



**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  
pursuant to the optional reporting procedure**

**Second periodic reports of States parties**

**Montenegro\*, \*\***

[24 December 2012]

The optional reporting procedure consists in the adoption of lists of issues by the Committee, which are transmitted to States parties prior to the submission of their periodic reports. Under this procedure, the present document, which contains the responses to the list of issues (CAT/C/MNE/Q/2) adopted by the Committee at its 45th session, 1–19 November 2010, constitutes the second report of Montenegro.

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\* The initial report of Montenegro is contained in document CAT/C/MNE/1; it was considered by the Committee at its 848th and 851st meeting, held on 11 and 12 November 2008 (CAT/C/SR.748 and 851). For its consideration, see CAT/C/MNE/CO/1.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

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\*\*\* Annexes can be consulted in the files of the Secretariat.

## I. Introduction

1. Since its declaration of independence on 3 June 2006, in accordance with the Decision on the declaration of independence of Montenegro (Official Gazette of the Republic of Montenegro 36/2006) adopted by the Parliament of Montenegro, Montenegro applies and assumes all international treaties and international agreements concluded and acceded by the State Union of Serbia and Montenegro, which are related to Montenegro and which are in accordance with its juridical system.

2. Montenegro is a contracting party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Official Gazette of Montenegro - International Treaties, 9/2008) (hereinafter: the Convention) and the Additional Protocol to the Convention (Official Gazette of Montenegro - International Treaties, 9/2008).

3. The reporting obligations to the Committee against Torture (hereinafter referred to as CAT), were defined by article 19 of the Convention. The initial report on the measures taken by Montenegro to fulfil its obligations under the Convention was submitted to the United Nations on 3 May 2006. Once adopted, the initial report was released by the United Nations - CAT/C/MNE/1<sup>1</sup> on 6 October 2008. In accordance with article 19 of the Convention, the second periodic report was prepared on all new measures taken for the purpose of effective implementation of the Convention, which is also a representation of the results achieved in the exercise of rights guaranteed by the Convention in Montenegro. Pursuant to the new procedure for periodic reporting, the report contains answers to 38 questions submitted prior to the submission of the second periodic report of Montenegro (CAT/C/MNE/2)\*<sup>2</sup>. While preparing the report, special attention was given to the concluding observations of the Committee against Torture CAT/C/MNE/CO/1<sup>3</sup> of 19 January 2009.

4. The following authorities participated in developing the second periodic report to the Committee against Torture: Ministry of Justice and Human Rights, Ministry of Interior, Ministry of Labour and Social Welfare, Ministry of Education and Sports, Ministry of Foreign Affairs and European Integration, Supreme Court of Montenegro, Supreme Public Prosecutor's Office, Police Directorate, the Ombudsman, Police Academy, Judicial Training Centre (JTC), Refugee Care and Support Office. A contribution to this report was provided by the Human Rights Action, which is an NGO active in Montenegro in the field of human rights.

## II. Background information

5. Montenegro is a Member State of the United Nations, the Council of Europe and other international organizations and regional initiatives, as well as the contracting party of the most important international instruments on human rights, among which: The International Covenant on Civil and Political Rights (including the Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty), The International Covenant on Economic, Social and Cultural Rights, The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (including the Optional Protocol), The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the

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<sup>1</sup> <http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.MTN.1.pdf>.

<sup>2</sup> [http://www2.ohchr.org/english/bodies/cat/docs/followup/AdvanceVersion/Montenegro\\_AV\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/followup/AdvanceVersion/Montenegro_AV_en.pdf).

<sup>3</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/402/84/PDF/G0940284.pdf?OpenElement>.

Elimination of All Forms of Discrimination against Women (CEDAW) (including the Optional Protocol), the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Second Optional Protocol on the sale of children, child prostitution and child pornography to the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities (including the Optional Protocol), 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 International Convention on the Suppression and Punishment of the Crime of Apartheid, the International Convention against Apartheid in Sports.

6. By depositing its instrument of succession, Montenegro became a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Also, Montenegro was among the first countries to sign the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

7. Montenegro is contracting party to 69 ILO conventions.

8. Montenegro actively cooperates with the Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE) in the field of protection of human and minority rights and fundamental freedoms, as well as in promoting the rule of law and the further democratization of society. It has ratified a large number of Council of Europe conventions on human and minority rights, including the most important - the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

9. As a member of the most important human rights agreements, Montenegro clearly shows support for achieving their goals, but also actively participates in the creation and implementation of new standards for the promotion and protection of human rights.

10. Montenegro is a country with the candidate status for European Union membership. In this context, Montenegro conducts numerous activities in partnership with the European Commission, the European Union Delegation to Montenegro, as well as bilateral activities with European Union Member States. These obligations are defined by a number of documents including the most important: the SAA - Stabilisation and Association Agreement, Action Plan for Implementation of Recommendations from the European Partnership, Action Plan for Implementation of Recommendations from the revised European Partnership, National Program for Integration of Montenegro into the EU (NPI) for the period 2008-2012 etc.

11. In the context of a comprehensive reform which takes place in Montenegro in this field, special attention is paid to promoting the rule of law and protecting human rights. Reform is aimed at amending the legislative framework so as to adopt the best standards and achievements of the modern society, but also in the area of institutional capacity building, media freedom, human rights promotion in every segment of the society.

#### **Constitutional framework**

12. Montenegrin Constitution guarantees human rights and freedom. The basic constitutional principles of human and minority rights are: the basis for exercise of rights and freedoms, equality before the law, gender equality, the right to equal protection of rights and freedoms, the right to legal remedy against the decision ruling on the right or legally based interest, the right to legal aid, the right to local self-government, the right to a healthy living environment. Guaranteed human rights and freedoms may be limited only by

law, within the scope permitted by the Constitution, to the extent necessary in an open and democratic society in order to satisfy the purpose for which the limitation has been permitted. Limitations will not be introduced for purposes other than the ones for which they were prescribed.

13. During a proclaimed state of war or emergency, the exercise of certain human rights and liberties may be limited to the necessary extent. Limitations may not be introduced by virtue of sex, ethnic origin, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or any other personal capacity. There will be no limitations imposed on the rights to: life, legal remedy and legal aid; dignity of and respect for a person; fair and public trial and the principle of legality; presumption of innocence; defence; compensation of damage for illegal or ungrounded deprivation of liberty and groundless conviction; freedom of thought, conscience and religion; entry into marriage. There will be no abolishment of the prohibition of: inflicting or encouraging hatred or intolerance; discrimination; retrial and multiple punishments for same offense; forced assimilation. Measures of limitation may be in effect at the longest for the period of duration of the state of war or emergency.

14. The Constitution guarantees the protection of personal rights and freedoms, political rights and freedoms, as well as the protection of economic, social and cultural rights and freedoms. The Constitution also guarantees the protection of a set of special minority rights. The Constitution prohibits forced assimilation of members of national minorities and other minority ethnic groups and stipulates duty of the state to protect members of national minorities and other minority ethnic groups against all forms of forced assimilation.

15. The Constitution stipulates that Montenegro guarantees inviolability of the physical and mental integrity of a person, his/her privacy and individual rights thereof. No person will be subject to torture or inhuman or degrading treatment. No one will be held in slavery or servitude (art. 28). Everyone has the right to personal liberty. Deprivation of liberty is allowed only on grounds and within procedures prescribed by law. Person deprived of liberty has to be notified immediately of the reasons for his arrest, in his own language or in the language he understands. Concurrently, person deprived of liberty has to be informed that s/he is not obliged to give any statement. Upon the request of the person deprived of liberty, the authority will immediately inform the person of his own choosing about his deprivation of liberty. Person deprived of liberty has the right to have a defence counsel of his own choosing present at his hearing. Unlawful deprivation of liberty is punishable.

16. In accordance with the Constitution of Montenegro, the Protector of Human Rights and Freedoms is an autonomous and independent body which takes measures to protect human rights and freedoms. The Protector of Human Rights and Freedoms exercises his office on the basis of the Constitution, laws and the ratified international agreements, observing also the principles of justice and fairness.

17. In accordance with article 145 of the Constitution, laws must be compliant to the Montenegrin Constitution and ratified international treaties, and other pieces of regulations must be compliant with the Constitution and the law.

#### **International treaties and generally accepted rules of international law**

18. Article 9 of the Constitution provides that ratified and published international treaties and generally accepted rules of international law make an integral part of the domestic juridical system, supersede national legislation and are directly applicable in cases when they govern relations differently than the national legislation. Owing to this definition, the legal effect of international treaties (including the Convention and the Optional Protocol thereto) is not only confirmed by considering them part of the domestic juridical system which has supremacy over the national legislation, but government

agencies are also instructed about the need to harmonize domestic legislation with international law, primarily in the field of guaranteeing, promoting and protecting fundamental human rights and freedoms.

19. In the period since the adoption of its initial report, Montenegro has acceded to significant international treaties: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>4</sup>, the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto<sup>5</sup>, the Convention on Cybercrime<sup>6</sup> and Additional Protocol to the Convention on Cybercrime, Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems<sup>7</sup> (Council of Europe), the European Convention on the Compensation of Victims of Violent Crimes<sup>8</sup> (Council of Europe), the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes<sup>9</sup> (Council of Europe), the International Convention for the Protection of All Persons from Enforced Disappearance<sup>10</sup>.

### **III. Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations**

#### **Responses to questions related to articles of the Convention**

20. This chapter provides a list of answers to questions before submission of the second periodic report of Montenegro (CAT/C/MNE/2) and displays activities undertaken taking into account the conclusions and recommendations contained in the concluding observations of the Committee against Torture (CAT/C/MNE/CO/1) of 19 January 2009.

#### **Articles 1 and 4**

##### **Reply to the issues raised in paragraph 1 of the list of issues (CAT/C/MNE/Q/2)**

21. The Constitution of Montenegro (Official Gazette of Montenegro 1/2007), article 28, guarantees the dignity and security of the person, inviolability of physical and mental integrity of the person, privacy and individual rights. No one may be subjected to torture or to inhuman or degrading treatment and may not be held in slavery or servitude. Article 27 guarantees the right of a person and the dignity of the human being in respect of application of biology and medicine, and article 28 guarantees respect for the human personality and dignity in criminal or other proceedings in the case of deprivation or restriction of liberty and during sentence execution. All forms of violence, inhuman or degrading treatment of a person deprived of liberty or whose liberty has been restricted, and any extortion of confession and statements are prohibited. Death penalty is prohibited in Montenegro.

