



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

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COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)*
OF THE 848th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 11 November 2008, at 10 a.m.

Chairperson: Mr. GROSSMAN

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.848/Add.1.

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 5) (*continued*)

Initial report of Montenegro (CAT/C/MNE/1; CAT/C/MNE/Q/1;
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1. *At the invitation of the Chairperson, Mr. Radovic, Mr. Vukanic, Mr. Mihaljevic, Mr. Krsmanovic, Mr. Djonaj, Ms. Kotlica, Ms. Cerovic, Ms. Jovovic et Ms. Boskovic (Montenegro) took places at the Committee table.*

2. Mr. RADOVIC (Montenegro) said that his delegation welcomed its first meeting with the Committee against Torture and would do it utmost to assist the Committee, by way of an open and constructive dialogue, in understanding the actual human rights situation in Montenegro. The report submitted to the Committee was in fact the part on Montenegro contained in the initial report of the former Serbia and Montenegro. All of the relevant authorities had nonetheless participated in its preparation.

3. After acquiring independence in June 2006, Montenegro had become a party to the Convention on 23 October 2006, as successor to the Socialist Federal Republic of Yugoslavia, which had ratified it on 10 September 1991. The new Constitution adopted on 19 October 2007 was founded on respect for and protection of human rights and freedoms, as well as on other principles enshrined in the instruments of the United Nations, the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE), inter alia. It thus strengthened protection against torture and other cruel, inhuman or degrading treatment or punishment. Some of its provisions were moreover specifically directed at respect for human dignity in matters of biology and medicine, security of person and the inviolability of physical and mental integrity. The Convention clearly provided that no one could be subjected to torture or to other inhuman or degrading punishment or treatment or be held in slavery or servitude. It prohibited all forms of violence or inhuman or degrading treatment against persons deprived of liberty, as well as the extraction of confessions. Lastly, the rights to life, dignity and legal aid were included among the rights that could not be restricted in any circumstances, however exceptional.

4. Montenegro had also amended its legislation to cover all important aspects of the prevention of torture. The Criminal Code of 2003 punished torture and violence as specific offences in the category of abuses of the rights and freedoms of citizens. In 2005, the acts constituting those criminal offences had been broadened and clarified and the applicable punishments increased; torture was now punished with imprisonment of six months to five years, or of one to eight years if committed during the course of official duties, whereas previously the maximum penalty had been three years. Violence was punishable with imprisonment of between three months and three years. Certain forms of torture and violence were also included in the category of crimes against humanity or other offences provided for under international law. The current Code of Criminal Procedure prohibited the use of force against a person deprived of liberty and the extortion of confessions or statements from an accused person or anyone else involved in the proceedings. It also provided that no court decision could be based on confessions extracted by force, torture or inhuman treatment, nor on other evidence that, by virtue of its nature or the manner in which it had been obtained, violated national and

international standards. The draft Montenegrin code of criminal procedure, which was in the process of elaboration, would include those prohibitions and further expand the role of the prosecutor, who would in particular be assigned the function of investigation, previously vested in the courts, in order to improve the conduct of investigations into cases of violence and torture.

5. Other laws adopted between 2003 and 2005 also contained provisions to prevent and combat torture and ill-treatment, such as the Criminal Code Amendment Act, the Ombudsman Act, the Mentally Disordered Patients Act, which protected the rights of such patients, and the Police Act. Moreover, in the knowledge that effective action against torture included preventive measures as well as punishment, Montenegro had been careful to establish mechanisms for monitoring the treatment of detainees. It was also aware of the need to sensitize all public officials on the subject of human rights. Professional training for those personnel categories had therefore been compulsory since 2005.

6. Reform of the various components of the State system was achieved through strategic planning. The 2007-2012 legal reform strategy, for instance, set specific objectives for improving the prison system, particularly in the areas of monitoring the enforcement of sentences, testing, parole, segregation of certain categories of prisoner, improvement of prison conditions and treatment of detainees, strengthening of security, and ongoing professional training for prison personnel. The strategy was designed to enhance the independence and effectiveness of justice. Other strategies were dedicated to the field of mental health, social welfare, protection of children and disabled persons, minorities and the social integration of marginalized groups, such as the Roma.

