



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

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Initial reports of States parties due in 1999**

**MONTENEGRO\* \*\* \*\*\* \*\*\*\***

[3 May 2006]

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\* The present report has been reissued as a separated document, upon the request of the Government of Montenegro.

\*\* The initial report CAT/C/16/Add.7 was submitted by the Government of Yugoslavia for consideration by the Committee; see documents CAT/C/SR.348, 349 and 354 and *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 44 (A/54/44)*, paras. 35-52.

\*\*\* The present report, submitted as the initial report of Serbia and Montenegro was received by the Secretariat prior to the declaration of independence by Montenegro adopted by the National Assembly of Montenegro on 3 June 2006, following the referendum in the Republic of Montenegro on 21 May 2006 pursuant to article 60 of the Constitutional Charter of Serbia and Montenegro. Following the declaration of independence by Montenegro, the Republic of Serbia, by letter dated 3 June 2006, notified the Secretary-General that the Republic of Serbia continued the membership of Serbia and Montenegro in the United Nations, including all organs and organizations of the United Nations system on the basis of article 60 of the Constitutional Charter of Serbia and Montenegro. Moreover, with respect to multilateral treaties deposited with the Secretary-General, the Republic of Serbia notified the Secretary-General, by letter dated 30 June 2006, that all treaty actions undertaken by Serbia and Montenegro will continue in force with respect to the Republic of Serbia with effect from 3 June 2006, and that all declarations, reservations and notifications made by Serbia and Montenegro will be maintained by the Republic of Serbia until the Secretary-General is notified otherwise.

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

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### General framework

1. The general legal framework which, in the Republic of Montenegro, allows protection against torture, inhuman and degrading treatment and punishment, is defined by the Constitution of the Republic of Montenegro (*Official Gazette of the Republic of Montenegro*, No. 48/1992) and Constitutional Charter of the State Union of Serbia and Montenegro (*Official Gazette of Serbia and Montenegro*, No. 1/2003), which includes the Charter on Human Rights (*Official Gazette of Serbia and Montenegro*, No. 6/2003). The latter two documents have been consistently referred to in the section on the Republic of Serbia as “the Constitutional Charter” and “the Charter on Human Rights”, and will be referred to as such in this section.

2. The Constitution of Montenegro by its article 20, guarantees the inviolability of the physical and psychological integrity of the person, and his/her privacy. Also, according to the Constitution, article 24, respecting of the personality and dignity is guaranteed in criminal and any other proceedings, in the case of depriving or limiting of freedom and during the execution of sentence. It is forbidden and punishable to commit an act of violence against persons deprived of freedom, more exactly with limited freedom, likewise to extract confessions and statements. Nobody can be subject to torture, degrading punishment and treatment. It is forbidden to perform medical and other experiments on the person without his/her previous permission.

3. The Constitutional Charter, in spite of the fact that it defines immediate application of international agreements on human and minority rights and civil freedoms which are valid for the territory of Serbia and Montenegro (art. 10), establishes the subordination of ratified international agreements and generally accepted regulations of international law over the internal law of Serbia and Montenegro. Besides this, article 1 of the Charter on Human Rights establishes a person’s dignity as inviolable and that an obligation of all is to protect the human dignity, likewise right to free development of own personality, under the condition that it does not mean the violation of rights of others as recognized by this Charter. According to the same Charter, article 12, the right to the inviolability of the physical and psychological integrity is guaranteed. No one can be subject to torture, inhuman or degrading treatment or punishment or can be the subject of medical or scientific experiments without his/her free given assent.

4. With such normative regulation of this subject issue, with court and administrative measures mentioned below undertaken within the field of protection against torture, inhuman or degrading conduct and punishments, it is necessary to stress the lack of adequate records, which would make possible the complete picture on the application of this universal ban, because only under the condition of the existence of appropriate records harmonized according to the standards is it possible to have suitable analysis, to notice the problem and to define further systematic work aiming at the harmonization of practice with normative institutions and with standards of institutions which harmonize integration processes on global and regional levels.

## **Articles 1 and 2**

### **Legal measures**

#### **Criminal legislation**

5. Until adoption of the Criminal Law of the Republic of Montenegro (adopted on the Session of the Assembly of the Republic of Montenegro dated 17 December 2003, published in the *Official Gazette of the Republic of Montenegro*, No. 70/3 dated 25 December 2003, and implemented after 2 April 2004) the law in force in the Republic of Montenegro was Criminal Law of the Federal Republic of Yugoslavia (*Official Gazette of the Federal Republic of Yugoslavia*, No. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 45/90 and 54/90 and *Official Gazette of the Federal Republic of Yugoslavia*, No. 35/92, 16/93 and 24/94) and the Criminal Law of the Republic of Montenegro (No. 42/93, 14/94, 27/94 and 30/02).

6. In most of these criminal offences, the action which constitutes the criminal offence (for example, attack etc.) bans conduct which might result in torture or other forms of cruel or inhuman conduct. The level of severity of such treatment is determined by the level of suffering which the victim goes through and might constitute a criminal offence, but also aggravating circumstances directly influence the Court in deciding on type and level of punishment.

#### **Criminal Law of the Federal Republic of Yugoslavia**

7. According to the Criminal Law of the Federal Republic of Yugoslavia (CL FRY), the following issues are established:

- Criminal offence and criminal liability
- Penalties
- Suspended sentences and court reminders
- Security measures
- General rules on corrective measures and the punishment of minors
- Legal consequences of sentences
- Rehabilitation, cancellation of sentences and conditions for giving data from the record of prior convictions
- Prescriptions
- Amnesty and abolition
- Validity of the Yugoslav Criminal Legislation relating to the place of the committing of the criminal offence

- Validity of the Republic and province criminal legislation relating to the place of the committing of the criminal offence
- Meaning of expressions in this law
- Criminal offences against the constitutional order and security of the FRY
- Criminal offences against humaneness and international law
- Criminal offences against the reputation of FRY, a foreign State or an international organization
- Criminal offences against the unity of the Yugoslav market
- Criminal offences against official persons in federal institutions or federal organizations
- Criminal offences against the security of air traffic
- Criminal offences against other social values
- Agreement and association in order to commit criminal offences of federal law

