

# **MONTENEGRO**

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**AMNESTY  
INTERNATIONAL**



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# INTRODUCTION

This document is based on a submission presented in May 2013 to the European Commission, as part of their consultation with non-governmental organizations, on Montenegro's progress towards membership of the European Union.

The information included in this document covers the period only up to May 2013, thus omitting significant developments over the past seven months, which will be covered in a further report in May 2014.

In their progress report on Montenegro, published in October 2013, the European Commission reflected many of Amnesty International's concerns. Most significantly, on the issue of impunity for crimes under international law, the Commission noted:

“As regards domestic handling of war crimes, in the case of the deportation of Bosnian refugees (1992), the Appellate Court confirmed in May 2013 the second first-instance judgment rendered by the Podgorica High Court in November 2012, which acquitted all nine indicted former officials of the Montenegrin Ministry of Interior. This judgement is final now and concludes the second, out of four, local war crimes trials. The first-instance trial against eight former members of the Yugoslav Army indicted for war crimes in Kaludjerski laz (1999) has been ongoing since 2009. In November 2012, one defendant was released on bail.

In July 2013, the Podgorica High Court rendered a decision on the third first-instance trial in the case of war crimes committed against prisoners of war and civilians in the Morinj camp (1991). Four defendants were sentenced to the same low prison sentences as in the second first-instance judgement of January 2012. Montenegro needs to make efforts to tackle impunity. All outstanding reports of war crimes need to be duly followed up. Decisions by the Montenegrin judiciary on war crimes cases need to be in line with international humanitarian law, to reflect the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, and to fully apply domestic criminal law. The charges of command responsibility, co-perpetration or aiding and abetting have so far not been used. Montenegro needs to ensure that civilian victims have access to justice and reparations”.

The Commission concluded:

“As regards domestic handling of war crimes, Montenegro needs to tackle impunity and ensure that decisions by the Montenegrin judiciary on war crimes cases are in line with international humanitarian law, reflect the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and fully apply domestic criminal law”.<sup>1</sup>

# THE SUBMISSION

Amnesty International notes that on 25 June 2012, the General Affairs Committee of the European Commission (EC) approved the opening of talks with Montenegro on accession to the European Union. In advance of the decision, the Commission conducted a pre- accession

screening of Montenegro's progress in the implementation of measures related to the rule of law and fundamental rights, respectively, (Chapters 23 and 24 of the *acquis communautaire*).<sup>2</sup>

Given that talks on Chapters 23 and 24 are expected to begin in the second half of 2013, Amnesty International highlights shortcomings in relation to the rule of law and fundamental rights, including serious and persisting concerns about the investigation and prosecution of crimes under international law committed during the 1990s, which the commission failed to address in its screening reports.<sup>3</sup>

Amnesty International also notes its continued concerns about the right to adequate housing and status of Kosovo Roma and Ashkali refugees in Montenegro, and briefly highlights other concerns related to the enjoyment of fundamental rights.

# GENERAL HUMAN RIGHTS CONCERNS<sup>4</sup>

Throughout the year, civic society has demonstrated concern about a number of governmental policies, including the failure to address social and economic rights and guarantee the rule of law. Demonstrations against the government's economic and social policies continued throughout 2012 in the period leading up to the election. In January 2013, trade unions protested the government's austerity measures, including proposals for increased taxation. In February 2013, thousands of people attended candle-lit vigils in six Montenegrin cities protesting about the poor rate of prosecution of crimes and the weak rule of law, after the killing of two brothers, Dejan and Ljubomir Gojacanin.<sup>5</sup>

Enduring concerns remain about the right to freedom of expression. Instances of attacks on and threats against journalists, including by members of the government and the ruling DPS, continue to be reported in the media and by Montenegrin NGOs; the organization also notes the recent formation of a journalists trade union<sup>6</sup>.

In this context, Amnesty International welcomes the indictment on 24 January 2013 of a police officer for threats against journalist Olivera Lakić.<sup>7</sup> However, the organization continues to note the continued impunity for the unresolved murders and attacks on journalists over the past decade.

Local NGOs have also continued to raise concerns about respect for the rule of law, and the full enjoyment of human rights. Independent institutions charged with the scrutinizing the government's guarantee of such rights, including the Ombudsperson's Office remains weak. The Commission for Protection for Discrimination remains insufficiently independent of the government.

