



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

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Committee against Torture

**Information received from Montenegro on follow-
up to the concluding observations on its third
periodic report***

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* The present document is being issued without formal editing.



Information on addressing recommendations referred to in paragraphs 15, 19 and 23 of the Concluding Observations on the 3rd Periodic Report on Montenegro of 13 May 2022

1. The state of Montenegro extends gratitude to the Committee against Torture for the comprehensive work and observations on the 3rd Periodic Report of Montenegro, adopted by the Committee at the 1953th session held on 10 May 2022 (CAT/C/MNE/CO/3).
2. The state of Montenegro is honoured to submit information on addressing recommendations given in paragraphs 15, 19 and 23 of the Concluding Observations on the 3rd Periodic Report of Montenegro of 13 May 2022.

Conditions of detention

3. As for infrastructure and material conditions in the places of detention used by the Police Directorate, and with the aim of improving them and bringing them into line with minimum standards and recommendations given by the CPT and this Committee, the Police Directorate has several times addressed in writing the authorities competent for these affairs. In order to improve material conditions of the detention of detained persons, the Ministry of Internal Affairs began drafting the Rulebook on the appearance of detention facilities in accordance with national and international standards.
4. In order to reduce overcrowding at the Administration for the Execution of Criminal Sanctions and improve the conditions of accommodation of the persons deprived of liberty, in addition to strengthening alternative criminal sanctions system and regular maintenance of premises, the construction of the following four new facilities has also begun: special health care facility, multifunctional facility, admission office and open prison, while preparatory activities regarding construction of the prison for the northern region of Montenegro in the municipality of Mojkovac continued. The project of constructing special health care facility, new admission office, open prison and multifunctional facility at the Administration for the Execution of Criminal Sanctions is a significant infrastructure project. The evaluation commission completed evaluation of the bids submitted by bidders in the public procurement procedure for the project “EU for improving access to justice and fundamental rights”, and one of the lots of that project is construction of four facilities at the Administration for the Execution of Criminal Sanctions (special health care facility, admission office, multifunctional facility and open prison). Public procurement contract was signed on 01 December 2022 between the Directorate for Capital Projects and IGP Fidiija LLC Podgorica for the construction of these facilities. Works on the construction of these facilities began in January 2023, and they are planned to last 24 months. On 16 December 2021, the government adopted Information on capital infrastructure projects in justice sector, which are implemented with the instruments for pre-accession assistance, and on 20 October 2022 it adopted Information on the need to provide additional funding for implementation of IPA 2018 programme for the area *Rule of Law and Fundamental Rights*. In this way, financial arrangement was completely in place for implementation of the IPA 2018 programme for this area.
5. Project application of the Ministry of Justice was adopted and 100 percent of grant funds were received within the Western Balkans Investment Framework (WBIF) in the amount of 1,200,000 euro of TA grant, while technical designs were developed for construction of the prison with accommodation capacity for 200 persons deprived of liberty and 120 employees. The Decision on borrowing of Montenegro in 2021 sets out that the state of Montenegro will borrow funds from the Council of Europe Development Bank (CEB) to meet the needs of the Ministry of Justice, Human and Minority Rights in respect of construction of the capital facility – prison in Mojkovac in the amount of up to 15,000,000.00 euro. Public procurement contract was signed on 17 October 2022 between the Directorate for Capital Projects and ING INVEST LLC Danilovgrad for the performance of audit of the detailed design for the construction of prison for the northern region of Montenegro in the municipality of Mojkovac.
6. Professional training and professional development of personnel of the Administration for the Execution of Criminal Sanctions continued, with strong emphasis

placed on the following topics: international and national standards in the protection against torture, ill-treatment, inhuman and degrading treatment of the persons deprived of their liberty – implementation of the recommendations contained in opinions of the Montenegrin Protector of Human Rights and Freedoms given to the Administration for the Execution of Criminal Sanctions.

7. On the basis of the procedure for advertising vacancies prescribed by the law, 24 employees were hired for an indefinite period at the Administration for the Execution of Criminal Sanctions in the reporting period (14 employees at the Security Department in 4 prisons, 1 physician-head of the Health Care Department, 2 nurses, 1 employee at the Public Procurement Bureau and 6 employees at the Department for Vocational Training and Work of Prisoners). With a view to improving health care of the persons deprived of their liberty, the following 3 employees were hired for an indefinite period: prison chief for health care and 2 nurses, while recruitment procedure continued for the positions of specialist physician – internist, urologist, surgeon, physiotherapist, radiologist and x-ray nurse, 2 psychiatrists in Spuž prisons, psychiatrist and general practitioner in Bijelo Polje prison, and 3 nurses and 2 medical doctors were also hired in 2022 with the aim of ensuring a higher quality and more complete health care of these persons.

