



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

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**Committee against Torture**

**Consideration of reports submitted by States parties  
under article 19 of the Convention**

**Follow-up responses by the Government of Montenegro to the  
conclusions and recommendations of the Committee against Torture  
(CAT/C/MNE/CO/1)\***

[6 April 2009]

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

1. On its session held on 15 January 2009 the Government of Montenegro reviewed the information on activities conducted in relation to the obligations deriving from the status of contracting party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, on that occasion, it adopted a number of conclusions. Among these conclusions, the Government adopted a decision according to which the Ministry of Justice has been obliged to, in cooperation with the Ministry of Foreign Affairs, prepare and submit to the Government information on activities conducted in the final quarter of 2008.
2. Having in mind paragraph 28 of the concluding observations of the Committee (CAT/C/MNE/CO/1) the focus was primarily on the activities which correspond to the Committee's recommendations contained in paragraph 12.
3. It should be noted that in paragraph 28 mentioned above, the Committee had requested from the Government of Montenegro to provide, within one year, information on the measures undertaken to implement recommendations laid down in paragraphs 6, 11, 12 and 17 of the concluding observations. Having in mind that developments in the court proceedings for war crimes are very dynamic and positive it has been decided that information on these issues will be submitted to the Committee in the first quarter of 2009. The intention was also to include data concerning ratification of the Optional Protocol to the Convention and other activities aimed at strengthening the prevention against torture (Committee's concluding observations, para. 24).
4. In the context of the ongoing dialog between the Committee and Montenegro additional comprehensive information on all activities conducted with the aim to implement recommendations contained in paragraph 28 will be submitted to the Committee in the indicated time limit.
5. Regarding the aforementioned and in connection to the following statements, we would like to draw your attention to the activities conducted in the context of concluding observations of the Committee in relation to the initial report of Montenegro on the implementation of the Convention that was under review on 11 and 12 November 2008.
6. It should be noted that during October 2008 the Ministry of Justice has initiated activities required for the ratification of the Optional Protocol with the aim to establish a national mechanism for the prevention of torture, according to the provisions of the Optional Protocol. All these actions were conducted in the framework of a project previously launched by the OSCE in cooperation with competent authorities. This project has had as its result the finalization of the Draft law on the ratification of the Optional Protocol that was adopted by the Government on 13 November 2008, and enacted by the Parliament of Montenegro at the end of 2008 (*Official Gazette of Montenegro – International treaties No. 9/2008*).
7. In this way the first condition for the establishment of the National mechanism for the prevention of torture was fulfilled having in mind that, at the beginning, it was necessary to make the Optional Protocol an integral part of the internal legal system. This has made possible further enactment of required legal measures and actions, all with the aim of enabling the Protector of Human Rights to adequately respond to the requirements envisaged by the Optional Protocol and having in mind the decision that this institution has the ability to perform functions of the National mechanism for the prevention of the torture.
8. While drafting the Law on the ratification, and by the provision contained in article 3 of the latter (making a declaration in relation to the article 24 of the Optional Protocol), the possibility of the postponement of the obligations contained in Part IV of the Optional Protocol was exercised (National mechanism for the prevention of torture). The postponement would be effective for two years after the date of Optional Protocol's entering into force. This decision was made in line with the fact that the time framework of

“at the latest year after the ratification” (art. 17 of the Optional Protocol) was not sufficient to provide all legal and institutional requirements prescribed by the Optional Protocol for the establishment of the national mechanism for the prevention of torture.

9. With the goal of preserving the continuity of activities on establishing the National mechanism for the prevention of torture certain measures, i.e. actions of legal nature, have been defined through previously adopted Plan for Action for the Prevention of Torture (implementation is planned for the 2009). These actions were formulated with the intention to contribute to full implementation of all requirements envisaged in the Optional Protocol, including those prescribed by the Convention (each state is obliged to perform legal, administrative, judicial and other effective measures in order to prevent acts of torture on the territory under its jurisdiction). The Plan of Action envisages measures related to amending and supplementing the Law on the Protector of Human Rights and Freedoms, enactment of appropriate bylaws for the implementation of the amendments and supplements of the Law on the Protector of Human Rights and Freedoms, and amending Act on internal organization and systematization of job positions of the Protector of Human Rights and Freedoms.

10. The intention behind this is to further strengthen the institution of the Protector of Human Rights and Freedoms, independence and autonomy of which is guaranteed by the Constitution of Montenegro. At the same time this represents an act in response to an observation made by the Committee concerning the necessity to undertake appropriate legal measures to ensure the full independence of the Ombudsman and provide adequate human and financial resources). In favor of this is the fact that at the end of December 2008 the Protector of Human Rights and Freedoms (as well as the Director of the Police Directorate and representatives of NGO) has visited all the renovated premises for detention in organizational units of the Police Directorate.

11. Regarding the issue of investigations on war crimes, the Ministry of Justice requested information in possession of the Supreme State Prosecutor regarding the stage at which the following cases are: *Kaluđerski laz*, *Morinj*, *Deportacija muslimana* and *Bukovica*. The Ministry received from the latter the following information:

(a) In the proceeding known to the public as *Kaluđerski laz*, the Supreme State Prosecutor of Montenegro – Department for suppressing organized crime, corruption, terrorism and war crimes had, on 30 July 2007, raised charges before the Higher Court in Bijelo Polje against eight persons for the criminal offence of war crime against the civilian population (art. 142, para. 1 of the Criminal Law of the Federal Republic of Yugoslavia) with the request for detention (Cis.no.6/08). Following the mentioned indictment and request, the Higher Court in Bijelo Polje has made a decision to place under custody all accused. According to this decision seven of the accused are in detention while the eighth has fled. Trial is scheduled for 19 March 2009.