NGOs have, for example, questioned the independence of the state prosecutor's office which failed to open an *ex officio* investigation, as required by law, following the publication of audio recordings of a December 2012 meeting of senior officials of the ruling Democratic Party of Socialists (DPS), which clearly indicated criminal offences of discrimination in employment based on political affiliation and abuse of state resources. No independent investigation had been opened at the time of writing.<sup>8</sup>

With respect to the right to privacy and to freedom of expression and information, Amnesty International notes that the wiretapping of journalists working for the daily newspaper, Dan, was reportedly authorised by Special Prosecutor, Djurdjina Ivanović and Minister of Interior, Rasko Konjević.<sup>9</sup> They were due to appear before the parliament's Committee for Security and Defence in March, but did not appear to have done so by the end of April.<sup>10</sup>

Some progress appears to have been made with respect to guaranteeing the rights of LGBTI people in Montenegro. In December 2012, 16 human rights, women's and LGBTI NGOs, suggested amendments to the proposed law on hate crimes, including to expand the list of personal characteristics covered by the law, and to include recognition of hate crime as an

aggravating factor when qualifying offences.<sup>11</sup>

In late April, a draft of the Strategy for improving the quality of life of LGBT people was approved, although regrettably the Ministry of Justice and Human Rights failed to ensure the participation of all relevant sections of civil society in the construction of the plan.

However, the authorities have failed to adequately protect LGBTI people from attacks: in September 2012 three gay men, including an actor and the director of a video against homophobia, were violently attacked by members of a Podgorica football supporters' organization. Despite requests for police protection, actor Todor Vujosević was attacked again in October.



# IMPUNITY FOR WAR CRIMES

On 27 February 2013, the Bosniak community in Montenegro, commemorated the 20th anniversary of the abduction of 18 Montenegrin Bosniaks and one Croat, who were deprived of their liberty in Bosnian town of Štrpci while travelling by train from Belgrade to the Montenegrin town of Bar. In those past 20 years, only one of those suspected of criminal responsibility has been brought to trial: Nebojša Ranisavljević, a member of the Avengers, a Bosnian Serb paramilitary group, was imprisoned for 15 years in 2002 following a trial in Bijelo polje court. None of the other members of the Avengers who are reasonably suspected to have carried out the crime have been brought to justice.

Nor have investigations been conducted into credible allegations, including in testimonies to the International Criminal Tribunal for the former Yugoslavia (ICTY), that the then SFRY authorities and agents, including state, army, police and railway officials, knew that the 'Avengers' were planning this action and failed to do anything to prevent it.

The bodies of only three victims of that enforced disappearance have been located, identified and returned to their families for burial; the fate or whereabouts of the others are unknown and their families are still waiting. None of the families of the disappeared have received compensation on any other form of reparation for their loss, or for the pain and suffering they have endured for the last 20 years. Despite promises by the authorities, a memorial due to be built in Bijelo polje, has not been built.

Many of the families of the disappeared Bosniaks remain as refugees in BiH.

This case is emblematic of the failure of the Montenegrin authorities, over a period of 20 years, to comply with the obligation to bring all those suspected of criminal responsibility to trial and ensure that victims of the armed conflicts of the 1990s have access to justice, truth and reparation.

In its 2012 submission to the Commission, Amnesty International raised extensive concerns about the issue of impunity for crimes under international law, which the organization considers were inadequately reflected in their Commission's subsequent progress report.

Amnesty International has found little or no subsequent evidence to suggest that Montenegro has implemented the sole recommendation on this outstanding human rights violation made by the EC in their 2012 progress report, namely that, "*The processing of war crime cases needs to be stepped up and fully aligned with international human rights and humanitarian case law.*"<sup>12</sup> Indeed verdicts handed down in 2012 continue to be inconsistent with international humanitarian law, (see below).

Amnesty International notes with dismay that in the relevant screening reports, impunity for war crimes is not even mentioned, (beyond a reference to the Special Prosecution Office for fighting organised crime, corruption, financing of terrorism and war crimes, within the Supreme Public Prosecutor's Office).<sup>13</sup>

Under conventional and customary international law, Montenegro is required to investigate and, where there is sufficient admissible evidence, prosecute crimes under international

law.<sup>14</sup> Amnesty International considers that the Montenegrin authorities have denied the victims of crimes under international law access to a remedy, including: “Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered”.<sup>15</sup>

## EQUAL AND EFFECTIVE ACCESS TO JUSTICE

Investigations in the four cases described below did not begin until 2007. More than five years later, in only one case has a final decision been rendered. No further investigations into war crimes and other crimes under international law have been opened by the Special Prosecutor’s Office.

Decisions in two war crimes trials (see below) since mid-2012 continue to cast doubts on the capacity of Montenegro to implement the rule of law. They also highlight concerns about the failure of the judiciary, who continue to make decisions in war crimes cases which fail to reflect international humanitarian law, the jurisprudence of the ICTY and sentencing guidelines set out in domestic law. Further, the longevity of proceedings, have led to few trials being concluded denying the defendants the right to trial within a reasonable time and the victims their right to receive access to justice. Still other cases remain to be investigated.