7. In 2004, when Montenegro was still part of Serbia and Montenegro, the Committee for the Prevention of Torture (CPT) of the Council of Europe had made a field visit to the country, following which it had, in agreement with the country authorities, published a report and made recommendations. Mindful of fulfilling its international obligations, Montenegro had promptly adopted concrete measures as follow-up to those recommendations, an approach commended by the CPT First Vice-President, Ms. Kicker, following the first periodic visit of CPT to post-independent Montenegro in September 2008. New recommendations had been made on the conclusion of that visit and the Government had consequently decided to create an intersectoral working group responsible for their implementation within the set time periods. The working group was specifically tasked with identifying activities to be carried out by the various authorities and elaborating a plan of action for the prevention of torture.

8. Montenegro was committed to fulfilling its obligations under the Convention, in particular that of taking legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction. Consequently, a project aimed at strengthening protection against torture for detainees, carried out jointly by the OSCE Mission to Montenegro and the law enforcement authorities, had culminated in the elaboration of a bill on ratification of the Optional Protocol to the Convention against Torture. Already approved by the Government, the bill was to be adopted by the Parliament before the end of 2008. As soon as it was adopted, Montenegro would establish the national preventive mechanism required under that instrument. The intention was to confer that function on the Ombudsman, subject to the necessary legislative amendments. Furthermore, pursuant to the Stabilization

and Association Agreement, the Government had undertaken the progressive harmonization of its laws with those of the European Union, meaning in particular that international instruments ratified by Montenegro would be incorporated into domestic law and could be directly invoked before the national courts. In accordance with the Constitution of 2007, in the event of contradiction, international provisions took precedence over those in the domestic legislation.

9. Since independence, Montenegro had adopted a wide assortment of measures to strengthen protection against torture. The new Constitution had depoliticized the judiciary, the police and the authorities responsible for combating torture. It had also introduced the institution of the ombudsman. In addition, the Constitutional Court was now able to give decisions in final appeals on violations of rights or freedoms enshrined in the Constitution. A definition of torture consistent with international standards had been included in the Criminal Code and, under the Code of Criminal Procedure, State organs were required to report any cases involving acts of torture. The range of alternative punishments to imprisonment had been extended. New laws had been adopted to prevent torture, such as the International Judicial Assistance Act, which prohibited the extradition of a person to a country where he or she was in danger of being tortured, the Police Act, pursuant to which the monitoring of police was threefold (internal, parliamentary and by the people), and the Mentally Disordered Patients Act, which guaranteed specialist treatment for such patients. Measures had also been taken to guarantee respect for the rights of convicted persons.

10. Other new laws were worthy of mention, including the Public Servants Act, the Judicial Personnel Act and the Code of Civil Procedure, the provisions of which could be invoked by victims of torture in order to obtain compensation. A bill on domestic violence and another on access of suspects to free legal assistance were currently being drafted. The Parliament had also established a commission responsible for security policies and a council composed of civil-society representatives, which was tasked with monitoring police activities. The Montenegrin Government enjoyed an excellent relationship with NGOs and sought increasingly to involve them in its work.

11. A plan for reform of the judicial system aimed at strengthening the independence and autonomy of the judiciary was being implemented. In recent years, moreover, prison capacity had increased substantially and no complaints of torture had been lodged by any detainee serving sentence in a prison institution. Lastly, pending establishment of the national preventive mechanism already mentioned, the priority of Montenegrin courts was to consider all cases of torture still outstanding.

12. Mr. MARIÑO MENÉNDEZ (Country Rapporteur), recalling that the State party had gained independence in 2006 and become a Member of the United Nations that same year, welcomed the fact that, as successor State, Montenegro continued to be a party to a wide range of international human rights instruments to which the former State union of Serbia and Montenegro had acceded. He also welcomed the amendments made to its domestic laws in order to adapt them to the country's new situation, endowing itself with a proper Constitution in 2006 and in particular adopting various laws relating to non-nationals, including the Asylum Act, which had entered into force in January 2007, the Nationality Act and the Aliens' Labour Act, both dated 2008. Various bills were being prepared, including a bill that would prohibit the expulsion of a person to a State where he was at risk of torture. In that

regard, the delegation might explain whether that bill would constitute a supplement to the Asylum Act or stand as a law in its own right.

13. Concerning the international instruments ratified by the State party, he noted that Montenegro had acceded to the Rome Statute of the International Criminal Court, to the European Convention on Human Rights, with retroactive effect, to the Framework Convention for the Protection of National Minorities and to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Lastly, he welcomed the submission of the initial report and written replies, as well as the substantial amount of additional information provided orally by the delegation.

