



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

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List of issues prior to the submission of the second periodic report of Montenegro (CAT/C/MNE/2)*

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

Articles 1 and 4

1. Further to the Committee's recommendation in its previous concluding observations (para.5)¹, please provide information on measures taken by the State party to bring its definition of torture in conformity with article 1 of the Convention and to ensure that all acts of torture are offences under criminal law, and punishable by appropriate penalties which take into account the gravity of their nature.

* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies to this list of issues will constitute the next periodic report under article 19 of the Convention.

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee and published under the symbol CAT/C/MNE/CO/1.

Article 2²

2. Please provide updated information on the measures taken to guarantee in law and in practice that a person under arrest is immediately informed of his/her right to consult with counsel and to receive independent and free legal aid when he/she cannot afford private counsel.³ Please also provide information on the rights of detained persons to have from the outset of detention access to an independent doctor and to notify a relative.⁴ Please also indicate whether a statement of detainee rights is available at all places of detention for consultation by detainees.

3. Please provide information on measures taken by the State party to register all persons detained under its jurisdiction by documenting the identity of the detainee, date, time and place of detention, identity of the authority detaining the person, ground for the detention, date and time of admission to the detention facility and state of health of the detainee upon admission and any changes thereto during detention, time and place of interrogations, including the names of all interrogators present, as well as the date and time of release or transfer to another detention facility.

4. Further to the Committee's recommendation in its previous concluding observations (para. 7), please provide information on any legal measures taken by the State party to ensure the full independence of the Ombudsman and on the adequate human and financial resources provided to enable the office to carry out its mandate to independently and impartially monitor and investigate alleged acts of torture and ill-treatment perpetrated by law enforcement personnel. Does the State party speedily pursue the recommendations issued by the Ombudsman?

5. According to information before the Committee, in October 2009, the Council of Europe's Venice Commission voiced concerns about an amendment to the Law on the Protector of Human Rights (Ombudsman). The amendment proposed that Parliament would appoint the Ombudsman on the proposal of the President of Montenegro, and designate the Ombudsman as the National Preventive Mechanism (NPM). Please provide information on whether this draft law was finally adopted and on the content of its provisions.

6. Further to the Committee's recommendation in its previous concluding observations (paras. 21(a) and (b)), has the State party adopted the draft law on domestic violence (Bill on Protection from Domestic Violence)? Please provide detailed information on the measures taken by the State party to prevent combat and punish violence against women, including domestic violence, and provide, inter alia, free legal aid to victims. Please provide statistical data on the number of complaints received and investigated during the reporting period, as well as the number of prosecutions, convictions and penalties imposed.

² The issues raised under article 2 could also imply different articles of the Convention, including, but not limited to, article 16. As stated in general comment No. 2, paragraph 3, "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. [...] In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

³ Council of Europe, Report to the Government of Montenegro on the visit to Montenegro carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 22 September 2008 (CPT/Inf (2010) 3), para. 31.

⁴ *Ibid.*, para. 32.

7. Further to the Committee's recommendation in its previous concluding observations (para. 23), please provide information on measures taken by the State party to make trafficking in persons a criminal offence, to prosecute and punish perpetrators, and to ensure the provision of free legal aid, recovery and reintegration services to victims of trafficking. Please provide statistical data on the number of complaints received and investigated during the reporting period, as well as the number of prosecutions, convictions and punishment imposed.⁵

8. According to information before the Committee, on 15 May 2010, six men convicted of war crimes, including torture and other ill-treatment, were sentenced to periods of imprisonment which failed to meet the minimum sentence of five years imprisonment that is set forth in Article 430 (War crimes against prisoners of war) of the Montenegrin Criminal Code. Please provide information on the measures taken to ensure that such mitigation is not granted in cases of serious crimes. Please also provide information on the measures taken to amend the Penal Code in order to ensure that senior public officials are prosecuted for command responsibility.⁶

9. Further to the Committee's recommendation in its previous concluding observations (para. 15), please provide detailed information on measures taken to prevent sexual violence in prisons, including inter-prisoner violence. Please provide statistical data in this regard.

10. According to information before the Committee, please provide information on measures taken to prevent the reported torture and abuse of the LGBT population by the police, and to promote education and sensitization of members of the police on their obligations in terms of non-discriminatory treatment towards LGBT persons. Please include statistical data on the number of complaints received and the number of those investigated, as well as the number of prosecutions and convictions.⁷

Article 3

11. Further to the Committee's recommendation in its previous concluding observations (para.10), please provide detailed information on measures taken to respect the prohibition to expel, return or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture, and to fully incorporate the provisions of article 3 into the State party's domestic law.