Investigation of cases of torture and ill-treatment

8. The Public Prosecutor's Office of Montenegro applies Instruction of General Nature of the Supreme Public Prosecutor, under which in all cases where there is reasonable doubt that human rights guaranteed under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms were violated. Therefore, once the public prosecutor becomes aware of violations of the rights referred to in Article 3 of the European Convention on Human Rights and Fundamental Freedoms, these allegations should be recorded in writing, public prosecutor should issue an order on hiring a medical expert and take all measures and actions so that these allegations are fully investigated. Such approach should be taken regardless of whether the person has visible external injuries. Even in the absence of explicit allegations of ill-treatment, public prosecutor should take a proactive approach and issue an order on hiring forensic medical expert whenever there are other reasons indicating that the interrogated person may have been a victim of ill-treatment.

9. Furthermore, in cases in which criminal proceedings have been initiated against police officers and officers of the Administration for the Execution of Criminal Sanctions on the account of committing criminal offences of ill-treatment referred to in Article 166a of the Criminal Code of Montenegro, torture referred to in Article 167 of the Criminal Code of Montenegro and serious bodily injury referred to in Article 151 of the Criminal Code of Montenegro, the public prosecutor will inform the head of the authority where the officer works about that fact so that the competent authority can take further actions.

10. Moreover, in these court proceedings the public prosecutors demand and will demand imposition of stricter criminal penalties, and when there is a legal basis they will lodge appeals with the aim of imposing such criminal penalties on perpetrators of these criminal offences.

11. In the period from 01 January 1 2022 to 01 March 1 2023, 28 (twenty-eight) criminal cases were opened in the public prosecutor's offices in Montenegro against 67 (sixty-seven) known police officers, for the offences committed to the detriment of several injured persons. A total of 20 (twenty) dismissal decisions against several persons were handed down. Preliminary enquiry is underway in 10 (ten) cases opened against several persons and investigation is conducted against 8 (eight) persons.

12. In the period from 01 October 2022 to 31 March 2023, courts handled a total of 30 cases against 49 defendants – police officers for the criminal offences of extraction of confessions referred to in Article 166 of the Criminal Code of Montenegro and ill-treatment referred to in Article 166a of the Criminal Code of Montenegro. Of that number, 11 cases against 17 defendants were closed in the reporting period, while proceedings are ongoing in the remaining cases (19). As for the structure of judgments, convictions prevail, while acquittals were handed down in 2 cases.

13. The Rulebook on more detailed characteristics of the markings on special equipment of police officers (Official Gazette of Montenegro 34/2022) prescribes characteristics of the markings on parts of special equipment of police officers which enable identification of police officers, when their introduction and identification are not possible due to the use of special equipment in the performance of police duties. We emphasise that the aforementioned provisions are consistently implemented, which means that all police officers wear tags with names/identification numbers on their uniforms during high risk public gatherings and during the performance of regular work and duties. Representatives of internal control and ombudsman were present at all gatherings carrying high security risk, and on those occasions no complaints were registered regarding the lack of visible identification marks.

14. The procedural action that involves questioning of the suspects by police officers is performed only and exclusively with the consent of the public prosecutor, in accordance with Article 261 paragraph 5 of the Criminal Procedure Code, which happens extremely rarely in practice. In order for this action to be recorded by the police, it is necessary to obtain consent of the suspect and his/her defence attorney must also be present during the questioning.

15. Supervision and internal control of the use of means of coercion are reflected in assessment of the justification and regularity of their application which is carried out by the head of the Administration for the Execution of Criminal Sanctions, of which the report is drawn up and submitted to the Ministry of Justice while, on the other hand, the Ministry of Justice also has at its disposal the mechanisms for the control of execution of the criminal sanctions in accordance with the Law on Execution of Prison Sentences, Fines and Security Measures. Preventive measures are implemented through continuous professional development of employees and employment of the missing staff, in order to prevent the excessive use of force against persons deprived of their liberty. It should be noted that there was no excessive use of coercive means in 2022. Another important action is monitoring of the prevention and suppression of excessive use of force by persons in official capacity which is carried out by the National Preventive Mechanism as a relevant institution responsible for the protection of human rights and freedoms and prevention of torture and other cruel, inhuman or degrading punishments and treatments.