14. With regard to article 1 of the Convention, he said that one of the elements in the definition of torture set forth in that article, namely the consent or acquiescence of a public official, was not mentioned in the definition appearing in article 167 of the Criminal Code. Also noting that mental torture was not explicitly mentioned in the Code, he wished to know whether that type of torture was nonetheless implicitly covered by that definition. Furthermore, given that in the event of conflict between an international instrument to which Montenegro was a party and domestic law, the former took precedence in accordance with article 9 of the Constitution, he asked whether Montenegrin courts could directly apply the provisions of article 1 of the Convention in order to make up for the disparities in article 167 of the Criminal Code.

15. Concerning articles 2 and 4 of the Convention, he questioned the fact that the Constitution did not explicitly guarantee the principle of *habeas corpus*. He also wished to know whether domestic law protected the right of any suspect arrested by the police to have access to a doctor of his choosing and whether there were any forensic institutes independent of the executive. Although access to a lawyer was guaranteed by law, it appeared in practice that suspects were not able to talk privately with counsel from the time when first placed in police custody. The delegation should clarify whether the new Code of Criminal Procedure contained provisions under which persons deprived of liberty had the right to talk in private with their lawyer by explaining whether that right was in some cases subject to restrictions, whether standards for the conduct of police interrogations had been adopted and whether State security organs had the right to interrogate suspects before they appeared before a judge.

16. The Committee would like to know how the role of the prosecutor was defined in the new State Prosecutor Act adopted in June 2008, whether he alone was authorized to issue arrest warrants and order the pretrial detention of a suspect and what his relationship was with the judge tasked with following up the situation of suspects held in pretrial detention. The delegation had indicated that the Montenegrin Government had a good relationship with local non-governmental organizations (NGOs), several of which were active in the field of human rights. It was therefore surprising that no Montenegrin civil-society organization had followed the usual practice of coming to Geneva to meet privately with the Committee before it considered the State party's report. Explanations on that score would therefore be welcome.

17. He also wished to know whether any complaints of forced displacement lodged by the Roma yet been referred to the Montenegrin courts and, if so, what follow-up there had been and what measures had been taken to protect the persons concerned. He cited the case of *Hajrizi Dzemajl et al v. Serbia and Montenegro*

(A/58/44), a communication considered by the Committee in 2002 with regard to which it had concluded that the expulsion and forced displacement of the complainants, a group of Roma, constituted a violation of article 16 of the Convention. Further recalling that the Roma were particularly vulnerable to that type of violation, he wished to know what policies the Montenegrin Government had put in place to protect the rights of that population group. Concerning the strengthening of the independence of the judiciary, he would like to know whether judges were appointed for life, whether they were protected against external pressure and whether they were able to carry out their work independently when examining a case of torture in which charges were made against a State official.

18. The new Asylum Act did not explicitly guarantee the principle of non-refoulement enshrined in article 3 of the Convention. It would therefore be helpful if the delegation could comment on allegations that a group of persons from Kosovo, probably Roma, were likely to be returned there at any moment. In addition, the status of certain categories of displaced persons, including Bosnians and Croatians, was ill defined; they were not listed with the civil registries and had difficulties in obtaining official recognition of their nationalities. Details would be welcome concerning the effectiveness of measures taken in the State party to strengthen the protection of displaced persons and the possibilities of naturalization open to them. Lastly, it would be useful to know whether Montenegro had concluded an agreement with Serbia on the return of persons of or presumed to be of Serbian origin.

19. With regard to articles 6, 7 and 8 of the Convention, he wished to know whether the State party's courts were competent to try a person suspected of having committed acts of torture abroad if that person was in Montenegrin territory and the Montenegrin authorities did not extradite him to the country concerned. He noted that Montenegro was still bound by a bilateral agreement concluded in 2007 with the United States, pursuant to which it was under obligation not to surrender to the International Criminal Tribunal for the Former Yugoslavia (ICTY) any suspect of United States nationality who was in Montenegrin territory. Did the State party intend to continue applying that agreement or to terminate it, bearing in mind that the European Union strongly disapproved of such agreements, which considerably restricted ICTY's flexibility.