8. The banning of torture in this law is contained in the following regulations.

9. From the group of Criminal Offences against Constitutional Order and Security (chap. 15, arts. 114-139) in article 139, paragraph 1, Punishment for the most severe criminal charges:

- Article 114 - Criminal offence - Attack on Constitutional Order
- Article 116 - Criminal offence - Menace to the Territorial Entirety
- Article 120 - Criminal offence - Undermining of Military and Defence Powers
- Article 124 - Criminal offence - Armed Insurrection
- Article 125 - Criminal offence - Terrorism
- Article 126 - Criminal offence - Diversion
- Article 127 - Criminal offence - Sabotage, when criminal offence is accompanied with severe violence, including torture
- Criminal offences against election rights
- Criminal offences against labour relationships
- Criminal offences against honour and reputation
- Criminal offences against dignity of person and morals

- Criminal offences against marriage and family
  - Criminal offences against the health of people and the environment
  - Criminal offences against the economy
  - Criminal offences against property
  - Criminal offences against the general security of people and property
  - Criminal offences against public transportation
  - Criminal offences against the judiciary
  - Criminal offences against public order and legal traffic
  - Criminal offences against official services
  - Criminal offences of corruption
  - This law also bans torture, or any other forms of cruel or inhuman conduct, as contained in forthcoming regulations
10. The group of criminal offences against life and body (chap. 5, arts. 30-42), includes:
- Article 30, paragraphs 2t and 7: criminal offence of assassination (especially “when committed in a cruel way”)
  - Article 34, paragraph 4: criminal offence of leading a person to suicide and assisting in suicide, or cruel and inhuman acts towards a person who is in a subordinate or dependant position towards the perpetrator and thus involuntarily provokes a suicide. Based upon paragraph 5, the attempting of this criminal offence is also punishable
  - Article 36 - Criminal offence - Severe bodily injury
11. From the group of criminal offences against human freedoms and rights of citizens (chap. 6, arts. 43-59):
- Article 48 - criminal offence of mistreatment in service (“Who while performing his/her duties mistreats, insults or generally acts in a way which offends human dignity”). For this criminal offence is prescribed the punishment of from three months up to three years of imprisonment, and criminal prosecution is performed by State Prosecutor *ex officio*
12. According to amendments and supplements of this Law from 2002 (*Official Gazette of the Republic of Montenegro*, No. 30/02), capital punishment is cancelled from the Criminal Legislation of Montenegro. This is understood as time of cancellation of capital punishment in the Republic of Montenegro.

### **Criminal Code of the Republic of Montenegro**

13. The Criminal legislation of the Republic of Montenegro bans torture and other forms of cruel, inhuman and degrading punishment or actions in the following regulations.

14. Within the group of criminal offences against life and body (chap. 14, arts. 143-157):

- Article 144, paragraph 1 - Serious assassination
- Article 149, paragraph 5 - Criminal offence. Leading somebody on to suicide and assisting in that suicide, by cruel and inhuman actions towards that person who is in a subordinated or dependent position in relation to the perpetrator and owing to such actions he/she commits or attempts to commit suicide, which can be attributed to the negligence of the perpetrator

15. The most comprehensive protection against prohibited actions is prescribed in the following group of criminal acts against humans' and citizens' freedoms and rights (chap. 15, art. 158/183):

- Article 167 - Criminal offence - Mistreatment and Torture. According to paragraph 2, anyone who causes grave suffering to another person with the aim of getting information or a confession, or to frighten that individual or, a third person, or to exert pressure upon him or does this with another motive based on any form of discrimination, will be punished with up to three years of imprisonment. If this criminal offence is committed by an official person in the performance of his/her duty, he/she will be punished by imprisonment from one to five years (para. 3).

16. The group of criminal offences against humaneness and other welfares protected by the international law (chap. 35, arts. 426-449) in:

- Article 426 - Criminal offence - Genocide
- Article 427 - Criminal offence - Crime against humaneness
- Article 428 - War crimes against civil population
- Article 429 - War crimes against wounded or sick persons
- Article 430 - War crimes against prisoners of war
- Article 431 - Criminal offence - Organizing and inducing someone to commit genocide and war crimes

17. Within the sanctions proscribed by this Law, capital punishment is not foreseen.

### **Law on Criminal Proceedings**

18. The Law on Criminal Proceedings (*Official Gazette of the SFRY*, No. 4/77, 14/85, 74/87, 57/89 and 30/90, and *Official Gazette of the FRY*, No. 27/92 and 24/94), which entered into force

with the application of the Law on Criminal Proceedings of the Republic of Montenegro, does not contain regulations which deny legal force to evidence obtained by torture. This Law does not contain the necessary legal prerequisites to provide prevention from torture.

### **Law on Criminal Proceedings (Republic of Montenegro)**

19. The Law on Criminal Proceedings (*Official Gazette of the Republic of Montenegro*, No. 72/03 dated 23 December 2003) has been adopted, but its application was postponed for a period of three months, thus it entered into force in April 2004. Besides the above-mentioned laws which define the material part of Criminal Legislation, the Law on Criminal Proceedings underlines the intention to protect the rights of defendants by applying legal norms which allow proving of the criminal offence and pronouncing of appropriate sentence. For such reasons, the Law contains norms which prohibit torture and render it senseless because of the provision which voids confessions and evidence obtained by torture. By these regulations, in accordance with the article 15 of the Convention, the following actions are prohibited or punishable: violence against persons deprived of freedom or persons with limited freedom, likewise obtaining by insidious means a confession or any other statement from a defendant or other person who participates in the trial (art. 12, para. 1). The Court decisions cannot be based upon confessions or any other statement acquired by torture or inhuman treatment (art. 12, para. 2). This provision also applies to witnesses and court experts and is concretized by separate provision which especially underlines that Court decisions cannot be based upon confessions acquired by torture or any other form of mistreatment (art. 98), bearing in mind the fact that other forms of mistreatment also mean the use of force towards suspects, defendants or witnesses, medical intervention or giving devices which may influence their awareness and will during testimony (art. 134, para. 4).

### **Law on Internal Affairs**

20. The current Law on Internal Affairs was adopted in 1994 (*Official Gazette of the Republic of Montenegro*, No. 24/94). Internal affairs, according to the regulations of this Law, are affairs establishing the security of the Republic, the security of citizens, the protection of freedoms and human rights and the rights of the citizen according to the Constitution. These affairs are carried out in such a way that each person and citizen enjoys the same protection and constitutional rights and freedoms are guaranteed (art. 2).