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<sup>4</sup> Official Gazette of MNE - International Treaties 9/2008

<sup>5</sup> Official Gazette of MNE - International Treaties 2/2009

<sup>6</sup> Official Gazette of MNE - International Treaties 4/2009

<sup>7</sup> Official Gazette of MNE - International Treaties 4/2009

<sup>8</sup> Official Gazette of MNE - International Treaties 6/2009

<sup>9</sup> Official Gazette of MNE - International Treaties 11/2010

<sup>10</sup> Official Gazette of MNE - International Treaties 8/2011

Criminal Code<sup>11</sup> contains a special Title which prescribes criminal offences against freedoms and rights of persons and citizens. Article 165 prescribes coercion as the use of force or threat to compel someone to act or refrain from acting or to endure something. The stipulated prison term for the basic form of this offence ranges from three months to three years, whereas it can be up to twelve years even for particularly serious forms. Extortion of testimony is defined by article 166. This offence is committed when a public official uses force or threat or other inadmissible means or inadmissible manner while acting in his official capacity with the intention to extort a testimony or another statement from an accused, witness, expert witness or other person. The sentence prescribed for this offense ranges from three months to five years, and for particularly serious forms it is prison term from two to ten years.

22. Amendments to the Criminal Code of 2010 divided the former crime of torture and ill-treatment into two separate crimes: ill-treatment (art. 166a) and torture (art.167). Ill-treatment has been stipulated as an act of abusing others or treating them in a manner that offends human dignity. A prison term is stipulated of up to one year (for particularly serious forms of three months to three years).

23. Torture is laid down in article 167 of the Code. Anyone who inflicts to another severe pain or heavy suffering, whether bodily or mental, in order to obtain from him or a third party a confession or other information or in order to unlawfully punish or intimidate him, or to exert pressure over him or to intimidate or exert pressure over a third party, or does so for other reasons based on discrimination will be punished by a prison term from six months to five years. Prison term of one to eight years is stipulated for particularly serious forms of this offence.

24. The crime of endangering safety is defined by article 168. Anyone who endangers the safety of another person by threatening to attack his life or body or a person close to him will be punished by a fine or a prison term up to one year (particularly serious forms by a prison term from three months to three years).

25. Prohibition of torture is also included in offences from the group of criminal offences against humanity and other values guaranteed by international law (Title XXXV, arts. 426 - 449a) in article 426 *genocide*, article 427 *crimes against humanity*; article 428 *war crime against civilian population*, article 429 *war crime against the wounded and sick*; article 430 *war crime against prisoners of war*, article 431 *organization and instigation to commit genocide and war crimes*.

26. Article 11 of the Criminal Procedure Code<sup>12</sup> prohibits to threaten or exert violence over a suspect, accused person or another person participating in the procedure, as well as to extort confession or another statement from such persons. Judicial decision may not be based on any confession or other statement obtained by extortion, torture or inhuman or degrading treatment.

## Article 2

### Reply to the issues raised in paragraph 2 of the list of issues.

27. Article 5 of the Criminal Procedure Code (Official Gazette of Montenegro, 57/2009 and 49/2010) stipulates that persons placed under arrest by a competent state body will be

<sup>11</sup> Official Gazette of the Rep. of MNE 70/2003, 13/2004, 47/2006 and Off. Gazette of MNE 40/2008, 25/2010 and 32/2011.

<sup>12</sup> Official Gazette of MNE 57/2009 and 49/2010.

immediately informed in their language or in a language they understand about the grounds for placing them under arrest and, at the same time, informed that they are not obliged to make any statement, that they have a right to a defence counsel of their own choice and to request that a person of their choosing be informed on their placement under arrest as well as a diplomatic-consular representative of a state whose nationals they are or a representative of appropriate international organization if they are stateless persons or refugees. Article 69 lays down that the accused placed in detention will have a defence counsel while in detention. Article 180 stipulates that immediately after a person has been placed under arrest and within a term of 24 hours at the latest, police authority, the public prosecutor or the court will inform the family of the person under arrest or their common law spouse thereon, except where the person under arrest expressly object thereto. The competent social welfare authority will be informed about the deprivation of liberty if necessary to take measures for the care of children and other family members of whom the person under arrest takes care. Article 183 stipulates that upon the approval of the judge in charge of investigation and where appropriate and under the judge's supervision or the supervision of a person designated by the judge, the detainees may, in compliance with the rules of conduct, be visited by their spouse or common law spouse and their close relatives and upon their requests – by a physician and other persons. Some visits may be prohibited if they could detrimentally affect the conduct of proceedings.

28. Accused persons have the right to defend themselves, as defined in article 12, in person or with the professional assistance of a defence counsel of their own choice from the ranks of attorneys-at-law. The accused are entitled to have a defence counsel present during their hearing. Prior to the first hearing, the accused will be instructed of their right to retain a defence counsel, to agree with the defence counsel on the manner of defence and told that a defence counsel may be present during their hearing. They will be cautioned that everything they state may be used as evidence against them. If the accused persons do not retain a defence counsel by themselves, the court will appoint a defence counsel to them, when stipulated so by this Code. The accused will be ensured enough time and possibilities to prepare their defence. The suspects will be entitled to a defence counsel in compliance with this Code.

29. Article 66 lays down that the accused persons have the right to a defence counsel. The accused's legal representative, spouse, direct blood relative, adopting parent, adopted child, siblings or foster-parent as well as his/her common law spouse may engage a defence counsel on behalf of the accused. Only an attorney-at-law may be engaged as defence counsel. Defence counsels are obliged to submit their power of attorney to the authority before which the procedure is conducted. The accused may also give a power of attorney to the defence counsel verbally, which is entered into a record before the authority conducting the procedure.

30. Article 70 stipulates appointment of defence counsel due to adverse financial situation. When conditions for mandatory defence are not met, but it is required so by the interests of fairness, upon the request of the accused, they may be appointed a defence counsel if they are not able to bear the costs of defence under their financial standing. In preliminary investigation and in investigation, the decision upon the request will be taken by the competent public prosecutor, whereas after the pressing of charges, the President of the Court takes the decision in compliance with the order on the list of the Bar Association.

31. In addition to that, Law on Legal Aid<sup>13</sup> was adopted in 2011 and its application started on 1 January 2012. The Law stipulated that persons entitled to legal aid are beneficiaries of family cash benefits or other social security right, children without parental

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<sup>13</sup> Official Gazette of MNE 20/11.



care, persons with special needs, victims of the crime of domestic violence and persons of unfavourable financial situation. In order to start creating the preconditions for the commencement of application of this Law, in September 2011 the Government adopted an *Implementation plan for the Law on Legal Aid*. In accordance with the obligations laid down in the Implementation plan, the following results were achieved:

- The adoption of: Rulebook on the records of legal aid<sup>14</sup>, Rulebook on the form of legal advice record<sup>15</sup> and Rulebook on the form of legal aid application and referral form<sup>16</sup> which entered into force on 14 December 2011;
- Legal aid services have begun to operate in 15 basic courts;
- Donor assistance made it possible to equip the offices of basic courts in Podgorica, Kotor, Pljevlja, Rožaje, Nikšić, Danilovgrad, whereas the office in the Basic Court in Berane was equipped in cooperation with the Bar Association;
- Trainings were organized for presidents of basic courts and advisers working in the services concerning the commencement of implementation of the Law on Legal Aid.

32. The Law specified that the rights of persons deprived of liberty are recorded in the duty report made by a police officer as evidence that the person was informed of them, further to article 264 of the above Code. Owing to cooperation of the Police Directorate with the nearest medical facilities in all police regional units and outposts, medical aid is provided immediately once the person requests it. Medical aid is also provided in cases where the police officer determines that the person needs medical aid, because the situation of persons deprived of liberty is constantly monitored.

33. Under article 268 of the CPC, where a person placed under arrest is brought to the public prosecutor, that person, his/her defence counsel, family member, or a common law spouse may request the public prosecutor to order a medical examination. The decision on appointing a medical doctor who will perform medical checks and the record on the detainee's hearing are attached to criminal case file by the public prosecutor.

34. There is a factsheet in all holding facilities which was printed in several languages, containing rights of persons held. Laws and by-laws that define the rights of detained persons are available in dayrooms of facilities where detainees are held, so that they can be informed of them.

#### **Reply to the issues raised in paragraph 3 of the list of issues**

35. Law on Execution of Criminal Sanctions and by-laws that have been enacted on the basis of the said Law govern the receipt of detainees, establishing their identity, etc. Thus, the *Rulebook on more detailed manner of execution of detention* provides that upon receipt of a detainee, his identity is determined pursuant to the available data from the detention order, as well as on the basis of identity card and passport, or pursuant to other appropriate documents. If the detainee does not have documents or there are doubts concerning his identity, prison authorities will immediately ask the judge in charge of investigation to submit the data required to identify the detainee.

36. The following are entered into the detainee's personal record file: prison register number; date and time of receipt to prison; surname, father's name and name; day, month and year of birth; PIN – personal identification number; place, municipality and country of birth; place of permanent residence or place of temporary residence; nationality;

<sup>14</sup> Official Gazette of MNE 58/11

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

occupation; name and article prescribing the offense; name of the court which either imposed or prolonged detention (decision number and date); data on the indictment raised; date and time of release from prison; name of the court which approved release from detention (decision number and date), date of referral to another organizational unit.

37. General medical examination of the detainee is done within 24 hours upon receipt. The detained person will be provided with adequate health care immediately upon receipt, if this is necessary or upon request. When the prison doctor determines that the detainee is suicide-prone, things suitable for suicide shall be seized from him and temporarily held and other appropriate surveillance measures will be taken. Medical file card is created for the detainee including all data relevant to his health upon receipt, during detention, and when released from prison. In accordance with article 12 of this Rulebook, health care services are provided during detention by the Prison Health Service i.e. prison doctor. Upon the authorisation of the judge in charge of investigation and, if necessary, under his supervision or supervision of the person nominated by the judge in charge of investigation, within the limits of rules of conduct, upon request of the detainee and at his own cost, the detainee may be examined by a doctor chosen by him. At the suggestion of the prison doctor and upon the authorisation of the judge in charge of investigation or the presiding judge, detainee may purchase pharmaceuticals at his own expense.