Yet, Montenegro has stated that “[t]he Constitution<sup>16</sup> stipulated that ratified and published international treaties and generally accepted rules of international law were an integral part of the Montenegrin legal system, had supremacy over domestic legislation and were directly applicable where they regulated relations differently from domestic legislation”.<sup>17</sup>

To date, for example, no investigations have been opened in Montenegro into members of the then Yugoslav People’s Army for the 6 December 1991 shelling of Dubrovnik from Montenegrin territory. Some 19 civilians were killed, and another 60 people injured; civilian objects were also destroyed.<sup>18</sup> Yet the bulk of the JNA Operational group involved in the attack, was made up of the Montenegrin Territorial Defence - mobilized Montenegrin reservists - their use by the JNA authorised by Momir Bulatović, former President of Montenegro. Due to the lack of any provision permitting the extradition of those suspected of criminal responsibility for war crimes in the 2010 extradition agreement with Croatia, suspects residing in Montenegro may only be investigated and prosecuted in Montenegro.<sup>19</sup>

Impunity also persists for crimes against the civilian population in Montenegro itself, including the abductions at Štrpci (above) and Sjeverin, as well as in the majority of cases of widespread and systematic ill-treatment and persecution, by the Montenegrin police, between 1992-5 of the Bosniak population in the Sandžak, on the basis that they were perceived to be pro-Bosnian and unsympathetic to the then FRY government.<sup>20</sup>

**Amnesty International urges the EC to instruct the State Prosecutor to take immediate measures to conduct a mapping exercise of all outstanding reports and allegations of crimes under international law, and to develop a prosecution strategy, to address impunity for crimes under international law.**

## THE RIGHT TO REPARATION

Apart from the exceptional awarding of compensation in the “Deportations” case in December 2008, the majority of victims of violations of crimes under international law in

Montenegro have yet to be guaranteed the right to reparation.

The right to reparation is clarified in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles), which were adopted by UN General Assembly resolution 60/147 of 16 December 2005.

With respect to adequate, effective and prompt reparation, in the majority of approximately 20 civil cases in which a lower court has decided that reparation be awarded in the form of compensation, the High Court has overturned the decision on appeal.

However, in the majority of approximately 20 civil cases in which a lower court has decided that reparation be awarded in the form of compensation, the High Court has overturned the decision on appeal. Each of the following cases documented by the NGO Human Rights Action relate to events in Bukovica between 1992-1995. (see below).<sup>21</sup>

Amnesty International notes that the EC, in another context, has called on Montenegro to ensure the rights of victims.<sup>22</sup>

## THE TRIALS

Investigations in each of these cases began as early as 2007; first instance judgments in three trials were rendered in 2010 and June 2011. By May 2012 two of the cases remained at appeal, or pending retrial following appeal.

The length of such proceedings impacts on the rights of the defendants to trial within a reasonable time, and on the rights of the victims of these crimes under international law to receive access to justice and reparation. Decisions in several cases, including the “deportations case” remain inconsistent with generally held interpretations of international humanitarian law, or with the jurisprudence of the Tribunal.

## THE “DEPORTATIONS” CASE<sup>23</sup>

In November 2012, nine former police officials<sup>24</sup> were again acquitted of war crimes in a retrial in the case of 79 Bosnian refugees in May 1992. They were indicted on charges of war crimes for the deportation of more than 80 Bosniak (Bosnian Muslim) refugees who came to Montenegro in 1992 to seek protection from Bosnian Serb forces.

For a second time, and despite a revised indictment, the Podgorica Higher Court was unable to reach a proper determination on the guilt or innocence of the former police and government officials. The court’s decision raises serious concerns about the willingness of the Montenegrin judiciary to apply international humanitarian law in Montenegro’s courts.

For example, although the court agreed that the defendants had unlawfully arrested the Bosniak civilians, the presiding judge acquitted them of war crimes on the basis they were not participants in the war in BiH or allied with any party to the war in BiH. Yet the police officials were agents of the republic of Montenegro, which at that time was part of the Socialist Federal Republic of Yugoslavia, which was a participant to the armed conflict in BiH.

Further, the court characterized erroneously the war in Bosnia- Herzegovina; as a non-

international armed conflict, even though the appellate court had previously made a determination - when reversing the first judgment - that the conflict was an international armed conflict, and thus since the criminal acts were committed against civilians, they represented a breach of international humanitarian law.<sup>25</sup> Finally, the court failed to recognize that the alleged crimes should also have been characterized as crimes against humanity.