21. Authorized official persons can use force, according to the regulations of article 17 of the Law on Internal Affairs, only if it is necessary:

- (a) To prevent a person who is deprived of freedom or found while committing a criminal offence that is prosecuted *ex officio* from escaping;
- (b) To subdue the resistance of persons who violate public law and order or who need to be deprived of freedom according to the Law; and
- (c) To repulse an attack on themselves, another person or facility which they secure.



22. Means of coercion under paragraph 1 of this article include: physical force, sticks, water guns, devices for coercive blocking of vehicles, specially trained dogs, chemical devices, firearms and other means of coercion prescribed by the Law.
23. Chemical devices from paragraph 2 of this article are the short-term use of tear gas, which afterwards does not have any effect on psychophysical and general health condition.
24. Before using any of these devices, the authorized official person is obliged to warn the persons against whom these devices are going to be used. The authorized official person is not obliged to act according to paragraph 4 of this article if this could endanger the carrying out of an official duty.
25. In the performance of official duty (art. 18) an authorized official person can use firearms only if by using corrective devices or by other way, he/she is not able to:
- (a) Protect human lives;
  - (b) Prevent the escape of a person found while committing a criminal offence, attacking constitutional order, endangering territorial integrity, undermining military and defensive powers, committing acts of violence towards representatives of the highest State official, armed insurrection, violation of territorial integrity, skyjacking, endangering flight security, murder, rape, severe robbery, armed robbery, severe cases of armed robbery and robbery;
  - (c) Prevent the escape of a person found while committing a criminal offence prosecuted ex officio if there are basic suspicions that he/she possesses firearms and will use them;
  - (d) Prevent the escape of a person who has been deprived of freedom for committing criminal offences from points 2 and 3 of this paragraph;
  - (e) Counter direct aggression against himself/herself which directly endangers his/her life;
  - (f) Counter aggression against a facility or person he/she protects.
26. An authorized official person (art. 19) may use firearms only if by using physical force, stick or other corrective devices he/she is not able to carry out his/her official duties.
27. Before using firearms, the authorized official person is obliged to warn the citizens by shouting, given that under the circumstances this is possible.
28. While using firearms, the authorized official person is obliged to protect the lives of other persons.
29. If the Minister considers that coercion devices have been used illegally, he is obliged, within three days, to take measures for establishing the responsibility of the authorized official person who used them, or ordered the use of corrective devices (art. 21).

30. In 2000, police officers used corrective devices in 53 cases (physical force in 37 cases, official stick in 12 cases and physical force and stick in 4 cases), out of which in 47 cases the use of force deemed justified and in 6 cases the use of force deemed unjustified.

31. In 2001, corrective devices were used in 36 cases, out of which in 30 cases their use deemed justified and in 6 cases unjustified.

32. In 2002, corrective devices were used in 48 cases (physical force in 34 cases, physical force and official stick in 6 cases, official stick in 6 cases and firearms in 2 cases), out of which in 43 cases their use deemed justified and in 5 cases unjustified (physical force in 2 cases, official stick in 1 case and use of firearms in 2 cases).

33. In 2003, corrective devices were used in 59 cases (physical force in 44 cases, physical force and official stick in 5 cases, official stick in 7 cases and firearms in 3 cases), out of which in 54 cases their use deemed justified and in 5 cases unjustified (physical force in 3 cases, stick in 2 cases).

34. Against the officers who exceeded their legal authorization by using corrective devices, appropriate legal measures were implemented.

#### **Law on Application of Criminal Sanctions**

35. This Law dates from 1994 (*Official Gazette of the Republic of Montenegro*, No. 25/94). According to article 15 of the Law, actions towards convicted persons that do not respect his/her personal dignity and the maintenance of his/her physical and mental health are proscribed. Measures are taken to the highest possible level to consider personality of each convicted person and to achieve the best results in bringing about resocialization.

36. Corrective devices can be used on convicted persons only under the conditions and way prescribed by this Law and the regulations based upon it. The same Law, in article 61, proscribes the use of corrective devices, namely: physical force, tying, rubber stick, water hoses, specially trained dogs, chemical devices and firearms, in such a way that Law prescribes that these devices can be used only when necessary, in order to prevent the escape of a convicted person, a physical attack on an official or convicted person, injury of other person, self-injury or damage, likewise when this is necessary in order to prevent resistance towards legal order or an official person.

37. The use of the most severe coercive device, firearms, is regulated by article 180 of the same Law. According to this regulation, an authorized official person is allowed to use firearms only if by using other coercive devices he/she cannot perform his/her official duties and only if he/she cannot perform them in any other way. Such circumstances include:

- (a) Countering acts of aggression which endanger his/her life or the life of another person;
- (b) Countering acts of aggression on the facility which he/she secures;
- (c) Preventing the escape of a convicted person who serves a sentence of imprisonment in the open or semi-open section;

(d) Preventing the escape of a convicted person whom he/she escorts or guards, only if this person has been sentenced for a criminal offence with a minimal punishment of 10 or more years.

38. During their preparation for performance of their duties, authorized official persons go through special training intended to qualify them in the use of firearms and other coercive devices. Regarding firearms, officers involved in external security can be equipped with shotguns, and also during escort duty, guns which they cannot carry among convicted persons serving prison sentences in closed quarters.

39. A report is always made on the usage of corrective devices in cases of alleged exceeding of their authorized use, which within three days must be delivered to the Minister of Justice.

40. Regulations on using of other corrective devices are prescribed by the Rule Book on the performance of security measures, and the arms and equipment of security officers (*Official Gazette of the Republic of Montenegro*, No. 6/97). Use of corrective devices is limited by the need for their application, which is prescribed by article 55, which requires the official person to stop their application when the immediate reason for it ceases to exist.

41. Physical force or rubber stick may be used against convicted or arrested persons in order: to subdue their resistance, prevent escape, check physical aggression against an officer or other person, prevent the injury of another person, self-injury and material damage.