38. Surgical and other medical interventions on a detained person may be taken only at the suggestion of the prison doctor and specialist physician and with the prior consent of the detainee, and in the case of a juvenile, with the prior consent of the parent or guardian. In urgent cases, the head of the prison takes a decision whether to send the detainee to an appropriate medical institution, upon a proposal of the prison doctor, of which the judge in charge of investigation and the presiding judge need to be informed without delay. The prison doctor is obliged to keep separate records of detained persons who use methadone maintenance treatment. Medical and dental examinations of detainees are performed at the prison clinic during regular business hours, whereas they are performed in urgent cases outside regular working hours as well, upon the order of the head of the prison. Detainee reports to the prison health officer and security officer, who are obliged to keep records thereon and draw up a record. Prison doctor or dentist is required to keep daily records of examinations in the medical file card and in the record book of examinations. The prison doctor enters a description of the existing situation and the identified inadequacies into the medical rounds records. Prison doctor immediately informs the head of the prison about the identified inadequacies. According to a daily schedule, detainees must maintain personal hygiene and cleanliness of the rooms in which they reside. The prison administration provides supplies and equipment necessary to maintain cleanliness.

39. Pursuant to the recommendations given in the first cycle, in order to record all the detained persons under its jurisdiction, documenting the identity of persons detained, the date, time and place, identifying the authority that ordered detention of the person in question, grounds for detention, date and time of receipt into a detention institution and health of person detained after receipt and any changes thereof, location and time of testing, stating the names of persons authorized to take over the detained person, and the date and time of release from detention facility or transfer to another detention facility, the following was conducted in the previous period:

40. In addition to written records, records in electronic form were set up for detained persons, which are comprehensive and contain all the requested information. At the moment, the requested data can be assessed in a very accurate and precise manner on the basis of custody records which are kept in all the regional units and local units.

**Reply to the issues raised in paragraph 4 of the list of issues**

41. In accordance with the 2007 Constitution of Montenegro, the Protector of Human Rights and Freedoms of Montenegro (Ombudsman) is an autonomous and independent body which takes measures to protect human rights and freedoms. Law on Protector of Human Rights and Freedoms of Montenegro<sup>17</sup> governs the competence, powers, manner of work and proceedings of the Ombudsman while protecting human rights and freedoms enshrined in the Constitution, laws, ratified international human rights treaties and generally accepted rules of international law, and other issues of importance to his work. Among other things, this Law stipulates that the Ombudsman takes measures to protect human rights and freedoms autonomously and independently, based on the principles of justice and fairness, in cases when they are violated by acts, actions or lack of actions of government agencies, public administrative bodies, local self government bodies and local government bodies, public services and of other holders of public authorities, as well as measures to prevent torture and other forms of inhuman or degrading treatment or punishment and measures for protection against discrimination (art. 2, para. 2 of the Law).

42. Unlike the 2003 Law on the Protector of Human Rights and Freedoms, the new 2011 Law lays down the Ombudsman as a national mechanism for the protection of persons deprived of liberty against torture and other forms of cruel, inhuman or degrading treatment or punishment. In addition to the powers and responsibilities he had in accordance with the previous law and which he has under the valid law, Ombudsman is also entrusted with the taking of measures for the prevention of torture and other forms of inhuman or degrading treatment or punishment (prevention of torture) in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. While performing the function of the national mechanism for the protection of persons deprived of liberty against torture and other cruel, inhuman or degrading treatment or punishment, the Ombudsman directly cooperates with the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ('SPT').

43. The 2012 Budget of Montenegro also allocated to the Ombudsman funds for the execution of duties of an independent and impartial monitoring and research of cases of torture and other forms of inhuman or degrading treatment or punishment.

44. Under the Budget Law, funds allocated for the needs of new mechanisms of the Protector of Human Rights and Freedoms amounted to € 93,496 for the anti-discrimination program and € 105,117 for the anti-torture programme.

45. *Rulebook on internal organisation and job descriptions of the Professional Support Service within Ombudsman's Office*<sup>18</sup> provides additional specialized duties for Ombudsman's Office related to it being a national preventive mechanism, in charge of protection against torture and the right to trial within a reasonable time. Hence, the Ombudsman is in charge of protecting human rights and freedoms of persons deprived of their liberty and persons whose freedom of movement has been restricted, preventing torture and other forms of inhuman or degrading treatment or punishment, protecting against torture and other forms of inhuman or degrading treatment or punishment by police officers, staff of the criminal sanctions enforcement authorities, or authorities, organizations and institutions accommodating persons whose freedom of movement has been restricted, and protection in the event of delays in proceedings, obvious abuse of procedural powers or failure to enforce judicial decisions.

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<sup>17</sup> The Law was published in the Official Gazette of Montenegro 42/11 and it is applied as of 23 August 2011.

<sup>18</sup> Rulebook on internal organisation and job descriptions of the Professional Support Service within Ombudsman's Office entered into force on 15 May 2012.

46. For the purpose of its national preventive mechanism duties, the Rulebook lays down the positions of 2 new advisors and a deputy. Deputy Protector for Prevention of Torture was appointed in early June 2012. One adviser was employed, and the hiring of another adviser is under way. In addition to the above mentioned new positions, two advisor positions in charge of protection against torture were planned and one advisory position in charge of the right to trial within a reasonable time.

47. Given that the Law provides for a number of measures in the event of non-compliance with Ombudsman's recommendations within the set deadline, in most cases state bodies, public administrative bodies and public institutions to which the Ombudsman sends its recommendations act upon them and report regularly to the Ombudsman<sup>19</sup>. In case of non-compliance with the recommendation within the set deadline, the Ombudsman can inform thereof the directly superior authority, submit a special report to the Parliament of Montenegro or inform the public (art. 42, para. 2 of the Law). The fulfilment of certain recommendations often requires a longer period of time, so that the Ombudsman continually monitors activities related to their fulfilment.

#### **Reply to the issues raised in paragraph 5 of the list of issues**

48. Following the proposed amendments to the 2009 Law on the Protector of Human Rights and Freedoms, due to many changes (more than 50 per cent of the text of the Law), it was decided that a completely new version of the Law would be drafted. Several versions were made and the Venice Commission gave its opinion to the new draft Law in 2011. Finally, a new Law on the Protector of Human Rights and Freedoms of Montenegro was passed in July 2011, which partially took into consideration the opinions of the Venice Commission. The Ombudsman is appointed by the Parliament by a simple majority, upon the proposal of the President of Montenegro. Moreover, the institution of the Ombudsman has been appointed as the NPM and as an institutional mechanism for protection against all forms of discrimination.

49. As for its duties relating to the prevention of torture, the Ombudsman takes measures to prevent torture and other forms of inhuman or degrading treatment and punishment in accordance with the OPCAT. Specifically, the Ombudsman inspects without notice the premises within bodies, organizations, institutions and other places where there is a person placed under arrest or where such a person may be; visits the person placed under arrest and checks the respect of his/her rights without prior notification or authorisation; talks to the person under arrest, as well as with another person who might provide the Ombudsman with the necessary information, without the presence of an official or other person, personally or through an interpreter.

50. The authority, organization or institution shall, without delay, i.e. within the given time limit, implement the recommendations of the Ombudsman for the prevention of torture and other forms of inhuman or degrading treatment or punishment (Art.25). Establishment of an advisory body with special tasks and powers for the functioning of the NPM is planned in accordance with article 25. It will be established pursuant to a separate act.

51. The Ombudsman directly cooperates with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art.26).

#### **Reply to the issues raised in paragraph 6 of the list of issues.**

52. Law on Domestic Violence Protection<sup>20</sup> was adopted on 27 July 2010 and entered into force on 14 August 2010. This Law defines domestic violence as "omission or

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<sup>19</sup> <http://www.ombudsman.co.me/izvjestaji.php>

<sup>20</sup> Official Gazette of MNE 46/2010

commission by a family member in violating physical, psychological, sexual or economic integrity, mental health and peace of other family member, irrespective of where the incident of violence has occurred" (art. 2). The law governs protection of victims of violence in misdemeanour proceedings and provides five types of protection orders as types of misdemeanour sanctions (arts. 20 and 26): order of removal from place of residence, restraining order; prohibition of harassment and stalking, mandatory addiction treatment and mandatory psycho-social therapy. The principle of urgency in proceedings relating to protection against violence is also laid down. The obligation to report violence by government agencies, other bodies, health, educational and other institutions has also been introduced.

53. By adopting the *Strategy on domestic violence protection*, in July 2011, the Montenegrin government has shown its determination to improve domestic violence protection by providing support to all institutional and non-institutional actors which participate in prevention of domestic violence. The Strategy specifically promotes the application of international standards that protect human rights, promote gender equality and prohibit all forms of violence, including domestic violence. While observing international standards in this field, the Strategy envisages: harmonizing preventive action of all actors in the society (family, educational institutions, health and social services, judicial bodies, the police, NGOs, etc.) in order to prevent domestic violence; public awareness raising on domestic violence issues; continuous education of all entities participating in the process of preventing domestic violence; establishment of a single statistical database on victims of violence as well as on violent persons; identifying and establishing the necessary services that work to prevent domestic violence and provide assistance to victims, but also to violent persons.