(b) In the proceeding known to the public as *Morinj*, the Supreme State Prosecutor of Montenegro - Department for suppressing organized crime, corruption, terrorism and war crimes had, on 15 August 2008, raised charges before the Higher Court in Podgorica against six persons for the criminal offences of war crime against the civilian population (art. 142, para. 1, of the Criminal Law of the Federal Republic of Yugoslavia) and war crime against prisoners of war (art. 144, para. 1 of the Criminal Law of the Federal Republic of Yugoslavia) with the request for detention (Cis.no.7/08). Following the mentioned indictment and request, the Higher Court in Podgorica has made a decision to place under custody all accused. According to this decision five of the accused are in detention while the sixth has fled. Upon the motion of the Prosecutor, Criminal chamber of the Higher Court in Podgorica rendered a ruling to hold the trial in the absence of the accused who escaped after which the trial was scheduled for 26 January 2008. The trial is

postponed without defined deadline until the competent court reaches decision acting on the petition of defense attorney for the exemption of the judge in this case.

(c) In the proceeding known to the public as *Deportacija muslimana* the Supreme State Prosecutor of Montenegro - Department for suppressing organized crime, corruption, terrorism and war crimes had, on 19 January 2009, raised charges before the Higher Court in Podgorica against nine persons for the criminal offences of war crime against civilian population (art. 142, para. 1 of the Criminal Law of the Federal Republic of Yugoslavia) with the request for detention (Cis.no.17/08). Following the mentioned indictment and request, the Higher Court in Podgorica has made a decision to place under custody all accused. According to this decision four of the accused are in detention while the rest have fled. At the moment court is examining objections to the indictment submitted by defense attorneys.

(d) In the proceeding known to the public as *Bukovica*, the Higher State Prosecutor in Bijelo Polje, on 11 December 2007, submitted to the Higher Court in Bijelo Polje a request for investigation (Ci.no.107/08) against seven persons on the grounds of reasonable suspicion that they have committed the criminal offence of war crime against humanity (article 427 of the Criminal Code of Montenegro in connection with article 7, paragraph 2 of the European Convention on Human Rights and Fundamental Freedoms). The case is in the investigation stage in accordance with the request for supplement submitted by the Department for suppressing organized crime, corruption, terrorism and war crimes.

12. Having in mind the intention of the Government of Montenegro to, by common understanding, settle court proceedings (by conclusion of settlements of action) on charges raised by victims of unlawful deprivation of liberty and extradition to Bosnia and Herzegovina in 1992 and their families, and also in the context of continuous improvement of bilateral relations between Montenegro and Bosnia and Herzegovina, with good communication among the Montenegro's high-level governmental officials and relevant stakeholders in Bosnia and Herzegovina, a framework for conclusion of settlements in mentioned proceedings has been established. This framework was based on respect of degree of consanguinity as the basic criteria for establishing the compensation for damages. After this the Minister of Justice and his team were authorized to conduct negotiations with attorneys of injured parties in these highly sensitive cases.

13. Consequently in the period from 9 to 23 December 2008 five meetings have been held between representatives of the Ministry of Justice and attorneys of injured parties with the aim of defining conditions for conclusion of settlements and on those occasions it was noted that 202 plaintiffs have initiated litigations against Montenegro for material and non-pecuniary damages. These litigations were related to cases of extradition of 44 persons, out of which nine have survived the event, and as plaintiffs, along with these nine survivors were also their relatives as well as relatives of those who perished on the territory of Bosnia and Herzegovina.

14. During these negotiations an agreement was reached according to which guidelines for establishing the amount of damages should be the provisions of the Law on Obligations which refer to a range of persons entitled to claim damages. Also an understanding was reached that the amount of damages should depend on the degree of consanguinity with the victims, that the amount awarded to the survivors should be established according to the time spent in captivity for each plaintiff separately and that already adopted positions of courts should be followed, although, having in mind the sensitivity of these cases and the modality for its settlement, damages awarded should be in certain amount higher.

15. Proceeding from the agreed points, mutual consent was reached that damages awarded to relatives of the victims should be determined in the following way:

- (a) For children €30,000 each;
- (b) For spouses and parents €25,000 each;
- (c) For brothers and sisters €10,000 each.

16. For the plaintiffs-survivors damages were determined according to the time spent in captivity and they vary from €10,000 to 170,000, and for their closest relatives (children, spouses and parents) damages in the amount of € 10,000 were awarded. By this way preconditions for 42 litigations to be concluded by settlement were fulfilled and the Government had gave its approval to the Supreme State Prosecutor, as the legal representative of the State in property disputes, for the finalization of the settlements in action in accordance to the agreed conditions. The overall amount of damages awarded to all plaintiffs and on all grounds is €4,135,000.

17. Attorneys of injured parties have obliged themselves to drop claims for six brothers and sisters of the survivors since they are not entitled to damages according to Law on Obligations. In one case, attorneys informed that the injured parties had not given their approval for the settlement. In that case plaintiffs are three persons - spouse and children of the victim, and the proceeding will be continued.

18. At the end it was agreed by both sides that the reached settlements represent a just treatment of plaintiffs and also represent an expression of responsible and human comprehension of pain and suffering of plaintiffs.

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