In February 2013, the Prosecutor appealed against the decision on the basis that the reasons handed down by the court for the acquittal were both unfounded and contradictory. The Appeal Court's decision is expected on 13 May.<sup>26</sup>

### **MORINJ CAMP<sup>27</sup>**

In March 2013, the retrial opened at Podgorica High (Superior) Court of the former Yugoslav National Army reservists, reservists Spiro Lučić, Boro Gligić and Ivo Menzalin for alleged crimes under international law crimes committed at the Morinj camp. The defendants are charged with the torture and inhumane treatment of 169 Croatian prisoners of war and civilians at Morinj camp near Kotor in 1992. More than 160 persons detained in Mornij testified during the course of the original trial. The retrial follow a decision by the Court of Appeal in July, to review the case, following appeals by both the prosecution and defence against the 25 January 2012 verdict, when the defendants were convicted and sentenced to a total of 12 years imprisonment for war crimes against Croatian prisoners in Morinj.<sup>28</sup>

According to media reports, Ivo Menzalin's defence lawyer appealed on the basis that during the period between 3 October 1991 and 15 January 1992, (after Croatia was recognized as an independent state), the Yugoslav Army was not fighting against the Croatian army, but against Croatian "rebels", and that international humanitarian law was therefore not applicable.<sup>29</sup> However, international humanitarian law also covers non-international armed conflicts and the ICTY in its jurisprudence has confirmed that in relation to serious violations of the laws or customs of war it is applicable regardless of the nature of the conflict.

In March 2013, protests were held on the Croatian-Montenegrin border, by the Association of Prisoners of Serbian and Montenegrin Concentration Camps of Dubrovnik-Neretva County, who demanded that the defendants be transferred to Croatia for prosecution.<sup>30</sup>

### **BUKOVICA**

In April 2012, the prosecution appeal against the acquittal in 2011 of army reservists and police officials charged with inhumane treatment of Bosniaks in Bukovica in 1992 was dismissed. The appeal court found that at the time of the offence, the defendants' actions "did not constitute a criminal act in the eyes of the law". However inhumane treatment was defined as a crime against humanity in the 2003 Criminal Code of Montenegro<sup>31</sup> In any event, Amnesty International reminds the EC of the fact that if internal law does not impose a penalty for an act which constitutes a crime under international law, that does not relieve the person who committed the act from responsibility under international law.<sup>32</sup>

This was the first final verdict to have been reached in proceedings for crimes under international law; it leaves the victims without access to an effective remedy. <sup>33</sup> The majority of the expelled Bosniak families have yet to return to Bukovica.

### KALUDJERSKI LAZ<sup>34</sup>

The retrial of seven members of the Yugoslav Army indicted for the murder in 1999 of Kosovo Albanians, including a woman aged 80 and a child, in Kaludjeruski Laz, opened in September 2012, four years after the start of proceedings. In November 2012, defendant Predrag Strugar was released on bail; the other defendants had been released after three years in custody in August 2011.

Amnesty International urges the EC to more closely monitor proceedings for war crimes in Montenegro, with a view to ensuring that:

- Proceedings in war crimes cases are conducted impartially and in accordance with international law and standards for fair trial;
- Courts respect the provisions of international humanitarian law and take note of the jurisprudence of the International Criminal Tribunal for the former Yugoslavia;
- All victims of alleged war crimes perpetrated by members of the former state of the Socialist Federal Republic of Yugoslavia and its successors (of which Montenegro remained a part until 2006) are guaranteed access to justice, truth and reparation.

# DISCRIMINATION: THE RIGHTS OF ROMA, ASHKALI AND EGYPTIANS DISPLACED FROM KOSOVO

Montenegro was required by the Commission in 2010 to “*guarantee the legal status of displaced persons, in particular Roma, Ashkali and Egyptians, and ensure respect for their rights. This will include the adoption and implementation of a sustainable strategy for the closure of the Konik camp*”.<sup>35</sup>

*“The situation of the displaced persons living in Montenegro is improving but not yet entirely satisfactory. Additional measures and legal adjustments are needed in several sectors, to ensure full access to economic and social rights for both foreigners with permanent residence and for displaced persons. The situation in the Konik area remains a matter of concern: a plan to change the Konik area was adopted in February 2012, but the capacity within the administration to effectively implement projects on this scale is poor. A Law on social housing remains to be adopted”.*<sup>36</sup>

Amnesty International is deeply concerned at the lack of progress in this respect by the Montenegrin authorities and in particular what amounts to a dereliction of duty with regard to agreements with the EC, and international standards with regard to the right to adequate housing and non-discrimination.