54. The Protocol on Treatment, Prevention and Domestic Violence Protection was signed in November 2011. It defines the procedures and institutional co-operation in relation to domestic violence and violence against women. Signatories of the protocol are the Ministry of Justice, Supreme Court, Supreme Public Prosecutor's Office, Ministry of Education and Sports, Ministry of Labour and Social Welfare, Ministry of Health, Police Directorate, Misdemeanour Panel. In the framework of the campaign *The 16 Days of Activism against Gender Violence*, which was conducted in 2010, Government of Montenegro adopted the *Declaration Proclaiming the 2010 Year of the Fight against Gender Violence and Domestic Violence in Montenegro*. Title XIX of the Criminal Code criminalizes both violence against family members or members of a family community<sup>21</sup> and breach of family obligations and omission to provide maintenance. For example, the Criminal Code prescribes the crime of *violence against family members or members of a family community* which stipulates that anyone who uses gross violence to violate bodily or mental integrity of his family members or members of a family community will be punished by a fine or a prison term up to one year. Where the above offence was committed by means of weapons, dangerous tools or other instruments suitable for inflicting serious bodily injury or for seriously impairing one's health the perpetrator will be punished by a prison term from three months to three years. Where the offence in question resulted in serious bodily injury or harm to one's health or where such offences were committed against a minor, the perpetrator will be punished by a prison term from one to five years. In addition to that, where the offence resulted in the death of a family member of a member of

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<sup>21</sup> "family community" (porodična zajednica) is understood to also mean former spouses, cousins and relations through full adoption in a direct line without limitation, and in a collateral line conclusively with the fourth degree, relatives through incomplete adoption, relatives through marriage conclusively with the second degree, persons who live in the same household and persons that parent a child or a child on the way, even where such persons have never shared a household (translator's note).

family community, the perpetrator will be punished by a prison term from three to twelve years. Anyone who violates the measures which were ordered on the basis of law by court or other state authority as domestic violence protection will be punished by a fine or a prison term up to six months.

55. In Montenegro, there are three shelters which provide accommodation, assistance and support to potential victims and victims of trafficking in human beings. These shelters are run by NGOs: *Crnogorski ženski lobi* (Montenegrin Women's Lobby), *Sigurna ženska kuća* (Safe Women's House) and *SOS Nikšić*.

56. The Government is devoting great attention to the protection of victims of trafficking in human beings; therefore, since 2006, it has fully assumed through the Office for Fight against Trafficking in Human Beings the funding of the Shelter for Victims of Trafficking in Human Beings, run by the activists of NGO Montenegrin Women's Lobby. That is to say, further to the agreement signed between the Office for Fight against Trafficking in Human Beings and the NGO Montenegrin Women's Lobby, on the project to protect victims of trafficking in Montenegro, the Office committed to cover from its own resources all the expenses that are necessary for the smooth functioning of the Shelter.

57. According to statistics obtained from the NGO *Montenegrin Women's Lobby*, the Government's Shelter accommodated 45 wards in the period since 2009 to date (in 2009 - 18, in 2010 - 16, in 2011 - 6 and in 2012 - 5 wards). Of this number, on the basis of final convictions, there were three victims of trafficking in human beings. (For statistical data on the number of received and investigated reports of domestic violence during the reporting period and the number of prosecutions, convictions and penalties imposed (annex I).

58. Pursuant to the provisions of the Law on Legal Aid (Official Gazette of Montenegro 20/2011), the victim of the crime of violence in the family or family community is entitled to free legal aid.

59. Within the scope of the IPA 2010 Gender Equality Programme implemented by the Montenegrin Gender Equality Department (Ministry of Minority Rights) and the UNDP, with EU financial assistance, a special segment of the activities relates to the fight against domestic violence. In this connection, the project Advisory Committee has been established in this field, which consists of representatives of institutions and NGOs dealing with this issue. The establishment of multidisciplinary teams at the local level is on-going. They will provide a complete and coordinated protection of victims of domestic violence, in conformance to the Law on Domestic Violence Protection. Teams are established within the 10 centres for social welfare.

#### **Reply to the issues raised in paragraph 7 of the list of issues**

60. In Title XXXV the Criminal Code of Montenegro prescribes criminal offences against humanity and other values guaranteed by international law. A number of these offenses are related to trafficking in human beings: trafficking in persons (art. 444), trafficking in children for adoption (art. 445) submission to slavery and transportation of enslaved persons (art. 446). Title XVIII - *Crimes against Sexual Freedom* criminalizes offenses of solicitation and making arrangements for sex act (art. 209) and pandering (art.210). Title XXXII - *Criminal Offences against Public Law and Order* includes primarily heterogeneous criminal offenses. Very important criminal offenses are laid down under article 399 - *violent behaviour, criminal association* (401), *establishment of criminal organization* (401a) and *illegal crossing of state border and smuggling of persons* (art. 405).

61. Further to the provisions of the Law on Legal Aid<sup>22</sup> a victim of a crime of trafficking in persons is entitled to free legal aid. Government's 2012 Programme of Work established the obligation of preparing a proposal for a Law on the Compensation of Victims of Serious Crimes. This Law will govern the right to financial compensation for victims of violent crimes committed with wrongful intention, conditions and procedure for exercising the right to compensation, decision making bodies and bodies that participate in the decision making on the right to compensation, the authorities and the procedure to be used in cross-border cases.

62. The Government of Montenegro was among the first in the region to adopt the *National strategy to combat trafficking in human beings*, as the basic document containing guidelines for the conduct of all relevant stakeholders in the fight against trafficking in human beings in Montenegro, through prevention, protection and prosecution of perpetrators. The National Strategy is divided into three parts: prosecution, protection and prevention, and has a comprehensive approach to the problem of trafficking in human beings. Implementation of the National strategy and of individual Action plans are monitored by the Working Group formed as a multi-agency body, consisting of representatives of the judiciary, Public Prosecution Office, Ministry of Justice and Human Rights, Ministry of Health, Ministry of Labour and Social Welfare, Ministry of Education and Science, Police Directorate, Ministry of Foreign Affairs and European Integration, Ministry of Interior, Ministry of Minority Rights, Ministry of Culture and Media at the level of assistant ministers, as well as representatives of the U.S. Embassy, international organizations - OSCE and IOM, UNICEF and European Delegation representatives as observers.

63. For the purpose of achieving the objectives given in the *National strategy to combat trafficking in human beings* 4 action plans have been adopted and implemented (from 2003, 2006, 2009, 2010-2011). A Monitoring Working Group is tasked with monitoring the implementation of the *National strategy to combat trafficking in human beings* and action plans; among other things, it is tasked with preparing semi-annual reports on the implementation of the above-mentioned documents.

64. The last report on the implementation of the *National strategy to combat trafficking in human beings* and the Action plan for the period 1 July to 31 December 2011 was adopted at the session of the Government on 21 June 2012.

65. Taking into account the assessment of members of the Monitoring Working Group, that the 2003 *National strategy to combat trafficking in human beings* was fully implemented, in 2011 the Office for Fight against Trafficking in Human Beings presented an initiative to develop a new strategic document. Numerous representatives of state bodies and institutions that are directly or indirectly involved in fighting trafficking in human beings were involved in developing this document, as well as representatives of non-governmental and international organizations.

66. The *strategy to combat trafficking in human beings* for the period 2012-2018 was adopted at the session of the Government on 13 September 2012, with an Action plan for the period 2012-2013. In comparison to the previous Strategy, novelties are related to the introduction of a special chapter devoted to the objectives and implementation measures for proactive identification of potential victims of THB through greater involvement of all institutions that may come into contact with victims of THB. There are also new chapters which define the measures and activities focused on strengthening international cooperation and strengthening coordination and partnerships with entrepreneurs, civil

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<sup>22</sup> Official Gazette of MNE 20/2011.

sector, Administration for Prevention of Money Laundering and Financing Terrorism, and so on. A Tripartite Commission (composed of representatives of the Supreme Public Prosecutor's Office, the Supreme Court and the Police Directorate) was set up in 2009, tasked with recording THB statistics and delivering those data on a monthly basis to the Office for Fight against Trafficking in Human Beings, which consolidates the data and creates cumulative THB statistics for Montenegro. The said detailed statistics are public and available on the website of the Office ([www.antitrafiking.gov.me](http://www.antitrafiking.gov.me)).

67. Office for Fight against Trafficking in Human Beings coordinates the activities of the competent government bodies, international organizations and NGOs, thus combining all the positive efforts to combat THB in Montenegro; establishes and maintains cooperation between domestic and international entities in order to create effective mechanisms to combat THB; presents results achieved in combating THB in Montenegro by means of its participation in various international and national symposia; draws up reports for international entities; initiates approximation of national legislation with the international legislation in the field of combating THB; monitors the implementation of international regulations, conventions and agreements on combating trafficking in human beings; performs tasks related to the preparation of educational and promotional and marketing campaigns; manages the Shelter for Human Trafficking Victims and the complete program to protect victims of THB.

68. There is a support service in the courts in Montenegro for the injured/witnesses-victims of THB, victims of trafficking in children for adoption and victims of domestic violence and violence towards members of a family community. A brochure was published which provides to the injured parties/witnesses contact information of court employees responsible for providing support and information about the criminal proceedings, testimony, measures to protect injured parties/witnesses, etc. (For statistics on trafficking in human beings in Montenegro for the period 2008-2012, see annex II).

69. With the objective of providing protection and assistance of a higher quality, since 2006 the Government has been continuously and fully funding one Shelter for Victims and potential victims of THB/trafficking in children. At the Shelter the victim is provided with initial recovery through 24 hours of professional staff assistance and the implementation of specific self-support and rehabilitation programs. By signing of the Cooperation Agreement,<sup>23</sup> obligations of institutions which are laid down by law were detailed through clearly defined operational procedures implemented by the signatories to the Agreement when working on a particular THB case. Potential and actual victims of THB are provided personal safety, free legal, medical, psychological and social protection with a minimum of identification data and under the principle of priority, while not conditioning that support by their cooperation with investigating authorities. The competent investigative and judicial authorities are dealt with by the competent investigative and judicial authorities under the principle of priority. During the reporting period, a draft of the new Cooperation Agreement was drafted, which was forwarded to the heads of signatory bodies and institutions for review and approval. In addition to the existing signatories to this Agreement, the following were also included: the Supreme Court, Office for Fight against Trafficking in Human Beings, Centre for Children Support from Bijelo Polje, the Red Cross and NGOs: SOS helpline Podgorica, SOS helpline Nikšić, Roma Scholarship Centre and Dom nade (House of Hope). In April 2011, Office for Fight against Trafficking in Human Beings signed a

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<sup>23</sup> The signatories of the cooperation agreement: Supreme Public Prosecutor's Office, Ministry of Education and Sports, Ministry of Labour and Social Welfare, Ministry of Health, Police Directorate and three non-governmental organizations. The text of the agreement with related annexes which define individual obligations is accessible at the Office's website: [www.antitrafficking.gov.me](http://www.antitrafficking.gov.me).