42. Resistance can be active or passive:

(a) Active resistance is when a convicted or arrested person offers resistance by using firearms, tools or other objects or physical force and thus prevents an official person from performing official actions. Goading somebody into resisting is considered as an active resistance;

(b) Passive resistance is when an arrested person does not fulfil the legal order of an authorized official person or puts himself/herself in such a position which disables the authorized official person from performing official actions. If the convicted person offers resistance, a rubber stick can be used if there are no other options to overcome such resistance or if the use of other, more mild devices prove ineffective.

43. Regarding the use of rubber sticks, authorized official persons are instructed to avoid blows onto head and other sensitive parts of body. Rubber sticks cannot be used with:

(a) A person who is obviously sick, old, exhausted or severely disabled;

(b) Women who are obviously pregnant, except if they endanger the life of an official person or if it is not possible to subdue them in some other way and thus establish order and peace.

44. Binding normally consists of the wearing of handcuffs during escorting. It must be ordered in writing by the Authorized Officer of the Security Service. It can be done without a written order if there is suspicion that a convicted person can escape and upon escape, may attempt to attack an authorized official person or other persons, or if the convicted person attempts suicide

or self-injury. Within institutions for imprisonment, handcuffs can be used when there is no other way to overcome the resistance of a person, when he/she commits a physical attack on other arrested or sentenced persons or authorized persons, or when he/she commits self-injury or causes material damage.

45. Specially trained dogs can be used for:

(a) Finding escaped persons;

(b) Preventing escape;

(c) Guarding institutions;

(d) Preventing resistance and checking aggression on authorized official persons, other persons or guarded facilities.

46. Water hoses and chemical devices, upon order by the Director, can be used when a group of sentenced or imprisoned persons offers resistance, considerably disturb the order of the peace, or barricades.

#### **Disciplinary liability of convicted persons**

47. Because of the violation of regulations of household habits, pursuant to article 19, paragraph 3 of the Law, upon the order of the Director of the institution, convicted persons can be punished by the following disciplinary actions:

(a) Reprimand;

(b) A ban on receiving up to three parcels;

(c) Solitary confinement for up to 30 days upon fulfilling their term of obligation;

(d) Solitary confinement for up to 30 days.

48. Regarding disciplinary penalties (b), (c) and (d), their execution can be conditionally suspended for a three-month period. Conditional suspension can be cancelled if within the three-month period, the convict is again subject to disciplinary penalty (art. 55).

49. Upon the pronouncement of a disciplinary penalty, the convicted person will be heard, his/her defence will be checked, a report on his/her previous work/conduct will be obtained as will, if necessary, a medical expert's opinion. The disciplinary penalty is pronounced according to the decision, against which a convicted person can lodge a complaint to the next senior officer. The decision on punishment will be made public on a bulletin board (art. 56).

50. The disciplinary measure of sending a convicted person into solitary confinement consists of moving the convicted person to a separate cell, with a daily walk in the open air lasting at least one hour. While serving the disciplinary penalty, the convicted person at least once a day receives visits from a doctor and a tutor who is charged with working with him/her. The

disciplinary penalty of solitary confinement cannot be executed if it puts the health of the convicted person at risk (art. 57) and can be interrupted if the scope of disciplinary punishment has already been achieved or due to sickness on the part of the convicted person (art. 58).

51. The special disciplinary measure of isolation can be undertaken towards a convicted person if previous disciplinary penalties have obtained no results and if he/she still persistently disturbs the work and life within the institution and for such reasons represents a serious danger to other convicted persons and security. This measure must be decided by the Head of the institution. The measure of isolation can be interrupted if the doctor concludes that its further execution would prove harmful to the physical and mental health of the convicted person or if the reasons for the disciplinary action cease to exist.

52. According to this Law, based upon article 5, the possibility of procedure in contentious administrative matters against separation according to which, based upon regulations of this Law are regulated rights and obligations of persons under sanctions.

### **Law on Amendments and Supplements to the Law on the Execution of Criminal Sanctions**

53. This Law was adopted on 17 December 2003 (*Official Gazette of the Republic of Montenegro*, No. 69/03). Based upon it is amended article 5 of the Law on Execution of Criminal Sanctions, which states that persons under sanctions have the right to effective remedy before the Court against separate acts, based upon which, according to regulations of the Law and Amendments and Supplements to the Law on Execution of Criminal Sanctions, are decided his/her rights and obligations. According to the Section of Accessibility to the Court regarding other rights, the convicted persons have the same rights as other citizens.

### **Disciplinary liability of officers**

54. According to chapter 5 of the regulations of the Law on Government Employees (*Official Gazette of the Republic of Montenegro*, No. 45/91), on the liability of officers (arts. 33-43), it is proscribed that the officer can be held personally responsible for performing the duties entrusted to him/her. Officers are responsible for the violation of official duty and can be disciplined. This kind of responsibility exists if an officer violates his/her official duty in such a way that criminal or any other form of liability does not exclude the disciplinary liability if the committed act entails a disciplinary offence. For violations of official duty, officers are subject to one of the next disciplinary measures:

- (a) Public reprimand;
- (b) Fine amounting to 10 per cent to 50 per cent of salary earned in the month in which fine is pronounced;
- (c) Retention from promotion for a two-year period, or dismissal.

55. Among other things, disciplinary offences can entail:

- (a) Non- or poor execution, or tardy or negligent execution, of official duties;

- (b) Abuse of an official position or exceeding of official authority;
- (c) Actions which disturb citizens, legal persons and other parties in accomplishing their rights and interests at the proceedings at the governmental agencies;
- (d) Not undertaking, or unsatisfactory undertaking, of prescribed measures in order to ensure security to entrusted objects or persons.

### **Protection of rights of persons who are serving sentences**

56. The protection of the rights of convicted persons is based upon the same chapter of the Law on Amendments and Supplements in the Law on the Execution of Criminal Sanctions (art. 64a to art. 28). Based on these regulations, convicted persons, during the serving of a sentence, are entitled to court protection from the Chief's (Director's) acts in the institution in which he/she serves a sentence, if by such acts limit some of his/her rights recognized by the Law. This protection is accomplished in the purview of the competence of the Administrative Courts and pertains only to specific rights owing to prison conditions and allowing of their enjoyment, regulated by the Special Law (*Lex Specialis*) - on the Execution of Criminal Sanctions (the right to health care, to receive correspondence, visits, parcels, the right to marital life, to religious life, rights based upon work of convicted persons, the right to be informed, and the right to legal assistance). These regulations were adopted by the end of 2003. Until the writing of this report, there had been no court proceedings, based upon above-mentioned regulations.