In July 2011, the government adopted the 2011–2015 Strategy for Durable Solutions of Issues regarding Displaced and Internally Displaced Persons in Montenegro, with Special Emphasis on the Konik Area. An action plan agreed with the EU prioritized the phased demolition of the Konik camps in Podgorica, and the phased provision of social housing for the estimated 1,200 population, the majority of them Roma and Ashkali displaced from Kosovo, living there since 1999.<sup>37</sup> In March 2012, an agreement between Montenegro and the EU, allocation three million euro (€2.5 million from IPA funding; €0.5 million from the Kosovo government) for the first phase of construction between 2012-2014 of 90 apartments and a community centre for families living in the Konik camp, as well as other measures to improve their access to basic rights, including documentation, and assistance with voluntary return.<sup>38</sup> Additional funding, identified through the Sarajevo process, was subsequently identified for an additional 42 apartments for the residents of the Konik camp.

In July 2012, a fire broke out in Konik, which left some 830 Roma and Askalia from Kosovo homeless. The fire also destroyed the camp infrastructure.<sup>39</sup> In the absence of any progress on durable solutions, they were initially provided with tents set up next to the burned-out by the Montenegrin Red Cross, in cooperation with the government's Emergency Situations and Civil Security Sector, and received emergency humanitarian aid, from UNHCR and others. Many people lost all their possessions, including their personal documentation in the fire. The Red Cross provided assistance – including hot meals and psychosocial counselling - until 24 November, funded by international donors.

Despite protests from the community, who did not want tented accommodation, no measures were taken to provide the families with adequate housing. Nor was the housing programme expedited. Instead, they continued to live in tents – through summer temperatures of over 30 degrees Celsius – and the floods and storms of September:

*“In September 2012, heavy rains and storms affected the refugee camp Konik I ... Five tents collapsed completely and all the others were flooded, thereby damaging the personal belongings of the residents. As a result of the flooding, the living conditions in the camp worsened as the previously distributed blankets, mattresses, kitchen utensils, clothes etc. were destroyed by water or were washed away, leaving the population of the camp even worse off than after the fire that happened in July 2012.”<sup>40</sup>*

In August, the government promised to provide 216 containers, “as an interim solution.”<sup>41</sup> During the second half of November, following an international appeal for financial assistance, the government finally provided Konik residents with accommodation in metal containers, which Amnesty International consider do not meet international standards on the adequacy of housing – even on a temporary basis. Construction on the promised housing is reportedly not due to start until September 2013; the community is reportedly expected to live in containers for the next three or four years.<sup>42</sup> Amnesty International considers the government’s response to the Konik fire to be grossly inadequate.

By January 2013, the containers had still not been provided with an electricity supply, although all but 12 of the families had signed the necessary contracts. The Roma had spent the winter, in which temperatures dropped to minus five degrees Celsius on 13 December 2012, without heat, power or lighting. Electricity had not been installed by the end of April.<sup>43</sup>

Finally, Amnesty International is also concerned that measures to ensure that the new housing is not segregated from the majority community, as recommended by the European Commission against Racism and Intolerance (ECRI) in February 2012.<sup>44</sup> Representatives of the Konik community are not included in the planning process or fully consulted on the proposals, in accordance with international standards on resettlement. Yet, as the EC has stated: “Without the active participation of the proposed beneficiaries in Konik camps, the project impact is likely to be minimal”<sup>45</sup>.

## AT RISK OF STATELESSNESS

Under the 2010 agreement with the EU, the government is required to “guarantee the legal status of displaced person[s], in particular Roma, Ashkali and Egyptians, and ensure respect for their rights”, including – but not limited to those at Konik camp.<sup>46</sup> In the absence of statistics segregated by ethnicity, no figures are available for the number of Roma, Ashkali and Egyptians granted the status of foreigner with permanent residence (under a 2009 amendment to the Law on Foreigners).

But by December 2012, according to UNHCR estimates, only 10 per cent of those living in Konik (the largest single settlement of displaced Kosovo Roma, Ashkali and Egyptians) had been granted the status of foreigner.<sup>47</sup>

Amnesty International notes that following a call by the EC and UNHCR, the government agreed in principle to extend the application date to 31 December 2013; yet by April 2013,

according to UNHCR, the deadline had not yet formally been extended, so no further applications could be made. The organization remains concerned that unless far more concerted and concrete measures are taken to overcome the obstacles they face to acquiring the relevant documentation, many Kosovo Roma, Ashkali and Egyptians remain without a durable solution, and at risk of statelessness.