Protocol on Cooperation with the Union of Employers of Montenegro (which has over 1,500 members).

**Reply to the issues raised in paragraph 8 of the list of issues**

70. The doctrine of command responsibility was introduced in the Montenegrin criminal legislation by prescribing the crime omission to prevent criminal offences against humanity and other values protected under international law (art. 440 of the Criminal Code). For this crime to exist, a link is necessary between the perpetrator's omission and the commission of (i.e. completion) of a criminal offense by subordinates. Specifically, the Code provides that "A military commander or a person performing this function or a superior civilian who, knowing that forces he is commanding or controlling are preparing or have commenced the commission of criminal offences against humanity and other values protected under international law omits to take the necessary measures that he could have taken and was obliged to take for the prevention of commission of the offences and thereby causes actual commission of any of the offences, shall be punished by a prison term from two to ten years. Where the offence was committed by negligence, the perpetrator shall be punished by a prison term up to three years".

71. In the period since 2009 until 1 July 2012, the High Court in Podgorica had one war crimes case with elements of torture and ill-treatment, named Morinj, in which there were 6 accused persons. Of them, two persons were acquitted, while 4 persons were declared guilty and sentenced to: 1 prison term of two years, one prison term of four years and two prison terms of three years respectively.

72. It is certain that the issue of mitigation of punishment for the perpetrators of serious crimes will be considered when making amendments to the Criminal Code.

**Reply to the issues raised in paragraph 9 of the list of issues**

73. There were no registered cases of sexual violence at the Institution for Enforcement of Criminal Sanctions either between the officers and inmates or between inmates themselves. The strategy to prevent sexual violence is being developed. In accordance with the Law on Prohibition of Discrimination, Institution for Enforcement of Criminal Sanctions has achieved considerable results in the fight against all forms of discrimination; no international organization has pointed out in its report to any form of discrimination against persons deprived of liberty under different legal grounds and placed in the Institution. Moreover, none of the detainees have filed a complaint with any of the state institutions on basis of any form of discrimination based on sexual orientation or gender identity.

**Reply to the issues raised in paragraph 10 of the list of issues**

74. Information that the police force of Montenegro has jeopardized the rights of the LGBT population in any manner and in any segment of its competence, are false. On the contrary, the police has always intervened in a timely manner to protect members of the LGBT population. Police Directorate of Montenegro's data do not indicate to the existence of any cases of torture against the LGBT population by police officers. Pursuant to the legislation, Police Directorate handles without any exceptions all reports and findings of violations of human rights and fundamental freedoms, including the LGBT population.

75. For information on measures taken to prevent the reported torture and abuse of the LGBT population by the police and to promote the education and sensitization of members

of the police on their obligations in terms of non-discriminatory treatment towards LGBT persons, see annex III.<sup>24</sup>

76. The Public Prosecution Office has had no cases of torture and abuse of the LGBT population by the police. In the period from 2009 until 1 July 2012, courts in Montenegro did not have any cases of torture and abuse of the LGBT population by the police.

### **Article 3**

#### **Reply to the issues raised in paragraph 11 of the list of issues**

77. In accordance with article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Law on Mutual Legal Assistance in Criminal Matters<sup>25</sup> stipulates that the Minister of Justice will not grant the extradition of the person who enjoys the right of asylum in Montenegro or where it can be reasonably assumed that the person claimed would be subjected to prosecution or punishment because of his race, religion, nationality, belonging to a specific social group or for his political beliefs, or that his status would be made more difficult for one of these reasons.

78. In accordance with article 3, items 1 and 2 of the Convention, Law on Asylum, article 2 stipulates that subsidiary protection, as supplemental protection of refugees in accordance with human rights instruments, will be accorded to an alien who has not met the requirements for the recognition of refugee status but who would be subjected to torture or inhuman or degrading treatment or punishment, or whose life, safety or freedom would be threatened on account of generalized violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom, in case he or she is returned to his or her country of origin or another State.

79. Accordingly, when considering each application, the decision is being taken with a previous analysis of information on the country of origin of asylum seekers, in order to avoid even the slightest possibility of subjecting that person to torture or other inhuman or degrading treatment or punishment by returning him to the country of origin.

#### **Reply to the issues raised in paragraph 12 of the list of issues**

80. The asylum system in Montenegro started to work by adopting of the Law on Asylum<sup>26</sup>, which entered into force on 25 July 2006, and its implementation began on 25 January 2007. Following the adoption of the Law on Asylum, a separate organizational unit within the Ministry of Interior was formed - Asylum Office, which has 5 employees.

81. The Asylum Office receives asylum applications, conducts proceedings and takes decisions on asylum applications, takes decisions on discontinuing and annulling asylum, conducts proceedings and takes decisions related to changing the status of those who were already granted asylum status, issues documents needed to prove one's identity and to travel abroad, to exercise one's legal status and rights in accordance with regulations, keeps records of the situation in the country of origin, conducts procedure for the approval or cancellation of subsidiary protection, temporary protection and performs other tasks in the field of asylum.

82. The appeals procedure against the decisions taken by the body of first instance is conducted before the Asylum Appeals State Commission. The Commission was established

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<sup>24</sup> [http://www.arhivamedija.com/docs/1330089588/1330089588\\_266.pdf](http://www.arhivamedija.com/docs/1330089588/1330089588_266.pdf).

<sup>25</sup> Official Gazette of MNE 4/2008.

<sup>26</sup> Official Gazette of the Rep. of MNE 45/06.

in November 2007 pursuant to the decision of the Government of Montenegro, and it consists of the president and four members who are judges of the Administrative Court of Montenegro or expert assistants in the same court.

83. Refugee Care and Support Office, as the body responsible for the care of these persons, provides adequate conditions for the accommodation of such persons, given that the Centre for Asylum Seekers is still under construction. Also, this authority is obliged to assist all persons who are subject to the proceedings or have been granted protection, in the process of exercise of their rights to accommodation, education, health care, work and other rights.

84. The construction of the Centre for Asylum Seekers, which can accommodate 65 beneficiaries, is on-going, on the basis of the Conclusion of the Government of Montenegro. It is planned that the Centre be put into operation by the end of 2012. The procedure of adopting the internal organization and job descriptions act of the Refugee Care and Support Office is at work. The proposal of the said document provided the appropriate number and the professional structure of the staff to carry out the tasks of care and support provision to asylum seekers. Financial resources to care for refugees are provided for in the budget. As for the regulations, laws and by-laws were adopted governing issues of exercising rights to: health care, social benefits in cash, legal aid and access to the labour market. Appropriate bylaws were adopted with a view to fully implement the Law on Asylum.

85. In order to find a lasting and sustainable solution to the issue of displaced persons from former Yugoslav republics and internally displaced persons from Kosovo, Montenegrin Parliament adopted the Law on Amendments to the Law on Foreigners, which entered into force on 7 November 2009. This Law enabled DPs and IDPs in Montenegro to obtain the permanent resident alien status in Montenegro under privileged and more favourable conditions. After the adoption of this Law, in order to inform displaced and internally displaced persons in an adequate and timely manner about the method and procedure of applying to obtain the permanent resident alien status, the Ministry of Interior conducted an information campaign. Also, it is possible that individuals who do not have a valid travel document of the country of origin be approved temporary stay until they are provided with a valid passport, but at the longest for three years following the date of being granted temporary stay. The original deadline for the submission of applications needed to regulate the status of DPs and IDPs was 7 November 2011; however, Ministry of Interior extended the deadline for the submission of applications for obtaining the permanent resident alien status until 31 December 2012. More specifically, the Parliament of Montenegro adopted for that purpose the Law on Amendments to the Law on Foreigners, which entered into force on 18 November 2011.

86. In order to provide assistance to IDPs from Kosovo in terms of obtaining the necessary documents, the Agreement between the Government of Montenegro and the Government of the Republic of Kosovo was concluded on subsequent registration of internally displaced persons from Kosovo residing in Montenegro into the main registers and registry of nationals of the Republic of Kosovo.

87. Last year Ministry of Interior initiated the establishment of the Regional Technical Working Group on the simplification of procedures for obtaining the documents necessary to obtain the permanent resident alien status for DPs and IDPs in Montenegro, whose members are representatives of the Ministry of Interior of Montenegro, Ministry of Interior of the Republic of Serbia, Ministry of Interior of the Republic of Croatia, Ministry of Civil Affairs of Bosnia and Herzegovina and UNHCR offices in these countries. There have been four meetings of this working group so far, whose results were rated as highly successful. The Working Group has achieved significant working results; motivated the competent authorities of these countries to address DPs and IDPs' issues more actively and eliminated

all uncertainties and possible obstacles in the processes of obtaining documents, registration and subsequent registration into the registers of birth and nationals, and in the process of establishing the nationality of these persons, as the legal instruments were created to regulate their status, both in countries of origin of these persons, and in the receiving states.

88. The Government of Montenegro adopted the *Decree on the manner of exercising the rights of displaced persons from former Yugoslav republics and internally displaced persons from Kosovo*<sup>27</sup>, which stipulated that DPs from former Yugoslav republics and IDPs from Kosovo residing in Montenegro will exercise rights in the same manner as Montenegrin nationals until they obtain the permanent resident alien status in accordance with the Law on Foreigners.

89. Resolving the status of displaced persons is also possible by means of the admission to the Montenegrin nationality, further to the existing legislation.

90. Also, a new *Strategy on finding durable solutions for displaced and internally displaced persons in Montenegro, with special emphasis on the Konik area*, with an Action plan, was passed in July 2011. The Strategy stipulates that in cooperation with the UNHCR Office in Podgorica, the Asylum Office would analyze all the individual applications of DPs who have applied to the Asylum Office for asylum status or have submitted an application for permanent residency in Montenegro. The Asylum Office has so far received 417 applications for status review. Each of the applications were examined by the Office.