57. Regarding some of these generally recognized rights enjoyed by free citizens, convicted persons achieve the protection of rights before the court, in proceedings which are accessible to other citizens.

### **Court measures**

58. Court measures undertaken in criminal proceedings are shown below, based on data received from the Superior Court of the Republic of Montenegro (Report Su.V. No. 1/04 dated 24 February 2004).

*1994*

59. One official person was sentenced by conditional sentence for the criminal offence of mistreatment while performing duties under article 48 of the Criminal Code of the Republic of Montenegro.

*1996*

60. Two persons were conditionally sentenced, namely: one for the criminal offence of mistreatment in the performance of official duty under article 48 in connection with the criminal offence of light bodily injury from article 37, paragraph 2, of the Criminal Code of the Republic of Montenegro.

1997

61. One official person received the conditional sentence for the criminal act of causing serious bodily injury, in connection with the criminal offence of mistreatment in the performance of official duty under article 48 of the Criminal Code of the Republic of Montenegro.

62. One official person received the sentence of 12 years' imprisonment for the criminal offence of murder under article 39, paragraph 1, concerning the criminal offence of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro, one person received the sentence of 10 years' imprisonment, and another person a sentence of 8 years' imprisonment.

1999

63. Three members of the KPD (House of Correction) Security Guard, after catching an escaped convicted person, used excessive and inappropriate force against the sentenced person.

64. Accordingly, criminal proceedings were conducted against them. All three were irrevocably sentenced for the criminal offence of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro. They received the following sentences: eight months of imprisonment for two of them, and for a third, six months of imprisonment.

65. Because of this, a disciplinary measure was pronounced, resulting in the cessation of their employment at the House of Correction.

66. Three persons received conditional sentences for the criminal offence of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro, and one was sentenced to two months' imprisonment.

2000

67. For the criminal offence of the loan of anything but money under article 219 of the Criminal Code of the Republic of Montenegro, coupled with the criminal offence of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro, one person was sentenced to two months' imprisonment and another was conditionally sentenced.

68. For the criminal offence of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro, one person was sentenced to a conditional sentence.

69. In addition, the Basic Court in Pljevlja conducted proceedings for the criminal offences of mistreatment while performing official duties under article 48 of the Criminal Code of the Republic of Montenegro against four persons, who received the following sentences: three months' imprisonment (one person), 45 days' imprisonment (one person), and conditional sentences (two persons). In two cases against five persons proceedings were in progress.

70. According to data obtained from the Superior State Prosecutor (Document Ktr. No. 21/04 dated 1 March 2004), for criminal offences resulting from article 1 of the Convention, in the period from 1 January 1993 to 31 December 2003, criminal charges were brought against 307 persons, prosecutors with jurisdiction *ratione loci* and jurisdiction which was individually and particularly conferred:

(a) After the evidence necessary for the decision was examined, the court rejected the allegations against 139 persons;

(b) Regarding 69 persons, they submitted an application for further investigation. The investigation of six persons was suspended;

(c) Regarding 74 persons, they submitted the proposal of indictment;

(d) Following investigation, criminal charges were brought against 63 persons;

(e) Proceeding upon prosecutors' acts, competent courts completed proceedings against 105 persons, with the following results:

(i) Indictments against 6 persons were rejected and 14 persons were acquitted;

(ii) Eighty-five persons were convicted, and after proceedings according to complaints were completed, sentences went into effect against 59 persons. Proceedings against 34 persons are in progress.

## **Administrative and other measures**

### **Education of officers**

71. Regarding the training of officers of the House of Correction, education on human rights and including on the prohibition of torture and the Convention, is a part of the continuing education of personnel. Education is performed within premises which are intended exclusively for education. For these needs, a centre for officer training with permanently employed officers has been established.

### **Disciplinary proceedings against officers**

72. According to data obtained from the House of Correction (Document No. 05-466/1 dated 10 February 2004, which notes that due to the frequent moving of the archives, the House was not able to provide data before 1998), disciplinary proceedings were conducted against officers for cruel and inhuman punishment of convicted persons.

*1999*

73. In the Bijelo Polje prison, a guard placed two sentenced persons, without legal reasons for the serving of disciplinary punishment, into the cell for solitary confinement. Disciplinary proceedings were conducted and suspended because a guard retired.



2000

74. Two guards were disciplined by a fine amounting to 20 per cent of one month's salary because they used force against a sentenced person in an inappropriate way.

2002

75. Six guards were disciplined by fines amounting to 50 per cent of one month's salary because they used rubber sticks in an inappropriate way against a sentenced person.

2003

76. One guard was punished by a public warning because he used the rubber stick against a sentenced person without legal conditions.

### **Humiliating treatment of sentenced persons**

1998

77. A security officer from the House of Correction (KPD), several times, without reason, returned his food to the sentenced person serving food in the officers' canteen with the explanation that the food was not salty enough. This was deemed as a disciplinary violation of this official person, and the officer in question received a fine amounting to 30 per cent of his monthly salary.

2001

78. The disciplinary punishment of a public warning was given to a female officer because she slapped a sentenced person who tried to prevent her from fighting with another officer. Another officer was punished by a fine amounting to 50 per cent of his monthly salary because he did not implement all prescribed measures in order to prevent fighting between two sentenced persons, although he was able to, and should have, done that.

### **Punishment of officers of the Ministry of the Interior**

79. During the period from 1 January 2000 to 31 December 2003, the Ministry of the Interior of the Republic of Montenegro brought criminal charges against 75 officers.

80. Within the same period, owing to the serious violation of official duties under article 57 of the Law on Internal Affairs, disciplinary proceedings were initiated against 646 officers, including lesser violations of official duties under article 56 of the Law on Internal Affairs. Disciplinary proceedings were initiated against 3,579 officers.

81. We would like to mention that all cases initiated were regarding irregular use or the exceeding of authority regarding the use of compulsion devices.

