Special Report**

(i) The Protector may submit a special report if he/she assesses that exceptionally important reasons require such action. The special report from paragraph 1 of this Article shall be accessible to the public.

(ii) Office of the Ombudsman in their assessment of the respect of human rights of detainees has found that the conditions of detainees in regard of the premises in which they pass their time have been considerably improved compared to the past. A new building has been constructed with three physically separated blocks, i.e. there are separate entrance doors for the blocks accommodating minors, women

and foreign nationals. The Ombudsman has recommended that the Parliament ratify the Optional Protocol to the UN Convention against Torture providing for National Mechanisms for the Prevention of Torture. In order to pre-empt any problems with the implementation of the Optional Protocol after its ratification, under the OSCE auspices an Inter-departmental Working Group has been established, which is examining the modalities of functioning of this National Mechanism.

#### Article 14

##### Question 19

80. The relevant authorities do not possess statistical data on compensation to victims of torture or cruel, inhuman or degrading treatment that occurred in Montenegro in last three years.

##### Question 20

81. State provides physical, psychological and social help to the victims of family abuse through its institutions for social and child protection. In national laws there is no other reference to obligation of the state to provide this kind of help to the victims of torture, other cruel, inhumane or degrading treatment or punishment.

#### Article 15

##### Question 21

82. Prohibition of use of force and extortion of confession represents one of the basic principles of the Criminal Procedure Code (Article 12), and it reads as follows:

- (a) The use of force against a person who has been detained or whose freedom has been limited and extortion of a confession or statement from the defendant or any other person participating in the proceedings shall be forbidden and punishable.
- (c) No Court decision shall be based on any confession or other statement obtained by extortion, torture, humiliating and degrading treatment.

83. The Criminal Procedure Code, in the provision **Acts of proofing**, defines that force, threat, deceit, promise, extortion, exhaustion and other similar means cannot be used upon an accused in order to provide his statement or confession, or any deed that could be used against him as a proof (Article 88), and that it is not allowed to perform medical intervention upon a suspect, accused or witness or to give them such agents that could affect their conscious and will during their testimony.

84. According to the Criminal Code of Montenegro, Extortion of confession or statement is prescribed as a criminal offence, and it is classified in the group of act of crime against freedoms and rights of man and citizen. The substance of this act of crime is defined in the Article 166 of the Criminal Law, which reads as follows:



- (a) A person acting in an official capacity who, during performance of his/her duties, uses force or threat or other inadmissible means or inadmissible manner with the intention to extort a confession or another statement from an accused, a witness, an expert or other person shall be sentenced to three months to five years of imprisonment.
- (b) Should the extortion of confession or statement be accompanied by heavy violence, or should extremely serious consequences occur for an accused in the criminal procedure due to extorted confession, the perpetrator shall be sentenced to two to ten years of imprisonment.

## **Article 16**

### **Question 22**

85. In 2007, State prosecutors' offices received 3 criminal complaints against the perpetrators of criminal offence of trafficking in human beings. Along with complaints pending from previous years, complaints against 6 persons in total were processed.
86. Acting upon the filed reports on criminal offences, State prosecutors passed decisions to reject complaints against 3 persons, while indictments were brought against 3 persons after the investigation.
87. Along with indictments pending from previous years, there were a total of 9 persons charged with committing this criminal offence in 2007.
88. Acting upon the indictments brought, Montenegrin courts rendered 2 judgments sentencing the accused to imprisonment.
89. In 2007, prosecutors filed one appeal which is still pending before the court, while 3 appeals filed in previous reporting periods were dismissed.
90. In the end of 2007, there were 7 indictments brought and 4 appeals filed by the State prosecutors against judgments rendered in previous reporting periods, pending before Montenegrin courts.

### **Question 23**

91. Basic provisions of the Constitution of Montenegro, i.e. Article 1, defines Montenegro, among others, as a civic state, in which all shall be deemed equal before the law, regardless of any particularity or personal feature. (Article 17 of the Constitution) and in which everyone shall have the right to equal protection of the rights and liberties thereof (Article 19 of the Constitution). In context of these provisions, and the provision that no one can be submitted to torture, inhuman or humiliating treatment (Article 28 of the Constitution), the issue of protection of minorities from inhuman or humiliating treatment or punishment should be observed as well.

92. In this context it should be stressed that Article 8 of the Constitution proscribes prohibition of discrimination and grounds for affirmative action: “Direct or indirect discrimination on any grounds shall be prohibited. Regulations and introduction of special measures aimed at creating the conditions for the exercise of national, gender and overall equality and protection of persons who are in an unequal position on any grounds shall not be considered discrimination. Special measures may only be applied until the achievement of the aims for which they were undertaken.”

#### **Question 24**

93. The Criminal Code of Montenegro defines a separate group of criminal offences against life and body, which, along with the sanctions prescribed for these offences, ensures criminal-law protection of life and body as fundamental social values. The criminal offences prohibiting bodily injuring, namely the criminal offence of “serious bodily injury” and the criminal offence of “light bodily injury”, are related to these.