Amnesty International urges the EC to ensure that the government of Montenegro:

- takes every possible measure to ensure that the Konik building programme and associated programme starts without any further delay;
- Draws up plans, in consultation with Kosovo Roma, Ashkali and Egyptians living in the Konik camps, to ensure that the proposal to resettle them in permanent housing is carried out in accordance with international human rights standards, including the UN Guiding Principles on Internal Displacement and the Basic Principles And Guidelines on Development-Based Evictions and Displacement.<sup>48</sup> Any resettlement should be carried out in full consultation with the affected community.
- Takes concerted and proactive measures, including through bilateral agreements with the Kosovo government, and the provision of free legal aid, to ensure that the remaining Kosovo Roma and Ashkali are provided with every assistance in obtaining documentation, including passports, required for them to apply for temporary or permanent residence in Montenegro.



# ENDNOTES

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<sup>1</sup> Commission Staff Working Document, *Montenegro, 2013 Progress Report*, Accompanying The Document Communication From The Commission To The European Parliament And The Council, Enlargement Strategy and Main Challenges 2013-2014, (COM(2013) 700 final), Brussels, 16.10.2013, SWD(2013) 411 final,

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/mn\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf)

<sup>2</sup> [http://ec.europa.eu/enlargement/pdf/montenegro/screening\\_reports/20130218\\_screening\\_report\\_montenegro\\_ch23.pdf](http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch23.pdf), (Screening Report, Chapter 23);

[http://ec.europa.eu/enlargement/pdf/montenegro/screening\\_reports/20130218\\_screening\\_report\\_montenegro\\_ch24.pdf](http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch24.pdf), (Screening Report, Chapter 24);

<sup>3</sup> In this context the organization welcomes the establishment of a coalition of 15 NGOs, aiming to monitor the course of the negotiations in the framework of the negotiation of Chapter 23 Judiciary and Fundamental Rights, and their comprehensive assessment of 278 areas which needed to be addressed by the government, see <http://www.hraction.org/wp-content/uploads/ZAHTJEVI-13-12-2012-FINAL-II-VERZIJA.pdf>

<sup>4</sup> These and other concerns identified by Amnesty International were reflected by the UN Human Rights Council in their latest Periodic Review of Montenegro, see <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MESession15.aspx>

<sup>5</sup> Concerns were also express that the suspect was armed, despite having a previous criminal record.

<sup>6</sup> <http://www.balkaninsight.com/en/article/montenegro-s-journalists-to-form-union>

<sup>7</sup> <http://www.hraction.org/?p=2885>

<sup>8</sup> "Montenegro: Need to investigate any allegations about election irregularities", 28 February 2013, [http://europa.eu/rapid/press-release\\_MEMO-13-157\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-157_en.htm)

<sup>9</sup> On 28 February 2013, the Minister stated that an internal inquiry had not yet been concluded, <http://www.vijesti.me/vijesti/konjevic-moze-se-provjeriti-da-li-su-brisani-podaci-clanak-115963>

<sup>10</sup> The wiretapping allegedly focused on calls to contacts related to allegations of corruption in connection with the privatization of Telekom, and allegations relating to the alleged drug trafficker, Darko Šarić, <http://www.balkaninsight.com/en/article/montenegro-parliament-to-address-concerns-over-journalists-wiretapping>

<sup>11</sup> For these and the proposed introduction of a new criminal offence, on the violation of freedom of expression of sexual orientation and gender identity, see <http://www.hraction.org/?p=2749>.

<sup>12</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/mn\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/mn_rapport_2012_en.pdf), para. 2.3

<sup>13</sup> EC, *Screening Report, Chapter 23*, p. 3.

<sup>14</sup> "Montenegro is a state party to the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court”.

<sup>15</sup> As set out in the Article 11 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly resolution 60/147 of 16 December 2005.

<sup>16</sup> Article 9 of the Constitution provides that international agreements in force are part of the internal legal order of Montenegro and take precedence over domestic legislation, EC, *Screening Report, Chapter 23*, p.9.

<sup>17</sup> EC, *Screening Report, Chapter 24*, p. 7.

<sup>18</sup> For prosecutions at the Tribunal, see Strugar (IT-01-42) "Dubrovnik" , <http://www.icty.org/case/strugar/4>; ; the indictment against Milan Zec withdrawn on 26 July 2002; In 2009, the Montenegrin Supreme State Prosecution Office stated that an investigation had not been opened, as no criminal reports against Montenegrin nationals had been filed by that date (Reply to a request for access to information, HRA archives, [http://www.hrraction.org/wp-content/uploads/war\\_crimes\\_FINAL.pdf](http://www.hrraction.org/wp-content/uploads/war_crimes_FINAL.pdf)).