### Article 3

82. In situations where there were reasons to believe that a person could be exposed to torture if transported to another State, there was no prosecution, expulsion or extradition of persons to these third States. Due to conditions of war and the mass violation of human rights, several thousand refugees and displaced persons found refuge in Montenegro. A number of these persons, in cooperation with the competent international agencies, were returned to their States, but a number are still staying in Montenegro.

83. Pursuant to the regulation on Taking Care of Displaced Persons (*Official Gazette of the Republic of Montenegro*, No. 37/92), which is still in force, the Ministry of the Interior carries out the proceedings for recognizing the status of displaced persons. According to the records of the Ministry, 34,000 displaced persons (from former Republics of SFRY) are registered. However, this number is not realistic, considering the fact that displaced persons are obliged to report the change, which is the basis for establishing his/her rights.

84. UNHCR and the Commissariat for Displaced Persons performed a census of displaced persons, on which occasion 13,000 persons were registered. We would like to mention that the Ministry does not collect data on the ethnicity of those persons.

85. In the period from 1 June 2004 to 3 July 2004, a census of displaced persons, organized by the Ministry of the Interior, UNHCR and the Commissariat, was performed. However, taking into consideration the fact that the next phase is coming, namely proceeding according to revision, and after that the appeal of people unhappy with decisions, which may be disputed before the Superior Court of the Republic of Montenegro, we were not able to introduce the real situation or final data on displaced persons.

86. The Republic of Montenegro signed the Readmission Agreement with 14 European States. The Ministry established the status of citizens and identity of persons and entered into agreement for the handing over of such persons.

87. Pursuant to the Readmission Agreements, in the year 2003, the handover of 2,661 persons was agreed upon. Out of that number, according to data at our disposal, 672 persons were returned to Montenegro.

### Article 4

88. A legal preamble for measures undertaken according to this regulation is given in the Comment regarding article 2 of the Convention.

89. Pursuant to article 134 of the Criminal Code of the Republic of Montenegro (CC), which will, regarding this report, be referenced hereinafter, this Law is applicable against anybody who commits a criminal offence in the territory of Montenegro. Consequently it is valid for domestic and foreign citizens. The Criminal Code also applies to any person who commits a criminal offence on domestic vessels, no matter the location of the ship during the committing of the criminal offence. It also applies to any person who commits a criminal offence on a domestic civil airplane while in flight or in any military airplane, no matter the location of the airplane

during the committing of the criminal offence, if the offender is a citizen of Montenegro. The Criminal Code also applies to any citizen of Montenegro who commits a criminal offence abroad or is caught in Montenegro or extradited.

### **Articles 6 and 7**

90. Pursuant to the Law on Criminal Proceedings (chap. VIII, arts. 136-153) the following are measures for the treatment of an accused person and the proper conduct of criminal proceedings:

(a) Court summons;

(b) Bringing to trial;

(c) Surveillance measures (prohibition to leave residence; visit certain places or areas; the obligation of the accused to periodically report to certain State officials; prohibition to meet with certain persons; temporary deprivation of driving licence);

(d) Guarantee;

(e) Imprisonment.

91. The competent court must observe the conditions defined for applying separate measures, taking care not to use severe measures if the same end can be achieved by less severe measures. These measures must be cancelled ex officio, when reasons for their undertaking cease to exist, in other words, will be substituted by other, less severe punishment when conditions call for it.

92. Pursuant to the separate regulation of the Law on Criminal Proceedings (arts. 528 and 529 - these regulations are applied also after the applying of the Law on Criminal Proceedings, until adopting of the new Law, based upon which will be regulated the issues of international legal assistance and extradition) based upon a request from a competent international agency, in urgent cases, when there is a risk that a foreigner might escape or hide, the police are enabled to deprive an alien of freedom in order to escort him/her to the investigating judge. The investigating judge immediately starts investigation on established facts, and through the diplomatic service, informs the foreign State in question. Further proceedings depend on established evidence, from the point of view of competence of national agencies and likewise the request of the foreign State. When reasons for imprisonment cease to exist or when the foreign State does not request extradition within the term defined by the investigating judge, he/she will liberate the accused. This term cannot be longer than three months starting from the day of imprisonment. Upon request from the foreign State, a board of judges can prolong the term for another two months.

### **Articles 8 and 9**

93. Regarding this basis, there were no requests for extradition.

### **Article 10**

94. Education on human rights is a part of the education of prison guards and police. This training includes not only new officers but also those who are already employed within

institutions. Regarding this issue, cooperation with international institutions (OSCE and others) has been established and the experience of foreign experts, who participate as consultants and educators, is used.

95. In cooperation with OSCE, the Ministry of the Interior organized the course for “Trainers in Police Training” at the International OSCE Educational Centre in Zemun (six weeks), while at Danilovgrad additional training sessions for policemen took place, titled “Program of Development of Montenegrin Police”.

96. Representatives of the Ministry of the Interior were present at the following workshops:

(a) “Human Rights and Police”, organized by UN/ICRC Center in Vienna (five days);

(b) “Police Ethics and Training Methods”, organized by the Association of Police Colleges in Croatia (four days);

(c) “Methods of Training”, organized by the Association of Police Colleges in Croatia (four days);

(d) “Human Rights as a Goal of Police Reform”, organized by the Center for Democracy and Human Rights with support of the Danish Institute for Human Rights in Igalo-Herceg Novi.

97. The “Code of Police Ethics” is a part of the Law on Police, which is now in the procedure of adoption.

98. The curriculum for students of the Secondary School of Internal Affairs (2003/04), more exactly that for graduating students, has been updated to include the subject of Criminal Processing Law, from the field “Human Rights and Police” (Semester I) and “Code and Professional Ethics” (Semester II).

## **Article 11**

### **Police arrests**

99. The Law on Internal Affairs (*Official Gazette of the Republic of Montenegro*, No. 24/94) regulates the issue of police arrests. In fact, pursuant to the regulation of article 15 of the Law, it is prescribed for an authorized person to bring into official premises or deprive of freedom a person who disturbs public law and order or endangers traffic security, or if public law and order or traffic security cannot be established in another way.