#### **Other**

#### **Question 25**

94. There is no domestic legislation aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhumane or degrading treatment. However, the Government of Montenegro has committed itself to application of the EU Code of Conduct on Arms Export that envisages that in the process of issuance of license for export of arms, military equipment and dual-use goods the respect of human rights in the country of final destination should be considered (Criterion two). It also proscribes that “Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States will:

- (a) Not issue an export license if there is a clear risk that the proposed export might be used for internal repression.
- (b) Exercise special caution and vigilance in issuing licenses, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU;
- (c) For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with operative paragraph 1 of this Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes.
- (d) Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions,

disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.”

95. Draft law on export and import of arms, military equipment and dual-use goods which is expected to be adopted by the Parliament of Montenegro until the end of the year includes specific provision of the mentioned Code regarding internal repression as criteria for the rejection of issuance of a license:

- (a) “While assessing the compliance with criteria (for the issuance of license, Ministries) will take into due consideration:
  - (i) Clear risk that the proposed export might be used for internal repression.
  - (ii) The nature of the equipment, for countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU«

#### **Question 26**

96. With a view to ratification of the Optional Protocol to the UN Convention against Torture (OPCAT), certain activities have already been undertaken, more specifically within the project implemented by the OSCE Mission in Montenegro in cooperation with competent state authorities, aimed at setting up of National Mechanism for Prevention of Torture within the framework of the Optional Protocol.

97. Activities implemented within this project included:

- (a) Round table with the aim to get acquainted with the provisions of the Optional Protocol (OPCAT), i.e. to identify necessary requirements which will enable setting up of the mechanism to prevent torture tailored according to the needs of Montenegro,
- (b) Working meetings as a continuation of activities started in this field, and
- (c) Implementation of study visit to the Ombudsman of the Republic of Slovenia with the aim to get acquainted with the experiences of this institution regarding the setting up of a national mechanism for prevention of torture.

98. The activities of preparing the proposal for the model of National Mechanism for Prevention of Torture for Montenegro have been finalized on 25 September 2008. Representatives of the competent state authorities and non-governmental organizations have worked together with the coordination by the OSCE. The multidisciplinary expert group concluded that the Office of the Protector of Human rights and Freedoms (Ombudsman) is the most appropriate institution to act as the future National Mechanism for Prevention of Torture in accordance with OPCAT.

**Question 27**

99. Terrorism is prescribed as a criminal offence classified in the group of criminal offences against the constitutional order and security of Montenegro, in Article 365 of the Criminal Code of Montenegro, which reads:

(i) “Anyone who, with the intention of endangering the constitutional order and security of Montenegro causes explosion or fire or undertakes other universally dangerous actions or kidnaps a person, or commits another act of violence, or threatens to undertake some universally dangerous action or to use nuclear, chemical, bacteriological or other universally dangerous substance whereby he/she may cause fear or feeling of insecurity among citizens shall be punished by imprisonment for a term of three to fifteen years.”

International terrorism, taking hostages and financing of terrorism are also prescribed as criminal offences, in the group of criminal offences against humanity and other rights protected by international law, in Articles 447, 448 and 449 which read:

**“(a) International terrorism - Article 447**

(i) Anyone who, with the intention of causing harm to a foreign state or international organization commits abduction of a person or other act of violence, causes explosion or fire or undertakes other universally dangerous actions or threatens to use nuclear, chemical, bacteriological or other similar means, shall be punished by imprisonment for a term of three to fifteen years.

(ii) If the offence referred to in paragraph 1 above resulted in death of one or more persons, the offender shall be punished by imprisonment for a term of five to fifteen years.

(iii) If during the commission of crime referred to in paragraph 1 above the offender intentionally deprived someone of his life, the offender shall be punished by imprisonment for a minimum term of ten years or by imprisonment of forty years.

**“(b) Taking hostages - Article 448**

(i) Anyone who commits abduction of a person or threatens to kill, hurt or keep that person as hostage with the intention of forcing a state or an international organization to do or not to do something, shall be punished by imprisonment for a term of two to ten years.

(ii) The offender referred to in paragraph 1 above who frees the hostage of his own free will, although the purpose of the abduction has not been fulfilled, can be liable to a reduced sentence.

(iii) If the offence referred to in paragraph 1 above resulted in death of the hostage, the offender shall be punished by imprisonment for a term of three to fifteen years.

(iv) If during the commission of the offence referred to in paragraph 1 above, the offender intentionally deprived the hostage of his life, the offender shall be punished by imprisonment for a minimum term of ten years or a prison sentence of forty years.

**“(c) Financing of terrorism - Article 449**

(i) Anyone who provides or raises funds intended to finance a criminal offence referred to in Articles 365, 447 and 448 of this Code, shall be punished by imprisonment for a term of one year to ten years.

(ii) Funds referred to in paragraph 1 above shall be seized.”