16. In accordance with Article 9 of the Instruction on the health care of detained and convicted persons (2019), the patient comes for medical examination accompanied by a security officer. The security officer stays in the waiting room (in front of the clinic) during the examination, unless the doctor considers his/her presence mandatory. Furthermore, examinations are carried out without delay. When examining a person deprived of liberty, the prison doctor records what the patient says and describes his/her own findings. If, during the first examination, the doctor detects injuries on the patient's body, he/she describes and records them in the medical record, informs the person in charge of the prison who is then obliged to inform the competent public prosecutor. In accordance with Article 254 of the Criminal Procedure Code, persons in official capacity and responsible persons in state bodies, local government bodies, public enterprises and institutions are obliged to report criminal offenses which are prosecuted *ex officio*, of which they have been informed or of which they have learnt in the course of fulfilling their duties. All natural and legal persons who, under the law, exercise certain public powers or are professionally engaged in the protection and security of people and property, health protection of people and performance of the tasks related to caring for, raising or educating minors also have the duty to report criminal offences if they have learnt about such criminal offenses in the course of fulfilling their duties.

17. The Regulation on uniforms, insignia, weapons, vehicles and special equipment of security officers at the Administration for the Execution of Criminal Sanctions (Official Gazette of Montenegro 17/2020) sets out that special insignia – a strip with the first name and family name – is worn on the uniform, on the right side of the chest, on the external part of the uniform, below the rank insignia.

Impunity for war crimes and remedy for victims

18. In the period from 01 May 2022 to 15 March 2023, proceedings for the following cases were initiated at the Special Public Prosecutor's Office in respect of war crimes:

19. Case Ktr-S no.166/22, initiated on 04 May 2022, on the basis of the submission filed by D.L., in relation to the war crime committed in the place Štrpci. Acting on the submission mentioned above, and after obtaining data from the Special Police Division, the Special Public Prosecutor's Office sent a letter rogatory in the reporting period to the competent authorities of Bosnia and Herzegovina requesting mutual legal aid. After receiving response from the public prosecutor's office of Bosnia and Herzegovina the case was closed with an official notification of 02 February 2023 and the notice was sent to D.L.

20. Case Ktr-S 175/22, initiated on 09 May 2022, upon letter rogatory received from the Public Prosecutor's Office of Bosnia and Herzegovina by which certain data were requested. The Special Public Prosecutor's Office requested data from the Ministry of Interior and submitted this data to the Public Prosecutor's Office of Bosnia and Herzegovina on 06 June 2022, via mutual legal assistance.

21. Case Ktr-S 232/22, initiated on 09 June 2022, upon letter rogatory received from the District Public Prosecutor's Office in Trebinje, submitted by the High Public Prosecutor's Office on 07 June 2022, for the purpose of interrogating one person in relation to war crime. The response to the letter rogatory was finalised on 21 July 2022 and submitted to the Ministry of Justice of Montenegro in order for this ministry to forward it to the District Public Prosecutor's Office in Trebinje together with the evidence, of which the competent public prosecutor drafted an official notification.

22. Case Ktr-S no. 250/22, submitted to this public prosecutor's office, which was competent to handle it, by the High Public Prosecutor's Office in Podgorica on 20 June 2022, on the basis of an article published in Dan daily on 26 February 2018 under the title „300 civilians killed and thrown in the pit“; it was concluded from that article that there was a pit called *Kotor* at site Kuline – Nikšić municipality with remains of a large number of unknown persons who were killed as civilians during the second world war by members of the National Liberation Army. In the reporting period, the request for exhumation at this site was filed with investigative judge of the High Court in Podgorica, the investigative judge of the High Court in Podgorica expressed his disagreement with the request, while non-trial criminal panel of the High Court in Podgorica upheld disagreement of the investigating judge of the High Court in Podgorica. After that, the competent special prosecutor, acting in compliance with instructions set out in decision of the High Court in Podgorica, issued a written order on 31 August 2022 to the Police Directorate – Special Police Division to carry out preparatory activities for conducting on the scene investigation at the site concerned, while such investigation would be managed by the special public prosecutor.

23. Case Ktr-S 343/22, initiated on 15 August 2022, upon request for mutual legal assistance filed by the State Prosecution Service of Bosnia and Herzegovina regarding submission of the information on the address of a person. Special public prosecutor submitted the information accompanied by a letter from the Police Directorate, thus responding to the letter rogatory.