20. Concerning the problem of the impunity of perpetrators of acts of torture, he noted that in February 2006, six former members of the police force had been accused of being responsible for the disappearance in 1992 of 83 Muslim civilians from Bosnia and that, according to certain sources, no progress had been made in the investigation into the matter. He would therefore like to have information on the status of its progress. He would additionally like to know the outcome of the investigation into the case of 17 Albanians, including 3 who were United States nationals, who had been arrested in Podgorica as part of an anti-terrorist operation dubbed the "Eagle's Flight" and placed in a pretrial detention centre where they had been tortured by police officers. Information would also be welcome on the progress achieved in the investigation opened following the assassination in 2004 of the editor-in-chief of an opposition newspaper, Dusko Jovanovic. In general, it would be interesting to know how cases of disappearance dating back to before the proclamation of Montenegro's independence were handled.

21. Lastly, it was stated in the written replies that the State party had decided to confer upon the Ombudsman the role of national preventive mechanism. He therefore

he wished to know whether measures had been taken to strengthen the independence of the Ombudsman and in particular whether he had been provided with the budgetary resources and personnel needed to fulfil his tasks, especially visits to places of detention, and whether his conclusions and reports could be made public.

22. Ms. KLEOPAS (Alternate Country Rapporteur) welcomed the legislative measures taken by Montenegro, in particular the ratification of the Optional Protocol to the Convention and the adoption of the Domestic Violence Act. She equally welcomed the implementation of a strategy for strengthening justice, the weakness of which had in the past constituted a substantial problem for the country and prevented it from effectively stamping out torture. With regard to article 10 of the Convention, it was very encouraging that the State was organizing workshops and providing training. She wished to know whether, in addition to judges and prosecutors, such training was provided for all of the personnel categories listed in article 10 of the Convention, and at every level, and whether it also covered interrogation rules, instructions, methods and practices, the detection of signs of torture or ill-treatment, the reporting of cases of torture, and the treatment of detainees who were vulnerable owing to their age, sex or a disability and of other persons who were likely to be victims of discrimination. It would also be useful to know whether that training was systematically provided on a regular basis, whether there were any training programmes for medical personnel responsible for identifying and attesting to cases of torture and for helping victims to readjust, and whether a procedure for assessing the effectiveness of such training had been established.

23. Concerning the situation of the mentally disordered, the measures taken by Montenegro, in particular the enactment of the Mentally Ill Patients Act and the establishment of a complaints procedure, were extremely positive. There appeared to be a gap, however, between the provisions of the law and their actual implementation, a question that had also been broached by Mr. Hammarberg, Council of Europe Commissioner for Human Rights, who had been to Montenegro in June 2006. He had visited the only psychiatric hospital in Montenegro, Dobrota hospital, and stated in his report that some of the CPT recommendations had not yet been put into effect, in particular the installation of heating systems in the rooms of some patients and of alarms for ward personnel. He had also noted that there was apparently no general policy on restrictions and that patients had very little contact with their families. One patient who had been in the hospital since 1953 had never been visited by his family. In another case, a young 16-year-old girl with a mild disability had, at the time of Mr. Hammarberg's visit, been in the closed women's ward: the social services had apparently returned her file without having found a satisfactory solution and, as a last resort, the authorities had sent her to Dobrota, which her condition did not warrant. Her case underscored the urgent need for the Government to elaborate a new social policy guaranteeing the provision of care appropriate to each case. The delegation was asked to comment on Mr. Hammarberg's observations.

24. All detainees must receive timely and adequate health care, including mental health care; in that regard, the delegation should state whether detention centres had a resident doctor or a doctor who was close enough for a rapid response in cases of emergency. CPT had also been concerned that persons held in police custody generally received nothing to eat, primarily owing to lack of budget allocations, unless a family member or friend brought them food. She had noted that those persons were now assured of meals but wished to know how the meals service was

provided and whether it was free. Also noting that the prison population was increasing, she requested information on the measures taken to remedy the problem of prison overcrowding and to separate minors from adults, convicted persons from persons awaiting trial and women from men. It transpired from Mr. Hammarberg's report that conditions had been considerably improved in the Montenegrin prison system some years earlier and that they had been brought into line with European standards. Some problems relating to the infrastructure and material conditions in certain institutions and sectors persisted, in particular overcrowding in pretrial detention centres, the lack of hygiene products and the difficulty of organizing regular family visits. Mr. Hammarberg moreover indicated that detainees complained of the lack of opportunity for outdoor exercise. The establishment of the post of an ombudsman charged with monitoring the situation in detention centres and examining detainees' complaints constituted significant progress in that regard. Nevertheless, it was apparently another area in which there was a disparity between law and practice, Mr. Hammarberg having noted in his report that the Ombudsman did not visit prisons on a routine basis but only at the request of detainees.