100. The deprivation of freedom, according to paragraph 1 of this article, cannot last longer than 12 hours.

101. Exceptionally, deprivation of freedom can also last up to 24 hours, in the following circumstances:

102. If it is necessary to establish the identity of the person and this cannot be established without a deprivation of freedom;

103. If the person is being extradited by a foreign authority in order to be sent to a competent authority;
104. If he/she endangers another person with a serious threat that he/she will attack his/her life or body.
105. Authorized official persons from the Ministry are obliged to promptly inform the person deprived of freedom about the reasons he/she has been deprived of freedom. As per paragraph 1 of this article, a person can request that he/she may inform members of his/her family without delay.
106. During the deprivation of freedom, an official interview will be made with the person deprived of freedom about the circumstances and reasons he/she is being detained in order to verify if the person, in regard to paragraphs 2 and 3 of this article, is entitled to compensation for damages.
107. According to article 16, it is prescribed that deprivation of freedom be determined by a decision, which contains: data on the person deprived of freedom, the duration of the deprivation of freedom, the beginning and basis for the deprivation of freedom and precept on the right to appeal.
108. The decision on the deprivation of freedom is made by the Chief of the Organizational Unit.
109. The decision on the deprivation of freedom will be delivered to the person deprived of freedom within three years of the deprivation.
110. Regarding the decision on the deprivation of freedom in the cases from article 15, paragraph 1, a person deprived of freedom can make an appeal to the Minister within six hours, and can appeal the decision depriving him/her of freedom in cases from article 15, paragraph 3, of this Law within 12 hours after the delivery of the decision.
111. An appeal of the decision depriving a person of freedom does not stop its carrying out.
112. The Minister is obliged to decide upon the appeal of the person deprived of freedom within six hours from receiving the decision, in the cases from article 15, paragraph 3, point 1, and within 12 hours, in cases from article 15, paragraph 3, point 3.
113. If the decision brings about further appeals, procedure in contentious administrative matters cannot be conducted.
114. The Law on Criminal Proceedings of the Republic of Montenegro, which has been in effect since 2 April 2004, also contains new solutions concerning treatment of persons who have been arrested and are temporarily in jail, for any reason, in accordance with the application of article 11 of the Convention.
115. Authorized police officers can deprive of freedom any person, if there is a reason anticipated by the Law on Criminal Proceedings for determining the temporary arrest, but they

are obliged to escort the person, without delay, to the investigating judge. The authorized police officer will inform the investigating judge of the reasons for as well as the time period of the deprivation of freedom.

116. Persons deprived of freedom must be immediately informed, in his/her mother tongue, of the reasons for his/her deprivation of freedom and also must be told that he/she is not obliged to declare anything, is entitled to a defence attorney according to his/her preference and may request that his/her family be informed regarding his/her deprivation of freedom.

117. If the escorting of the person deprived of freedom lasts longer than eight hours, the authorized police officer is obliged to explain this delay to the investigating judge, upon which, the investigating judge will take notes, in other words, record.

118. Police officials can exceptionally detain a person, in order to collect information or evidence, a maximum of 48 hours upon depriving him/her of freedom, more exactly responding to summons. A maximum of two hours later police must present in a written decision to the retained person and the defence attorney. In the decision must be mentioned the criminal offence for which the accused is charged, the day and the hour of the deprivation of freedom, and likewise the time when the detention began.

119. The suspected person or his defence attorney is entitled to the right to lodge a complaint, which together with documents of the case will be immediately delivered to the investigating judge. The investigating judge is obliged to decide on the complaint within four hours of receiving the complaint. The complaint does not stop the carrying out of the decision.

120. The police are obliged to inform the investigating judge of the deprivation of freedom, who can request the police that they immediately escort the detained person to him/her. If within 48 hours the police do not announce the arrest and escort the detained person to the investigating judge, they are obliged to free the detained person. The same person cannot be detained again for the same criminal offence.

121. As soon as the police bring in the decision for detention, the suspected person must have his/her defence attorney. If the accused person does not choose his/her own defence attorney, police will do it ex officio, according to the sequence, from the list provided by appropriate Bar.

122. On the basis of an analysis of the long-term practical work of the Ministry of the Interior, it was concluded that torture has not existed, but there was evidence of only some cases of the exceeding of authority. In these cases against authorized officers, appropriate legal measures were undertaken, whether criminal or disciplinary.

123. During 2002, the Ministry deprived of freedom or detained 5,549 persons:

- (a) 3,437 persons for criminal offences, central wanted circulars, and traffic;
- (b) 1,627 persons for disturbing public law and order or violating the Law on Arms;
- (c) 311 persons for non-reporting of stay;
- (d) 174 persons for violations of the border regime.

124. During the year 2003, 6,340 persons were deprived of freedom or detained of these:
- (a) 127 persons for criminal offences, central wanted circulars, and traffic;
  - (b) 1,580 persons for disturbing public law and order or violating the Law on Arms;
  - (c) 377 persons for non-reporting of stay;
  - (d) 256 persons for violations of the border regime.

### **Supervision**

125. The supervision of actions towards temporary arrested persons, based upon decision of Competent Court, is performed by the President of the Court in accordance with article 158 of the Law on Criminal Proceedings. The institutions for executing temporary arrests are independent from the police. This involves independent State officials, together with the State institutions responsible for executing the punishment of jail.

126. The supervision of punishment by imprisonment, based upon article 21 of the Law on Execution of Criminal Sanctions and article 174b of the Law on Amendments and Supplements of the Law on Executing of Criminal Sanctions (ZIKS), is the responsibility of the Ministry of Justice through its authorized officer. In performing this function, the authorized officer can:

- (a) Inspect the premises in which prisoners stay;
- (b) Talk to prisoners;
- (c) Examine general and separate evidence, files and other documentation relating to prisoners;
- (d) Establish necessary facts and evidence regarding complaints of prisoners.

127. These inspections can be performed regularly, by monthly and weekly visits, but also in accordance with need and if convicted persons request them (for example after conversation, checking of statement from the request).

### **Article 12**

128. Impartial investigations are conducted by the investigating judge, who acts based upon regulations of the Law on Criminal Proceedings according to the request of the competent prosecutor. Detailed data are given in the section pertaining to article 2.

### **Article 13**

129. Regarding the right to complaint, likewise the right to estimation or examining of someone's complaint, the situation in the Ministry of the Interior is favourable. In fact, each request or complaint submitted to the Ministry is examined and disciplinary measures are taken

against those officers who exceed their authority. Police are obliged to provide citizens with physical protection, especially in cases when it is obvious that the persons who submitted complaints are subject to threats of violence.