24. Case Ktr-S no.453/22, initiated on 01 November 2022, upon letter rogatory received from the State Prosecution Service of Bosnia and Herzegovina on 27 September 2022, due to suspicion that one person committed war crime. Special prosecutor requested data on one person from the Special Police Division, response to this request was given and this response was forwarded to the State Prosecution Service of Bosnia and Herzegovina.

25. Case Ktr-S no.54/23, initiated on 10 February 2023, at the request of the Public Prosecution Service of Bosnia and Herzegovina of 17 January 2023 which asked whether certain persons were investigated by the Special Public Prosecutor's Office for war crimes. Data were requested from the High Public Prosecutor's Office in Podgorica and High Public Prosecutor's Office in Bijelo Polje.

26. Case Ktr-S no.77/23, initiated on 08 March 2023, at the request of Human Rights Action, in relation to the crime committed in Štrpci. The case is at the preliminary investigation phase.

27. Case Ktr-S no.82/23 – initiated on 08 March 2023, upon letter rogatory received from the Public Prosecutor's Office for War Crimes in Belgrade, by which questioning of one person was requested.

28. In the case Kt-S no.239/21, Special Public Prosecutor's Office filed indictment on 21 October 2021 against P (Ć.) S due to the reasonable doubt that he committed war crime against civilians referred to in Article 142 paragraph 1 of the Criminal Code of the Federal Republic of Yugoslavia. The main hearing is scheduled on 30 March 2023 before the High Court in Podgorica.

29. The Public Prosecution Service of Montenegro takes proactive approach to the war crime cases; therefore, on 08 August 2022 proceedings were initiated for a case due to allegations published in an article in *Vijesti* daily on 08 August 2022 under the title "Shelling of Split and Role of D.S." which stated allegations that D.S., in capacity of lieutenant of the frigate of the War Navy of the then Yugoslav People's Army and commander of a missile gunboat "RTOP-406 Ante Banina", ordered on 15 November 1991 opening of fire from the war boat mentioned above to the civilian targets in the territory of the city of Split, whereby a number of civilians were killed and enormous material damage occurred, in order to verify whether actions of the person mentioned above contained elements of some of the crimes against humanity and other resources protected under international law. Letter rogatory was sent on 23 August 2022 to the Public Prosecution Service of the Republic of Croatia requesting submission of all the relevant data related to the criminal law offence mentioned above; response to the letter rogatory was never received and the special public prosecutor sent an urgent letter requesting submission of the response.

30. The Public Prosecutor's Office of Montenegro held several meetings with representatives of the public prosecutors' offices from the region and representatives of the International Residual Mechanism for Criminal Courts in the Hague in order to more efficiently prosecute persons in war crimes cases, and on 10 and 11 October 2022, representatives of the Special Public Prosecutor's Office attended regional meeting of the public prosecutors on cooperation in prosecuting war crimes which was held in Belgrade, Republic of Serbia. Moreover, on 29 August 2022, representatives of the Special Public Prosecutor's Office had an online meeting with representatives of the International Residual Mechanism for Criminal Courts in the Hague.

31. We point out the fact that the upcoming amendments to the Criminal Procedure Code of Montenegro will create opportunities for a more efficient prosecution in war crime cases since these amendments will remove certain legal and procedural obstacles to the prosecution of war crime perpetrators. Three civil proceedings for the compensation of non-material damage are pending before basic courts; these proceedings commenced on the basis of claims filed by injured persons – victims of war crimes. Two civil proceedings are pending before the Basic Court in Podgorica and the next hearings are scheduled on 23 March 2023 and 20 April 2023, while one civil proceeding is pending before the Basic Court in Nikšić upon claim filed by the injured party, and two proceedings were finalised with a final decision (in the reporting period). The total amount awarded for compensation for non-material damage to the victims of war crimes, in all cases, amounts to 170,909.34 euro.

32. In addition to the information on addressing recommendations referred to in paragraphs 15, 19 and 23 of Concluding Observations on the 3rd Periodic Report of Montenegro, the state of Montenegro is honoured to submit to the Committee the information on the plans to implement all recommendations given in the Concluding Observations in the next reporting period.

33. Concluding observations on the 3rd Periodic Report of Montenegro are published on website of the Ministry of Justice <https://www.gov.me/clanak/zavrsna-razmatranja-otrecem-periodicnom-izvjestaju-crne-gore>, as well as on Twitter account of this ministry <https://twitter.com/PravdaCG/status/1534080729243697152>. Moreover, they were also submitted to all the relevant institutions competent for implementation of the recommendations set out in the Concluding Observations on the 3rd Periodic Report of Montenegro.