<sup>19</sup> In 2009, the Dubrovnik county state prosecutor filed indictments (Ref. No. 46/09) against former JNA officers for their failure to prevent violations of the Geneva Conventions, [http://www.hraction.org/wp-content/uploads/war\\_crimes\\_FINAL.pdf](http://www.hraction.org/wp-content/uploads/war_crimes_FINAL.pdf)

<sup>20</sup> See *Amnesty International, FRY: Still Seeking Justice in the Sandžak*, <http://www.amnesty.org/en/library/asset/EUR70/005/2003/en/10647833-d72e-11dd-b0cc-1f0860013475/eur700052003en.pdf>; *Serbia and Montenegro: Legal Loopholes Allow Impunity for Torturers in the Sandžak*, <http://www.amnesty.org/en/library/asset/EUR70/002/2003/en/87535eea-d756-11dd-b024-21932cd2170d/eur700022003en.pdf>

<sup>21</sup> In 2008, in a case lodged in 1998, the Podgorica Basic Court ruled that Mušan Bungur be paid 8,133 Euros compensation for the destruction of his house; the outstanding compensation was paid in 2009.

In March 2010, the Podgorica Basic Court ruled that Montenegro pay 10,000 Euros each to Šaban Rizvanović and his wife Arifa Rizvanović for the physical and mental anguish they suffered at the hands of the Yugoslav Army in Bukovica in 1992, after which the couple fled; they have never returned to Montenegro. In April 2010, the Podgorica Basic Court awarded €1,500 to Zlatija Stovrag, whose husband Himzo committed suicide in 1992, out of fear of the police. In April 2010, Osman Ramović. Zlatija Alema and Amela Bungur filed a civil claim against the Ministry of Defence, and Ministry of Internal Affairs and the Police Directorate for 20,000€ for mental anguish and unlawful imprisonment. In each of these cases, the Superior Court overturned the verdict and ordered a retrial: for further details, see [http://www.hraction.org/wp-content/uploads/war\\_crimes\\_FINAL.pdf](http://www.hraction.org/wp-content/uploads/war_crimes_FINAL.pdf), pp. 15-16.

<sup>22</sup> “Montenegro stated that its legal framework did not comply with Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings and Council Directive 2004/80/EC relating to compensation to crime victims. Montenegro does not have a definition of ‘victim’ in its legislation. Montenegro intends to amend its legislation to introduce this concept and to provide compensation to victims. Training needs to be prepared and delivered to law enforcement and judicial authorities, notably

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on the treatment of victims and the protection of victims' interests", *Screening Report, Chapter 24*, p.8. [http://ec.europa.eu/enlargement/pdf/montenegro/screening\\_reports/20130218\\_screening\\_report\\_montenegro\\_ch24.pdf](http://ec.europa.eu/enlargement/pdf/montenegro/screening_reports/20130218_screening_report_montenegro_ch24.pdf) (page 8)

<sup>23</sup> For further background and the history of these proceedings, see previous Amnesty International submissions.

<sup>24</sup> Branko Bujic, Sreten Glendza, Milorad Šljivančanin, Božidar Stojović, Boško Bojović, Milisav Marković, Radoje Radulović, Duško Bakrač, and Milorad Ivanović - were acquitted (the latter five in their absence).

<sup>25</sup> On 17 February 2012, the Appeal Court had returned the case for retrial, on the basis, "That the armed conflict in the territory of B & H has the character of international armed conflict"; and that the first instance court had applied only those provisions of common Article 3 of the Geneva Conventions which are applicable to non international armed conflict, but failed to take into consideration other provisions of common Article 3 and of Article 2 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

<sup>26</sup> <http://www.pobjeda.me/2013/04/13/apelacioni-sud-17-maja-razmatra-presudu-za-deportacije/>. The acquittal was subsequently upheld by the court in June 2013.

<sup>27</sup> For further background, see previous Amnesty International submissions.

<sup>28</sup> Ivo Gojnic was sentenced to two years' imprisonment, Špiro Lucic and Boro Gligic to three years and Ivo Menzalin was sentenced to four years imprisonment. Amnesty International considered that the sentences failed to reflect the gravity of the crime, and were less than the statutory minimum of five years' imprisonment (and six month's shorter than the in the previous trial). Two other defendants were acquitted. The trial had by then lasted more than five years.