91. Until 28 June 2012, approximately 8,000 DPs and IDPs have submitted applications for status regulation on the basis of the Law on Foreigners, which makes up about half of the total number of these categories of persons in Montenegro. Out of that, about 5,000 have been resolved, while others are subject to the decision making procedure.<sup>28</sup>

92. The Integrated action plan for the implementation of the *Strategy on finding durable solutions for displaced and internally displaced persons in Montenegro, with special emphasis on the Konik area* defines as one of the activities the determination of the number of IDPs who have been refused re-registration in 2009 and are still in need of protection to obtain the permanent resident alien status. Entities in charge of implementing this activity are the Refugee Care and Support Office of the Government of Montenegro, Ministry of Interior and UNHCR, whose representatives formed the Commission in charge of re-examining individual cases of IDPs who were denied re-registration in 2009. The Commission approved subsequent re-registration of 237 persons, refused re-registration of 82 persons and suspended proceedings concerning 18 persons.

93. The fire which erupted at Vrela Ribnička on 24 July 2012 destroyed one part of the settlement Kamp Konik I, in which IDPs reside. On that occasion 29 shacks were burnt down and 150 families with 800 members lost their homes. As a result, Operational Team was established which includes representatives of the Ministry of Labour and Social Welfare, Ministry of Interior, Police Directorate, Refugee Care and Support Office, administrative capital, Red Cross of Montenegro and the UN agencies. Within 24 hours of the fire, members of the Red Cross Disaster Relief Team and members of the Army of Montenegro erected a tent settlement for the affected families. The tents were provided by the Red Cross and the MoI's Emergency Situations Department. The organisation HELP, with financial support of the German Embassy in Montenegro, has assumed responsibility for providing food in August 2012. After that, the Ministry of Labour and Social Welfare allocated funds for providing hot meals for residents of the tent settlement. HELP is in charge of its distribution. With the support of United Nations agencies, the Red Cross and

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<sup>27</sup> Official Gazette of MNE 45/2010.

<sup>28</sup> Source: Ministry of Interior

the OSCE Office to Montenegro organized the distribution of sanitary supplies, blankets, mattresses, water canisters, kitchen sets, and clothing. In order to make sure health care is provided for the residents, a clinic was set up at the Konik camp at the request of the Ministry of Health. Doctors from the Podgorica Health Centre carry out daily medical checks, while the representatives of the Public Health Institute of Montenegro regularly monitor health of the residents and the overall epidemiological situation.

**Reply to the issues raised in paragraph 13 of the list of issues**

94. Since regaining its independence Montenegro has signed a series of bilateral agreements on readmission (return and admission) with other countries and the protocols for their implementation, which are formally and substantially aligned with the Agreement between the European Community and the Government of the Republic of Montenegro on Readmission. Implementing protocols envisage the obligation of a diplomatic interview with the person that could be subject to readmission into MNE or to transfer to third countries.

95. The most common objective of the interview in one of Montenegro's diplomatic missions or consular posts is to accurately define the identity and nationality of the person on the basis of *prima facie* evidence and in order to avoid re-admissions by mistake. On the same occasion, however, consular sectors of our embassies ask for specific guarantees in writing that the person who will be transferred to a third country upon the request for readmission, will not be subjected to torture or to inhuman treatment in the country of origin.

96. Recommendations of the Committee against Torture are also implemented by means of special reports prepared by Montenegrin diplomatic missions for the Montenegrin MoI (Division for Asylum) and Police Directorate of MNE (Division for Foreigners, Illegal Immigration and Visas) as answers to inquiries related to respect for human rights in the countries of origin of potential asylum seekers in MNE.

97. These reports are strictly confidential and are drawn up in accordance with the Law on Personal Data Protection, in order to eliminate any possibility of misuse of collected data. If the competent diplomatic mission or consular post finds in its human rights report in the country of accreditation that there is a possibility of torture, the person who has possibly sought asylum in Montenegro will not be returned to the country of origin.

98. From the above-mentioned it follows that Montenegro, as a signatory to the Convention, relies on diplomatic assurances both during readmission procedure, and during the asylum application procedure. So far there were not recorded cases of transfer of persons with the mediation of a Montenegrin diplomatic mission or consular post, to the country of origin where the same person has been exposed to inhuman treatment. Therefore there was no need to include subsequent monitoring mechanisms.

99. According to available data kept by the Police Directorate - Division for Foreigners and Illegal Migration, concerning the number of persons who were returned by Montenegro to other countries under the Agreement on Readmission and within the repatriation process, the following persons were returned in the period from 01/01/2008 to 01/07/2012:

- To the Republic of Albania 96 persons under the Agreement on Readmission - summary procedure;
- To the Republic of Albania 17 persons - forcible removal;
- To the Republic of Serbia 1 person - forcible removal;
- To the Republic of France 1 person – repatriation;
- To Georgia 1 person – repatriation;

- To Algeria 3 persons – repatriation;
- To Nigeria 3 persons – repatriation.

100. Please note that all cases concerned illegal migrants. The highest percentage of these persons were returned immediately after being caught committing a violation of the Montenegrin visa regime, without the need for diplomatic mediation or assurances.

**Reply to the issues raised in paragraph 14 (a), (b) and (c) of the list of issues**

(a) The number of registered and approved asylum applications disaggregated by age, sex and nationality from 2008 until 17 Oct 2012:

- Registered applications for asylum: 1,387. Age: 1,363 adults, 24 juveniles. Sex: 1,373 males and 14 females. Nationality: FYR Macedonia 5, Serbia 6, Albania, 6, Afghanistan 110, Belarus 1, Georgia 3, Kosovo 7, Russian Federation 4, Kenya 2, Croatia 2, Turkey 4, Algeria 728, Iran 14, Palestine 22, Kingdom of Morocco 175, Tunisia, 151, Somalia 1, Libya 6, Nigeria 7, Liberia 1, Pakistan 79, Iraq 2, Egypt 6, Syria 23, Moldova 1, Romania 1, Sudan 2, Kuwait 1, Sierra Leone 3, Lebanon 2, India 5, Yemen 1, Bosnia and Herzegovina 1, Latvia 1, Bangladesh 3, Mauritania 1.

(b) Out of the said 1,387 asylum applications filed, 1 person was granted refugee status (adult male from FYR Macedonia), which has since terminated; 5 subsidiary protections were approved (1 adult male from Belarus, Kingdom of Morocco 2, Iraq 1, Iran 1). In the meantime, subsidiary protection of one person was cancelled (Iran). The said persons were accorded international protection as in case of their return to the country of origin they would be subjected to torture;

(c) In the period 2009-2012 there were no forcible deportations or expulsions of foreigners. The asylum procedure is the responsibility of the Ministry of Interior.

**Articles 5 and 7**

**Reply to the issues raised in paragraph 15 of the list of issues**

101. Montenegro is a contracting party to the Statute of the International Criminal Court and is ready to cooperate fully with the court and to comply with all of its international obligations in this field, as shown by its overall cooperation with the Hague Tribunal.

102. Montenegro signed an agreement in 2007 with the United States in connection with article 98, exchange of diplomatic notes, which did not imply any signature or ratification. At that moment, it was estimated that such an arrangement would allow us to strengthen our cooperation with the U.S. and successful reforms in the security and defence sectors.

103. Montenegro has expressed its readiness to contribute to the investigation and prosecution of acts falling under the jurisdiction of the International Criminal Court. By means of the agreement, we took upon ourselves the obligation to consult with the U.S., on a reciprocal basis, in relation to the surrender of U.S. nationals to the International Criminal Court, if present in the territories of the contracting parties.

104. It should be noted that this agreement has a provision on revision and it can be cancelled with a validity period of one year after the cancellation notice. Until now there were no specific cases where this Agreement had to be applied.

**Reply to the issues raised in paragraph 16 of the list of issues**

105. See annexes I – VII

## Article 10

### Reply to the issues raised in paragraph 17 (a), (b) and (c) of the list of issues

106. Training of Police Directorate officers - Police Academy: human rights and ethics, involving 22 units and a class load of 54 are taught at the Police Academy in Danilovgrad, within the education program for policemen of basic level. Four classes out of the total class load are devoted exclusively to the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This topic is also present in other units such as: police and human rights, human rights during preliminary investigation and investigation, rights of vulnerable groups, protection of human rights during arrest and provisional custody, ethics in the police service, awareness of difference, as well as in nine classes on the international humanitarian law. Moreover, four classes are devoted to the Convention exclusively within the subject *ethics and code of conduct* (class load of 36) as part of the education program for prison officers. This topic is also covered in a series of other units, as well as in the contents of the subject *human rights and prisons*. Both educational programs are devised in a spirit of respect for human rights and ethical and human treatment, which permeates through all the subjects (theoretical and practical classes) contained within the education of future police officers and prison officers.

107. Training of judicial and prosecutorial office holders - the Judicial Training Centre organized a total of 11 activities/seminars for judicial and prosecutorial office holders on the manifestations of torture and ill-treatment, in the period from June 2008 to July 2012. They were attended by more than 132 participants (61 representatives of the judiciary and 71 representatives of the prosecution office). Seminars and workshops were held on topics of the European Convention on Human Rights and the Criminal Procedure Code. The Judicial Training Centre regularly distributes newsletters containing selected judgments of the European Court of Human Rights to all courts and prosecution offices in Montenegro. In previous years, the bulletin in question had monthly editions, but in 2011 it started to be published on a quarterly basis. This long-standing practice of the JTC is implemented in collaboration with the AIRE (Advice on Individual Rights in Europe) Centre from London and the Council of Europe.

### Reply to the issues raised in paragraph 18 of the list of issues

108. For detailed overview of trainings, see annex IV

## Article 11

### Reply to the issues raised in paragraph 19 of the list of issues

109. Being the line ministry, Ministry of Justice and Human Rights pays special attention to the implementation of valid European standards regarding the sanction serving policy, as well as the relevant Council of Europe conventions and European Prison Rules. The aforementioned were taken into account during the development of the *Action plan to improve the prison system* adopted by the Government of Montenegro in September 2011. The Action plan defines measures to improve the situation in the prison system, competent authorities for their implementation, as well as deadlines and indicators on the basis of which it will be possible to assess the success of planned measures and the results achieved. Planned activities are grouped in such a manner to improve prison conditions, education and vocational training of the Institution for Enforcement of Criminal Sanctions staff, treatment of sentenced persons and to promote alternative sanctions and strengthen public relations policy.