25. With regard to articles 12 and 13 of the Convention, the Committee believed that it was vital to proceed to a prompt investigation of a case of torture in order to ensure the victim would cease to be subjected to torture or ill-treatment and that physical signs of torture did not disappear before they were placed on record. It should be recalled that, pursuant to article 12 of the Convention, such investigations must be carried out, even in the absence of any complaint about the act of torture. In that regard, the Committee believed that information provided by NGOs could provide cause for an investigation. In the case of Montenegro, it was regularly alleged that the police committed abuses when making arrests and that such abuses were not investigated. The organization Youth Initiative for Human Rights, for example, had listed 23 cases of that nature during September and October 2008 alone. For his part, Mr. Hammarberg had stated in his report that a climate of impunity continued to surround a number of controversial cases involving assassination, war crimes, police blunders and the harassment of and threats against human rights defenders and other representatives of civil society. In particular, he had stressed that the authorities had either not investigated or prosecuted or had not promptly and effectively tried some of the most shocking cases, such as the assassination of Dusko Jovanovic, former editor-in-chief of the daily newspaper *Dan*, the harassment of writer Jevrem Brkovic and the assassination of his bodyguard, repeated death threats against the human rights defender Aleksandar Zekovic, the serious threats against Mr. Mitrovic, president of an NGO, the case of the former employee of the Ministry of the Interior Suad Muratbasic, and the fire at a Roma camp at Danilovgrad in 1995. The delegation was asked to comment on those matters.

26. Turning to the question of impunity and referring to the pending war crime cases on which information had been provided by the State party, she emphasized that most of the crime incidents dated back to the 1990s but that little progress had been made nonetheless. Concerning the case of the 83 Bosnian Muslim refugees arrested by the police on Montenegrin territory and forcibly returned to Bosnia-Herzegovina, despite the accumulation of irrefutable evidence, only five junior police officers had been investigated, no charges had been laid against those who had actually taken the decisions and the five suspects had still not been indicted. Other war crime cases that had had a wide impact - the military attacks on

Dubrovnik, the ill-treatment and acts of torture inflicted on civilians and war prisoners in Morinj camp, the ethnic cleansing of Muslims in the village of Bukovica and the execution of Albanian refugees from Kosovo by the Yugoslav army during the Kosovo conflict - had not been followed up or remained at the investigation stage. Decisions concerning the possibility of bringing prosecutions for those crimes and how to achieve that were long overdue. The strategy adopted by Montenegro for strengthening the independence of the judiciary and expediting proceedings raised the hope that the problem of impunity could be resolved and outstanding cases dealt with. Furthermore, with reference to the activities of the Working Group on Enforced or Involuntary Disappearances, she would like to know what the Montenegrin Government's replies were concerning the 15 unresolved cases of enforced disappearance that had been drawn to its attention.

27. With regard to the implementation of article 13 of the Convention, she was not certain that the State party guaranteed to all torture victims the right to lodge a complaint with an independent mechanism. Indeed, it was her understanding that the Ombudsman was not competent to conduct investigations and bring prosecutions. It was stated in Mr. Hammarberg's report that because torture victims had no access to their medical files, or had access only on the authorization of the investigating judge, they were unable to substantiate their complaints. The right of access by all persons - including those in detention or hospital - to their medical records was fundamental. Furthermore, complaints against the police were made to the Ministry of the Interior, which could not be categorized as an independent organ. Lastly, it would be useful to have a progress report concerning the bill on the protection of victims referred to in the State party's report.

28. It was regrettable that the State party had provided no statistical data on compensation paid to victims of torture or ill-treatment. It was furthermore clear from the report that the State did not compensate victims for such acts. When compensation was awarded to a victim of acts of torture and their perpetrator was not in a position to pay it, the victim was deprived of that compensation. The obligation to pay compensation to victims and provide them with the resources needed for their rehabilitation, however, lay with the State party and not with the perpetrator of the crime.