12. Further to the Committee's recommendation in its previous concluding observations (para. 10), please provide information on steps taken by the State party to provide the necessary human and financial resources to the administrative bodies responsible for the implementation of the Law on Asylum, and to promulgate the necessary regulations and operating instructions for the full implementation of the said Law. Please provide detailed information on measures taken by the State party to ensure that all refugees and "displaced persons" have a clear legal status with focus on the prevention of statelessness.⁸

13. Has the State party relied on diplomatic assurances when returning a person to a third State? Please provide detailed information on what the State party's requirements are for such assurances and which post-return monitoring mechanisms have been adopted. Also,

⁵ See A/HRC/WG.6/3/MNE/2, para. 12.

⁶ Council of Europe, CPT/Inf (2010) 3.

⁷ A/HRC/WG.6/3/MNE/3, para. 13.

⁸ A/HRC/WG.6/3/MNE/2, para. 26; also A/HRC/WG.6/3/MNE/3, para. 43.

please provide information on the number of detainees who have been returned to other countries and include the list of countries.

14. Please provide data, disaggregated by age, sex and nationality on:

- (a) The number of asylum requests registered and approved;
- (b) The number of asylum-seekers whose requests were granted because they had been tortured or might be tortured if they were returned to their country of origin;
- (c) The number of forcible deportations or expulsions and the countries to which the persons were expelled. Please indicate how many deportations/expulsions involved rejected asylum-seekers.

Articles 5 and 7

15. Further to the Committee's recommendation in its previous concluding observations (para. 13), please provide detailed information on the measures taken by the State party to review the terms of the bilateral agreement between the United States of America and Montenegro which prevents the transfer of United States nationals in the territory of Montenegro to the International Criminal Court, in accordance with the provisions of the Convention.

16. Please provide detailed information on how the State party has exercised its universal jurisdiction over persons responsible for acts of torture, wherever they have occurred and regardless of the nationality of the perpetrator or victim, and provide specific examples and texts of any decisions on the subject.

Article 10

17. Further to the Committee's recommendation in its previous concluding observations (para.14), please provide detailed information on measures taken by the State party to:

- (a) Further develop educational programs to ensure that all officials, including civil or military, law enforcement personnel, medical personnel and other officials who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, are fully aware of the provisions of the Convention;
- (b) Ensure that all relevant personnel involved with detained persons receive specific training on how to identify signs of torture and ill-treatment and to report such incidents to the competent authorities, based on the Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1999) and ensure that the Manual is an integral part of the training provided to forensic medical personnel and other professionals involved in the documentation and investigation of torture, and that it is translated into all appropriate languages;
- (c) Develop and implement a methodology to assess the effectiveness and impact of such training/educational programs on the reduction of cases of torture and ill-treatment.

18. Further to the Committee's recommendation in its previous concluding observations (para.14), please provide information on the training provided to law enforcement personnel, particularly border and customs officials, in handling cases of trafficking, and on awareness-raising campaigns and training on domestic violence for judges, lawyers, law enforcement personnel and social workers who are in direct contact with victims. Please

state how many officers have undergone such training, the results of the training, and how the results are evaluated.⁹

Article 11

19. Further to the Committee's recommendation in its previous concluding observations (para.15), please provide detailed information on measures taken towards the implementation of the national prison reform process, including allocating sufficient funds to further improve the infrastructure and hygienic conditions, in particular in the Podgorica Prison.

20. Please provide information on the steps taken to improve the conditions of all places of detention and imprisonment, and to ensure the segregation of male and female detainees as well as segregation of convicted persons and persons remanded in custody. Also, provide information on inter-prisoner violence, including the number of complaints, any action taken by the State, and the result of such action.

Articles 12 and 13

21. Further to the Committee's recommendation in its previous concluding observations (para. 8), please provide information on whether the State party has guaranteed full independence of the judiciary in line with the Basic Principles on the Independence of the Judiciary (General Assembly resolution 40/146 of December 1985) and whether judicial appointments are made according to objective criteria concerning qualification, integrity, ability and efficiency. Has an independent monitoring mechanism of Court proceedings with the view to further enhancing the independence of the judiciary been adopted?