110. The project *Support to the Reform of the System of Criminal Sanctions Execution* was implemented in 2011 with the support of the European Union in order to improve the legal framework and promote alternative sanctions and best management practices in the prison system. IPA 2011 project is expected to begin by the end of 2012, which will continue activities to improve the implementation of legislation in the field of criminal sanctions execution, to strengthen probation and reintegration services and improve prison management system.

111. A project was designed for waterworks and electrical installations in Podgorica Prison, and the funds were provided by the Directorate of Public Works.

**Reply to the issues raised in paragraph 20 of the list of issues**

112. Bearing in mind provisions of the Criminal Procedure Code and of the existing *Rulebook on holding facilities* and recommendations submitted to the Police Directorate by the Protector of Human Rights and Freedoms, it was stated that detention premises in all the regional and local units of the Police Directorate at present do not meet the requirements. Taking into consideration the importance of these issues and aiming to improve conditions in all holding facilities, *The Holding Facilities* project was developed. It examines very accurately the current situation and provides appropriate guidance and sets priorities for future necessary investments. Detention premises in regional and local police units would be thus brought to the required level. This project also defined precisely the possibility of separating detained men and women, according to recommendations received that the organizational units in the field must have separate rooms for such cases.

113. In the period 2009-2012 Police Directorate did not have any reported cases of violence and torture in detention facilities. The last such reported case was in the holding premises of Podgorica regional police unit (Pejanović case, 2008) which was processed and handed over to the judicial authorities.

114. Please note that all detention facilities are recorded at present by quality video monitoring equipment, which allows for a prompt identification of all possible cases of torture or ill-treatment.

115. Number of persons detained by year is as follows: 2008 -7,817, 2009 -8,423, 2010 – 8,901, 2011 – 10,180.

116. In 2012, following the implementation of the new Criminal Procedure Code (of 01/09/2011), the number of detained persons was significantly reduced. Thus, after the planned investments, the existing number of holding facilities will fully meet the needs of the Police Directorate.

117. Institution for Enforcement of Criminal Sanctions – *The rulebook on the conditions of accommodation of sentenced persons* which is also applied to detainees provides that every prisoner should have at least 8 m<sup>2</sup> or 20 m<sup>3</sup>. According to the criteria of the Rulebook, the total capacity of the Institution for Enforcement of Criminal Sanctions corresponds to 1,100 detainees. These are the figures showing number of persons placed in the organizational units of the Institution for Enforcement of Criminal Sanctions: investigative prison in Podgorica - 276 detainees, Bijelo Polje prison - 32 detainees and 58 sentenced persons, 123 sentenced persons in the short term incarceration facility and in the Correctional Facility (KP DOM) in Podgorica - 702 sentenced persons. Comparing the numbers of sentenced persons and detainees at the Institution to the numbers of the previous year, we can see that they were significantly reduced and that it now accommodates 91 person more than the actual design capacities. Overcrowding is only obvious in the organizational unit of Correctional Facility in Podgorica which has the capacity to accommodate 470 sentenced persons. The problem of overcrowding is no longer present in other organizational units of the Institution.



118. *Master plan of infrastructural investment in the sectors of education, health, culture, sports and state administration* for the period 2011-2020 envisages the construction of a long term incarceration facility and a prison hospital at the prison in Spuž and the construction of a prison/detention unit in the prison complex in Bijelo Polje. Preliminary architectural documents for the construction of a long term incarceration facility and a prison hospital was prepared within the IPA project *Support to the Reform of the System of Criminal Sanctions Execution* which was implemented in 2011 with the support of the European Union. Construction of these facilities will provide relief of the design capacities and conditions of a higher quality for the stay of sentenced and detained persons while serving a prison sentence or during detention.

119. The Institution for Enforcement of Criminal Sanctions provides the segregation of men and women, as well as the segregation of those sentenced to prison term and those who are remanded in custody. The juvenile department/for those serving the sentence of juvenile custody was opened. It should be particularly underlined that the women's part of the Institution was renovated, which was presented in the Montenegrin media.

120. Based on the recommendations of the Committee against Torture, the IECS's Board of Directors adopted in July 2012 the *Strategy to prevent ill-treatment and violence among prisoners*. Moreover, in July 2012 IECS prepared and adopted an Action plan which defines measures to meet CPT recommendations and those of the Ombudsman and relevant NGOs, supported by the EC within the monitoring closed-type institutions project.

## **Articles 12 and 13**

### **Reply to the issues raised in paragraph 21 of the list of issues**

121. The 2007-2012 *judicial reform strategy* and the Action plan for its implementation identified as key targets to strengthen the independence and effectiveness of the judiciary. In this regard, significant progress has been achieved and major activities have been undertaken through amendments to the Law on Courts, Law on the Judicial Council and the Law on Public Prosecution Office. The Parliament adopted amendments to the laws and all three laws were published in the Official Gazette of Montenegro 39/11 on 4 August 2011.

122. Amendments to the Law on the Judicial Council and the Law on Courts were aimed at establishing an independent and efficient system of appointment of judicial office holders. Therefore, criteria were laid down for the selection of members of the Judicial Council from judges and renowned jurists; procedure was prescribed for the nomination of candidates for appointment to the position of the Supreme Court Chief Justice; criteria for the selection of judges were revised by separating them into the criteria for the appointment of judges appointed for the first time, criteria for the appointment of promoted judges and criteria for president of courts. In addition to that, a system of objective assessment of their work was defined and disciplinary proceedings and disciplinary measures aimed at strengthening the accountability of judges were enhanced.

123. In addition to that, amendments to the Law on Public Prosecution Office involved the appointment procedure of deputy public prosecutors, revising the established criteria for appointment and their objective valuation under sub criteria, disciplinary accountability and removal from office, as well as reducing the concentration of powers of the Supreme Public Prosecutor. Amendments to the Law on Public Prosecution Office apply as well to the system of appointment of members of the Prosecutorial Council from among public prosecutors and deputies, revising the criteria for the appointment of public prosecutors and deputies who are appointed for the first time and who are being promoted and the definition of a system for their objective evaluation and disciplinary procedures.

124. While drafting the law, harmonization with international standards on judicial independence was taken account of, especially with the United Nations standards contained in a series of documents. The most important of them are: The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, the United Nations Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress, endorsed by the United Nations General Assembly. Standards from the Council of Europe documents were also taken into account. The most important of them are: The European Convention for the Protection of Human Rights and Fundamental Freedoms, The European Charter on the Statute for Judges and Opinions of Consultative Council of European Judges, in particular: Opinion no. 1 (2001), Opinion no. 3 (2002), and Opinion no. 10 (2007) and Opinions of the European Commission for Democracy through Law, better known as the Venice Commission, namely: Opinion of the Venice Commission on the Constitution of Montenegro, no. CDL-AD(2007)047 of 14-15 December 2007 and on Judicial Appointments CDL-JD(2007)001rev.

125. The Judicial Council adopted the Rules of Procedure of the Judicial Council (Official Gazette of Montenegro 57/11, entered into force on 30 November 2011). In line with the novelties from the Law on the Judicial Council (Official Gazette of Montenegro 39/11) it regulates in more detail the organization, manner of work and decision making process of the Judicial Council. A scoring system of criteria for the appointment and promotion of judges and presidents of courts was developed in more details; application forms for open job advertisements, forms for opinion giving, forms for assessing candidates appointed for the first time and forms for the judges' personal information sheets were prescribed. On 19 September 2011 the Judicial Council appointed the Commission in charge of written testing of the candidates being appointed as judges for the first time. The Commission has two presidents and two members and it is appointed for a one year period. The Disciplinary Commission was also appointed on that occasion.

126. The Prosecutorial Council adopted the Rules of Procedure of the Prosecutorial Council (Official Gazette of Montenegro 52/11), which entered into force on 4 November 2011. In line with the novelties from the Law on the Public Prosecution Office (Official Gazette of Montenegro 39/11) it regulates in more detail the organization, manner of work and decision making procedure of the Prosecutorial Council. A scoring system of criteria for the appointment and promotion of public prosecutors and their deputies was developed in more details; application forms for open job advertisements, forms for assessing candidates appointed for the first time and forms for candidates being promoted were prescribed.

127. On 1 October 2011 the Conference of Judges formed the Code of Ethics for Judges Commission. The President of Montenegro proclaimed the new composition of the Judicial Council in a decree, in accordance with the Law on Amendments to the Law on the Judicial Council (Official Gazette of Montenegro 39/2011). The inaugural session of the new Judicial Council was held on 15 June 2012. The Law on Amendments to the Law on Courts (Official Gazette of Montenegro 39/11 of 04/08/2011) provides that lower instance courts are obliged to provide to higher instance courts the required data and information that they need in order to monitor and study case law, to perform organizational and professional control of the courts' work, which is why higher instance courts may directly examine the final and enforceable cases of lower instance courts.

128. Duration of procedures in all types of cases and the results of the courts' work are monitored on the basis of semi-annual and annual reports of all courts that are delivered to the Judicial Council. The duration of proceedings in each case can also be monitored via the judicial information system.

129. All novelties contained in amendments to the laws represent a significant progress towards strengthening the independence of the judiciary, due to more objective criteria for

the appointment and promotion of judges and public prosecutors and the system of valuation of their work, as well as owing to the improvement of the selection procedure, all of which contribute to exercising personal and institutional independence of the judiciary, which is one of the key objectives of the judicial reform.

### **Monitoring the work of courts**

130. The Supreme Court of Montenegro signed a series of memoranda of cooperation with NGOs and international organizations to monitor the work of courts with a view to improving the independence, efficiency, accountability and transparency of the courts' work. Memoranda were signed with the OSCE Mission to Montenegro, Youth Initiative for Human Rights (YIHR), CEDEM, AIRE Centre from London, NGO Juventas, NGO Centre for Monitoring (CEMI) and NGO 35mm. Reports on the monitoring of courts' work are publicly presented.