29. With regard to the implementation of article 15 of the Convention, the Montenegro Code of Criminal Procedure provided that a court decision could not be based on confessions or any other statement obtained through torture. In the Committee's view, a judge should not even be informed of such confessions. Concerning the protection of minorities, she welcomed the provisions of the new Constitution prohibiting discrimination on any basis, as well as the positive actions undertaken, and would like to know what stage had been reached in the process of enacting the law on non-discrimination. Despite such progress, it appeared that minorities, in particular the Roma, were still victims of discrimination. In that regard, she referred to Mr. Hammarberg's report, which highlighted the extremely difficult situation of the Roma.

30. The data provided by Montenegro on human trafficking related only to 2002 and it was therefore impossible to determine whether the number of cases of trafficking was rising or falling. She believed, however, that it was a growing phenomenon, in which regard she recalled that the Committee against Torture, in common with CPT and various other organs, had recommended to the State party

that it should take strict measures to combat trafficking and punish those who engaged in it. Lastly, on the subject of corporal punishment, the abolition of which was advocated by the Committee in all contexts, the State party was asked to clarify whether there was a law prohibiting that form of punishment.

31. Mr. GAYE welcomed the considerable efforts by the State party since its accession to international sovereignty to lay the foundations for the rule of law. Concerning the linkage between international and domestic law, he had noted that the Montenegrin Constitution accorded precedence to the former over the latter. As he understood it, the definition of torture in Montenegro's domestic law was narrower than that set forth in the Convention. It therefore appeared that a Montenegrin citizen would be entirely within his rights to invoke the definition of torture set forth in the Convention in lodging a complaint with the domestic courts concerning acts of torture not covered by the definition of torture given in Montenegrin legislation. What penalty was applicable in such cases, given that international conventions did not prescribe penalties and that no person could be punished for an offence that was not covered by the law at the time when the crime with which he was charged had been committed? By the same token, he understood that Montenegro's domestic law made no provision for *habeas corpus* as a procedural remedy; similarly taking into account the primacy of international law in that case, a Montenegrin citizen could apparently seek to benefit from that remedy, which was provided for in some of the conventions to which Montenegro had acceded. It would also be helpful to know if the State party's legislation made provision for exceptions, what they were and what their impact was on the application of the Convention. It was also important to know whether evidence obtained by torture had in fact already been deemed inadmissible by any court and whether any rulings had already been set aside on the ground that confessions obtained by torture had been admitted as evidence. Lastly, he shared the concerns of the Rapporteurs with regard to the independence of the courts in Montenegro.

32. Ms. BELMIR welcomed the efforts of the State party to reform its domestic law. With regard to the codification of Montenegro's criminal legislation, she wondered to what extent the new Code of Criminal Procedure would genuinely stand apart from the former Code and whether, in order to ensure the harmonization needed to move from one system to another, parts of the former Code would not continue to apply, in which case Montenegro would present somewhat of a special case when it wished integrate European Community law into its own legal system. She also referred to the ruling in which, on 8 July 2004, the Constitutional Court of Serbia had declared unconstitutional certain measures taken by the Republic of Serbia and Montenegro during the state of emergency, measures that had derogated from the International Covenant on Civil and Political Rights; it would be useful to know whether Montenegro, which had at the time belonged to the same State union, felt concerned by the impact of that ruling on Serbia.

33. It would be helpful if the State party could provide details of the conditions for joining the judiciary and indicate whether all minorities were in fact eligible. Information on the balance of power between judges and prosecutors would also be welcome. The delegation had in fact inferred that the new Code of Criminal Procedure would significantly strengthen the powers of prosecutors in relation to those of judges. Apart from the fact that the principle of the independence of the courts did not allow prosecutors to have excessive powers in relation to those of other judges, European Community law provided for a certain balance between the

respective powers of the bench, prosecutors and examining judges. The delegation should therefore explain why Montenegro intended to vest such extensive powers in prosecutors. Lastly, she welcomed the State party's concerted efforts to address the question of displaced persons and refugees. Nevertheless, the status of refugees and of residents was still only loosely defined. The State party should take advantage of the fact that it had undertaken reforms to be more specific about such matters, particularly since the jurisprudence of the European Court elaborated rules on the subject that favoured the applicability of principles enshrined by international instruments, in particular the Convention against Torture.

34. Mr. KOVALEV joined the other members of the Committee in underlining the seriousness of the enforced disappearance of 83 Bosnian civilians expelled from Montenegro to the region under the Bosnian Serb control of Bosnia-Herzegovina. He asked whether Montenegro had signed and ratified the International Convention for the Protection of All Persons from Enforced Disappearance and further wished to know how the authorities intended to proceed to ensure that the State prosecutor brought a criminal prosecution against all those responsible and to end the impunity surrounding enforced disappearances.