<sup>29</sup> <http://www.balkaninsight.com/en/article/soldiers-claim-innocence-at-montenegro-prison-camp-retrial>

<sup>30</sup> <http://www.balkaninsight.com/en/article/croats-protest-over-montenegro-s-morinj-trial>

<sup>31</sup> "Crimes against humanity, Article 427: Anyone who in breaching of the rules of international law, as a part of a wider or systematic attack against civil population, orders: murder, placing entire population or its part under such living conditions so as to bring about their complete or partial extermination; enslavement; forced displacement; torture; rape; coercion to prostitution; coercion to pregnancy or sterilization with a view to changing the ethnic composition of population; persecution or expulsion on political, religious, racial, national, ethnic, cultural, sexual or any other grounds; detention or abduction of persons without disclosing information on it so as to deprive them of legal assistance; oppression of a racial group or establishment of domination of one such group over another; **or any other similar inhuman acts intended to cause serious suffering or seriously harm health**; or who commits one of the crimes listed above, shall be liable to imprisonment for a minimum term of five years or a prison sentence of thirty years". <http://legislationline.org/documents/section/criminal-codes/country/57>

<sup>32</sup> "Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, 1950", International Law Commission, Yearbook of the International Law Commission, 1950, Vol. II, pp. 374-378".

<sup>33</sup>The defendants been indicted for war crimes committed in 1992 in the village of Bukovica, near Pljevlja, where about 200 Muslim families were expelled from the village and surrounding area, and six Muslims were killed. Charges included the inhuman treatment of Bosniak and Muslim civilians, causing

severe suffering, endangering their health and bodily integrity.

<sup>34</sup> For background and history of proceedings, see previous Amnesty International submissions.

<sup>35</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/mn\\_opinion\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mn_opinion_2010_en.pdf), page 11.

<sup>36</sup> EC, *Screening Report, Chapter 23*, p. 31.

<sup>37</sup> See Table 5,

[http://www.un.org.me/uploads/Documents/2013/ENG\\_The%20Report%20on%20the%20Legal%20Status%20of%20Persons%20Living%20in%20the%20Area%20of%20the%20Konik%20Camp%20with%20Recommendation%20for%20its%20Improvement.pdf](http://www.un.org.me/uploads/Documents/2013/ENG_The%20Report%20on%20the%20Legal%20Status%20of%20Persons%20Living%20in%20the%20Area%20of%20the%20Konik%20Camp%20with%20Recommendation%20for%20its%20Improvement.pdf), November 2012.

<sup>38</sup> *Standard Summary Project Fiche – IPA centralised programmes Project fiche: 2*

[http://ec.europa.eu/enlargement/pdf/montenegro/ipa/2011/pf\\_2\\_ipa\\_2011\\_konik.pdf](http://ec.europa.eu/enlargement/pdf/montenegro/ipa/2011/pf_2_ipa_2011_konik.pdf)

<sup>39</sup> No adequate fire precautions had been introduced by the authorities following a fire in three barracks at Konik in February 2011, which had left 17 families (86 people homeless).

<sup>40</sup> <http://reliefweb.int/report/montenegro/montenegro-floods-refugee-camp-konik-dref-operation-mdrme006-final-report>

<sup>41</sup> Email from Sabahudin Delić, Deputy Minister for Minority Rights, to Amnesty International, 31 August 2012.

<sup>42</sup> "There is a plan for residential buildings to be built as part of the so called "Sarajevo Process" Regional Programme, with significant EU funding. It is expected that the program will be completed in the next 3-4 years. Until this permanent solution is in place, Konik 1 residents are in need of a mid-term solution.", [http://www.romadecade.org/assist\\_konik\\_refugees\\_aug\\_2012](http://www.romadecade.org/assist_konik_refugees_aug_2012)

<sup>43</sup> <http://portalanalitika.me/drustvo/vijesti/87264-uskoro-struja-u-kampu-konik.html>, [http://www.epcg.co.me/08\\_01.html](http://www.epcg.co.me/08_01.html)

<sup>44</sup> ECRI Report on Montenegro, (4th monitoring cycle), 21 February 2012, para. 63

<sup>45</sup> *Standard Summary Project Fiche – IPA centralised programmes Project fiche: 2*, para 3.2

<sup>46</sup> [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/mn\\_opinion\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/mn_opinion_2010_en.pdf), page 11.

<sup>47</sup> Ministry of Interior data, provided to UNHCR. By the end of 2012 only 57 percent of the 9,461 refugees (3,935 from Croatia and BiH with DP status and 5,526 from Kosovo with IDP status) had applied for the status of foreigner. By December 2012, 2,941 people from Kosovo had been granted the status of foreigner

<sup>48</sup> <http://www2.ohchr.org/english/issues/idp/standards.htm>; [www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf)



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