130. At the Ministry there are established “hotlines” and phone numbers, regularly published in the daily press in such a way that each citizen can call these numbers and lodge a complaint regarding the abuse of an official post by an officer.

131. In the period from 1 January 2000 to 31 December 2003, the Ministry received 511 requests/complaints from citizens regarding the conduct of officers of the Ministry, out of which 389 complaints were deemed as unfounded and 112 were deemed founded, and appropriate legal measures have been undertaken against those officers.

132. The possibility of bringing criminal charges, inter alia, exists for persons who consider that torture has been used against them or some other treatment sanctioned by the criminal offences mentioned in the section on article 2 of the Convention. According to these criminal offences, the State prosecutor undertakes a criminal prosecution *ex officio*.

### **Complaints of convicted persons - the informing of rights**

133. Regarding measures which enable the protection of the person who lodged a complaint to witness protection, there is, at the moment, only general protection within protection provided to citizens by the Ministry of the Interior (police). The compilation of a working version of the proposed Law on Witness Protection according to the Agenda of the Government of the Republic of Montenegro for the actual year 2004, has been completed. Next will come public discussion, analysis, the compiling of a final proposal and the delivery of the proposal to the Parliament of the Republic of Montenegro.

### **Article 14**

134. According to the Code on Obligations (*Official Gazette of the SFRY*, No. 29/78; 39/85; 57/89 and *Official Gazette of the FRY*, No. 31/93, article 188, official persons are obliged to compensate for damage in the form of remuneration in the case of death, injury or damage to health. The victim of the damage is entitled to compensation for simple damage and likewise to compensation for lost benefits. In addition, according to article 193 of the Code on Obligations, the person who causes damage is also obliged to compensate the costs of hospital treatment and lost earnings because of the labour unfitness. If the injured person, due to bodily injury or severely disturbed health, is put in the situation of complete or partial unfitness for work and thus loses earnings or his/her needs are permanently increased or possibilities for his further advancing are destroyed or reduced, the responsible person is obliged to pay the injured party the funds equivalent to the damage caused.

135. In the case of death, the person who caused the damage is also obliged to compensate for the funeral costs. The right for compensation is also entitled to persons supported by the person who died, according to article 194 of the Code on Obligations.



136. In addition to material damage, the same Law also prescribes financial compensation of non-material damage (arts. 199-205). This compensation can be related to: physical pains suffered; mental pains, because of reduced life activities, ugliness, injury of reputation, honour, freedom and rights of the person; and likewise because of increased fear. Compensation is ordered by the court if it finds that the circumstances of the case, and taking into account especially the intensity of pain and fear and their duration, justify it. The compensation of non-material damage is ordered independently from compensation for material damage and even in the case of its absence. Compensation for non-material damage also entails fair compensation to the members of the immediate family (spouse, children and parents) in the case of the death of some persons. This compensation can be ordered to brothers and sisters if they and the deceased existed as a permanent life-unit. In the case of serious disability, a court may also order fair financial compensation to the victim's spouse, children and parents for their mental pain, and also to an illegitimate spouse, if the deceased and he/she existed as a permanent life-unit.

137. In court proceedings, these rights can be achieved in a lawsuit based upon the regulations of the Law on Contentious Procedure.

#### **Article 15**

138. Comments on this article of the Convention are given with article 2, including the section regarding articles 12 and 98 of the Law on Criminal Proceedings.

#### **Article 16**

139. By signing of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Montenegro obliged itself to prohibit all acts which represent cruel, inhuman and degrading treatment or punishment but do not represent the acts of torture according to article 1 of the Convention, in the case when such offences are committed by officials or persons who act ex officio, or with explicit and tacit inducement or agreement of these persons.

140. In fact, regarding the request, which 63 Roma persons, citizens of FRY, the Republic of Montenegro, submitted to the Committee against Torture, because of violation of regulations of the Convention, more exactly, the incident which occurred on 15 April 1995 in Danilovgrad, the Committee, at its session of 21 November 2003, made the decision that the Republic of Montenegro had violated articles of the Convention (arts. 12, 13 and 16, para. 1) and obliged the Republic of Montenegro to perform an investigation, to prosecute the responsible persons and to provide fair compensation to persons who had suffered a loss.

141. In accordance with the decision of the Committee, the Government of the Republic of Montenegro informed the Committee about actions undertaken regarding the positions and recommendations mentioned in the decision (19 March 2003). The Government concluded that the event in Danilovgrad was without political background, owing to the fact that similar events had not been recorded in Montenegro, and that the event was partly a consequence of the living conditions, and political and security situation, that existed at the time in Montenegro, owing to the war environment and high level of political polarization. The event happened as a spontaneous revolt and reaction to the act of rape of the Montenegrin little girl by two non-adult Romas.

142. By considering possibilities for a new set of proceedings, in accordance with the conclusions of the Committee, the Government of the Republic of Montenegro concluded that:

- Proceedings of checking evidence and estimating liability for the actions of authorized police officers cannot be performed in an appropriate way to establish if all measures were undertaken, first of all because of the lack of time and the impossibility of realizing all events, taking into account also the large number of citizens. Thus, it is not possible to start proceedings for eventually committed omissions, taking into consideration that for establishing of criminal offences - abuse of official posts and unscrupulous work in service due to the prescription of legal action
- However, there are legal possibilities according to valid regulations and principal positions of the Superior Court of Montenegro, that it was qualified form - severe offence against general security, for starting new proceedings, because relative prescription of legal action did not come forth. The condition for this is to provide new evidence, which according to available data is not possible because of the lack of time and the impossibility of providing new evidence, which is the condition that an authorized prosecutor requests for a rehearing

143. Aiming at the implementation of recommendations of the Committee, the Government concluded that those who suffered a loss (representatives of Roma) were entitled to an extrajudicial settlement, based upon which, about 1 million euros (985,474) were paid to them (for material and non-material loss).

144. The Government of the Republic of Montenegro also proposed to the Public Communal Company from Danilovgrad that it consider the possibility of returning workers to work before the ending of court proceedings (labour dispute), which is in progress.

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