35. World Bank data on Serbia and Montenegro indicated that 77 per cent of disabled persons living in the country were extremely poor and that only 13 per cent of them had access to employment. The Montenegrin Government had adopted a poverty-reduction strategy in the context of which funds were allocated for the full integration of disabled persons into social and political life. What legal and practical measures did the Government plan to take in order to achieve that objective? Had it considered the possibility of signing and ratifying the International Convention on the Rights of Persons with Disabilities?

36. Ms. GAER welcomed the fact that compensation had been paid in the *Ristic* and *Danilovgrad* cases. She wondered if, in addition to the enforcement of criminal rulings, other opportunities were available for victims of torture to obtain compensation through civil proceedings or other mechanisms. Concerned by the numerous allegations of impunity and corruption, she would like the delegation to review the cases mentioned in paragraph 32 of Mr. Hammarberg's report, which raised the problem of lack of effective investigation. In particular, she requested detailed information on the allegations concerning the beating of prisoners in Spuz prison by special units of the Ministry of Interior in September 2005. More generally, she wondered whether there existed an independent and efficient police complaint mechanism. According to information available to the Committee, over 250 disciplinary proceedings had been brought against police officers between 2000 and 2002, but there were no details about how many were connected with acts of torture. It would be useful to know whether immediate measures, such as suspension, were taken against officers suspected of having committed acts of torture and whether they could be criminally prosecuted if their responsibility was proven. It would also be interesting to know the delegation's view of the relationship between the police and the State prosecutor, which could impede investigations. Lastly, what measures had been adopted in prisons to combat sexual abuse, whether committed by detainees or by prison personnel?

37. Ms. SVEAASS asked whether the lack of data on compensation awarded to victims of torture or cruel, inhuman or degrading treatment in Montenegro's written replies was because there were no statistics or because there had been no actual

cases in which compensation had been paid or other forms of compensation awarded. She also asked about possible rehabilitation programmes for refugees, asylum-seekers and internally displaced persons who were victims of torture. With regard to the Roma, she would like to have detailed information concerning the implementation of the Rights and Freedoms of National Minorities Act and its linkages with the Constitution.

38. The CHAIRPERSON asked whether the Convention against Torture was directly applicable in the domestic system. In other words, could individuals directly invoke its provisions before the courts? Emphasizing the need to incorporate into domestic legislation all of the elements of the definition of torture set forth in the Convention, he asked whether pain or suffering inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity pertained to the crime of torture in Montenegrin legislation and whether the latter contained provisions in accordance with which the order of a superior or a public authority could not be invoked as a justification for torture. Lastly, were acts of torture time-barred?

39. It would be interesting to know at what point the protection offered by the Convention applied to persons placed in State custody. Did all detainees, regardless of their legal status, have access to a lawyer and had they the right to correspond and communicate with their families and so on? In addition, what were the rules and practice concerning the gathering of evidence on torture and what was the required level of proof? It would also be useful if the delegation could provide the Committee with copies of all its current extradition agreements with other countries, as well as a list of persons expelled since Montenegro's independence and of the countries to which they had been sent.

40. According to the Committee's information, the Roma continued to be subjected to wrongful arrest, unlawful detention, violence and acts of torture at the hands of the police. In particular, the Youth Initiative for Human Rights had reported 13 cases of torture committed in the past five months. Had that information been verified and had the reported acts given rise to investigations?

41. The term "national minorities" had been replaced in the new Constitution by that of "national minority communities". It would be interesting to know whether that new terminology reflected a new concept. The new Constitution also provided for positive action in favour of minorities in order to improve their representation in the national and local administration. How was that provision to be translated into practice?

42. Lastly, what were the Government plans for juvenile justice, given that special juvenile courts were still non-existent? He wished to know what remedies were available in cases of violence against children in the family and what measures had been taken to protect women who had lodged complaints of domestic violence. Statistics on that subject would be useful.

43. Mr. RADOVIC (Montenegro) thanked the Committee members for their comments and words of encouragement. The delegation had taken note of the various questions asked and would endeavour to provide the fullest possible replies.

44. *The Montenegrin delegation withdrew.*

The first part (public) of the meeting rose at 12.30 p.m.