22. Further to the Committee's recommendation in its previous concluding observations (paras. 18 and 19), please provide information on measures taken by the State party to ensure that any individual who alleges that he/she has been subjected to torture or ill-treatment has the effective right to file a complaint with the competent authorities without any impediment, including threat of prosecution, and that protection is provided to such complainants.¹⁰

23. Further to the Committee's recommendation in its previous concluding observations (para.19), please provide information on the implementation and enforcement of the Law on Witness Protection of 2005, including statistical data on the number of complaints received and investigated, as well as the number of prosecutions and convictions.

24. Please provide detailed information on measures taken to eradicate all forms of ill-treatment by law enforcement officials and to ensure prompt, thorough, independent and impartial investigations into all allegations of torture and ill-treatment, to prosecute and punish perpetrators and to provide effective remedies to the victims. Please include statistical data on the number of complaints received and investigated, as well as the number of prosecutions and convictions.¹¹

25. Please provide detailed information on measures taken to ensure the efficient and effective investigation of complaints and reports of alleged torture, including statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture,

⁹ CAT/C/MNE/CO/1, paras. 23 and 21(c).

¹⁰ See also A/HRC/WG.6/3/MNE/2, para. 9.

¹¹ A/HRC/WG.6/3/MNE/2, para. 10.

attempted torture and complicity or participation in torture, which have been filed during the reporting period, as well as related investigations, prosecutions, convictions and penal and disciplinary sentences.¹²

26. Please provide information on the measures taken to investigate and prosecute those responsible of the alleged torture of Aleksander Pejanovic, and the alleged ill-treatment of Dalibor Nikezic, Igor Milic and Vladana Kljajic.

Article 14

27. Further to the Committee's recommendation in its previous concluding observations (para.20), please provide detailed information on measures taken by the State party to ensure that victims of acts of torture have an enforceable right to claim from the State party fair and adequate compensation, including the means for full rehabilitation. Please include the number of requests filed, the number granted, the amounts ordered and those actually provided in each case.

28. Further to the Committee's recommendation in its previous concluding observations (para. 20), please provide information on measures taken by the State party to develop reparation programs, including the treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes. Please provide statistical data in this regard.

Article 16

29. Further to the Committee's recommendation in its previous concluding observations (para.9), please provide information on measures taken by the State party to adopt a comprehensive law on Juvenile Justice that would protect juveniles in conflict with the authorities in accordance with international standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985.

30. Further to the Committee's recommendation in its previous concluding observations (para.16), please provide information on steps taken by the State party to incorporate members of the Roma community into the police force.

31. With reference to the recommendation made by the Committee in its previous concluding observations (para.11), please provide information on the measures adopted to integrate all displaced persons under the jurisdiction of the State Party, including the "internally displaced" from Kosovo and Bosnia-Herzegovina, by fully protecting their human rights.

32. Further to the Committee's recommendation in its previous concluding observations (para. 22), what measures have been taken by the State party to implement legislation, including awareness-raising and educational campaigns, prohibiting corporal punishment of children as a method of discipline in all settings?

33. Please provide information on measures taken by the State party to implement a comprehensive policy designed to combat overcrowding and improve conditions in prisons. Please provide statistical data on the number of prisoners in all prison facilities, in

¹² A/HRC/WG.6/3/MNE/3, para. 12.

particular in the Podgorica Prison, as well as the degree to which the number of prisoners in each facility exceeds design capacities.¹³

34. Please provide information on measures taken to effectively address and investigate attacks against journalists and human rights defenders and bring those responsible to justice, including the number of complaints received and investigated, as well as the number of prosecutions and convictions.

Other Issues

35. Please provide updated information on measures taken by the State party to respond to threats of terrorism, and describe if and how such anti-terrorism measures have affected human rights safeguards in law and in practice, and how the State party has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). In particular, please provide information on:

- (a) The number and ethnicity of persons convicted under the anti-terrorism legislation;
- (b) The legal safeguards and remedies available to persons subjected to anti-terrorist measures, in law and in practice; and
- (c) The number of appeals and complaints against these measures, including with regard to non-observance of human rights international standards, and their outcome.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

36. Please provide detailed information on relevant new developments, since the previous report, regarding the legal and institutional framework within which human rights are promoted and protected at the national level, including any relevant jurisprudential decisions.

37. Please provide detailed relevant information on new political, administrative and other measures, since the previous report, taken to promote and protect human rights at the national level, including any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

38. Please provide any other information and pertinent statistical data regarding new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of Montenegro's initial report in 2008, as well as on any events that occurred in the State party and are relevant under the Convention.

¹³ A/HRC/WG.6/3/MNE/3, para. 16; also Council of Europe, CPT/Inf (2010) 3, para. 42.