### **Reply to the issues raised in paragraph 22 of the list of issues**

131. Article 120-132 of the Criminal Procedure Code provide for the protection of witnesses against intimidation, special modes for protected witnesses' procedural participation and hearing, the manner of taking a decision on special modes of participating and hearing witnesses, data protection, probative value of the testimony of a protected witness and protection of the injured party while giving testimony to whom the provisions of articles 120-123 apply accordingly regarding his participation and hearing. These articles also concern the protection of cooperative witnesses, the manner of determining the cooperative witness status and the evidentiary significance of his statement.

132. On such terms as provided for by the Law on Enforcement of Criminal Sanctions, every sentenced person has the right to: legal aid, work, information, health care, correspondence, visits, receiving shipments, married life, religious life, as well as other rights stipulated by law and by-laws. Sentenced persons have the right to complain, if they find that one of their rights were violated in connection with the execution of sentence or due to other irregularities they had to suffer. Sentenced persons are ensured protection of the rights guaranteed under this law at the level of the organization responsible for sentence execution - Institution for Enforcement of Criminal Sanctions. Hence, a complaint may be submitted against the decision of the head of the organizational unit, of which the head of the Institution takes a decision. Court protection of the rights of sentenced persons is also provided in administrative disputes (action against the head of the Institution). Where means of force are used against the sentenced person, the Institution for Enforcement of Criminal Sanctions has to draw and submit to the Ministry of Justice and Human Rights a report including the findings and assessment concerning police powers overstepping.

133. Cooperation with the civil society takes place by organizing meetings with a significant number of NGO sector attendees and working on the basis of memoranda of cooperation signed: project Monitoring Respect for Human Rights in Closed Institutions in Montenegro with the NGO Human Rights Action; MoU between the Ministry of Justice and NGO Juventas and NGO Centre for Monitoring (CEMI) - the goal of the project is to reduce the level of human rights violation in Montenegro, as well as to identify and document cases of human rights violations of drug addicts in the legal system of Montenegro, in terms of applying domestic and international standards of fair criminal proceedings; MoU between the Montenegrin Ombudsman and the Institution for Enforcement of Criminal Sanctions, governing the placement of complaint boxes within the prison facilities and their use by detainees and sentenced persons, in order to send complaints to the Montenegrin Ombudsman. The placement of complaint boxes and associated activities are supported by the OSCE Mission to Montenegro through a project aiming to strengthen national institutions for the protection of human rights and NGO-4

Life – which is implementing a project for the treatment of drug addiction, providing psychosocial support and mediation services while testing and treating hepatitis C.

134. The Ombudsman acts and takes measures in accordance with articles 24-44 of the Law on the Protector of Human Rights and Freedoms of Montenegro. The Ombudsman has the right to visit a person placed under arrest without prior notification or authorisation and to verify the respect of his rights, to talk to the person under arrest in the absence of an official or another person and to talk to other persons whom the Ombudsman believes to be in possession of the needed information. A person under arrest has the right to file a complaint to the Ombudsman in a sealed envelope. Authorized person of the authority, organisation or institution in which a person under arrest is placed has to deliver to the Ombudsman immediately the complaint or another document of that person, unopened and unread. Upon finalising its examination of violation case of human rights and freedoms, the Ombudsman issues an opinion on whether, how and to what extent violation of human rights and freedoms occurred. When the Ombudsman finds that there has been a violation of human rights and freedoms, his opinion contains as well a recommendation as to what needs to be done in order to remedy the said violation, as well as a time limit for its elimination. The head or the person managing the authority to whose work the recommendation relates will submit to the Ombudsman, within the given time limit, a report stating the actions taken in order to enforce the recommendation. Should the head or the person managing the authority fail to comply with the recommendation within a given time limit, the Ombudsman may inform the immediate superior authority, submit a special report or inform the public thereon. The Ombudsman will notify the complainant of the results of examining situations of violations of human rights and freedoms by submitting its opinion.

135. On the objective of facilitating access to the Ombudsman to persons placed under arrest and monitoring the level of protection of their rights (including protection against torture and other cruel, inhuman or degrading treatment or punishment), the Ombudsman, in cooperation with OSCE, placed complaint boxes in early 2012 within the Institution for the Enforcement of Criminal Sanctions (in Podgorica and Bijelo Polje) and within institutions accommodating persons whose freedom of movement has been restricted. These persons can use them to complain to the Ombudsman, if they believe that their rights and freedoms have been violated, including torture and other forms of illegal behaviour. The keys of the boxes are kept by the persons authorized by the Ombudsman, and the takeover of complaints is done once in 15 days. So far, a total of 46 complaints were taken from the boxes, of which 39 in Podgorica and 7 in Bijelo Polje. Complaints were mostly related to the work of prison administration and staff, the work of courts, prosecution office and Police Directorate officers, the work of the Parole Commission and inadequate health care. A couple of complaints had the form of a letter asking the Ombudsman to pay the person a visit or addressed to another agency or NGO.

**Reply to the issues raised in paragraph 23 of the list of issues**

136. As for the implementation of the Protection Programme, during 2008 Witness Protection Unit was in charge of bringing safely 17 persons to the hearings scheduled before the courts of appropriate jurisdiction. These activities were carried out under special written orders of the Head of Unit. In one case, at the request of the person included in the protection program, the program was terminated. In terms of the Protection Programme implementation, during 2009 Witness Protection Unit was in charge of bringing 64 witnesses to the hearings scheduled before the courts of appropriate jurisdiction who attended the hearings on 70 occasions. Protection was provided to one person while being brought to the prison to serve his sentence. In the course of these activities, the Unit had positive experiences in cooperation with the High Court in Podgorica, High Court in Bijelo Polje, Basic Court in Rožaje, Prison in Bijelo Polje, NGO Montenegrin Women's Lobby

(Government's Shelter for THB victims) and Police Department of Dubrovnik-Neretva County (Croatia). These activities were carried out under special written orders of the Head of Unit and in line with predetermined plans approved by the Assistant Director in charge of the Criminal Police Department. The Witness Protection Program Commission took a decision at its session to apply the protection program towards one person. Complying with that decision, an interview was held with the said person during which he gave a statement that he did not wish to be the subject of the protection program. He also stated that he was satisfied with the protection provided to him by the local police and that he is interested in that kind of protection only. In terms of its witness protection activities, during 2010, the Witness Protection Unit was in charge of bringing three witnesses to the hearings scheduled before the courts of appropriate jurisdiction who attended criminal case hearings on 3 occasions. In terms of its witness protection activities, during 2011, Witness Protection Unit was in charge of bringing four witnesses to the hearings scheduled before the courts of appropriate jurisdiction. Assistance was provided to the Witness Protection Unit of the Republic of Serbia regarding one person included in the Witness Protection Program, during that person's stay in the territory of Montenegro (in total five persons towards whom non-procedural protection measures were taken). The Unit did not have any activities in the first half of 2012 in terms of provision and implementation of measures to protect witnesses.

#### **Reply to the issues raised in paragraph 24 of the list of issues**

137. The strategic goal of the Police Directorate, in the process of implementing reforms, is the establishment of a professional, depoliticized and efficient organization subject to democratic control, in line with European standards, with the primary objective to respect human rights and freedoms. Law on Home Affairs laid down control of police work within the police itself, but also the external form of control at the state level. Three forms of control were established as standards: parliamentary, civic and internal control of police work. Internal control is a separate organizational unit within the Ministry of Interior tasked with controlling the legality of performing police duties, especially with regard to the respect and protection of human rights while carrying out policing tasks and applying police powers (art.114 of the Law on Home Affairs). External control over the legality of the work of police is exercised by the Parliament of Montenegro, through its competent bodies. This form of external control is regulated in the manner appropriate to European standards. The Security and Defence Committee exercises parliamentary control of the work of police and of the National Security Agency. In addition to external and internal controls, the civic form of control was set up, via the Council for Civic Control of the Police, which consists of five members appointed by: the Bar Association of Montenegro, Chamber of Physicians of Montenegro, Association of Lawyers of Montenegro, University of Montenegro and NGOs dealing with human rights. Upon the request of the Council, the Police Directorate provides the necessary information and notifications. Finally, it is certain that the most important control of the Police Directorate is the one performed daily by citizens who can directly see the actions of the police and their results.

138. On the basis of article 10 paragraph 3 of the Law on Police and upon the proposal of the Police Director, Ministry of Interior passed the Code of Police Ethics.<sup>29</sup> Currently valid Law on Home Affairs states in article 15, paragraph 2 that the Code is adopted by the Ministry. Under article 21 of the Code of Ethics, Minister of Interior issued a Decision on the establishment of the Ethics Committee in charge of investigating police conduct. The committee consists of seven members: four officers of the Police Directorate, one

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<sup>29</sup> Official Gazette of the Rep. of MNE 1/2006.

representative of the Ministry of Interior, one representative of the NGO sector and 1 representative of the Police Academy.

139. Police Directorate is paying more attention and investing visible efforts to develop the personal and professional integrity of police officers and not any less important, to ensure institutional integrity. It does so via professional training of staff at courses, seminars, workshops, etc (for statistical data on the number of complaints received and investigated, as well as the number of prosecutions of torture and convictions, see annex V).

140. In accordance with the Law, the Ombudsman may present an initiative to commence disciplinary proceedings or dismissal proceedings against persons whose commission or omission breached human rights and freedoms. As regards the misdemeanours prescribed, the Ombudsman may submit a request to commence misdemeanour proceedings (art. 44). In three cases the Ombudsman recommended to the Institution for Enforcement of Criminal Sanctions to commence disciplinary proceedings: in the first case against five persons (the Institution initiated proceedings against three persons), in the second case against one person and in the third case against two persons.

### **Reply to the issues raised in paragraph 25 of the list of issues**

#### **Accountability of police officers**

141. Accountability for breaching the law and acting contrary to the powers is established in each case during disciplinary proceedings before the police bodies. Disciplinary responsibility of police officers is outlined in detail in article 104-109 of the Law on Home Affairs (formerly article 79-85 of the Law on Police). Police officers who are perpetrators of crimes are held responsible before the courts of appropriate jurisdiction as all other citizens. A person who believes that his rights or freedoms were violated by the performance of police duties or that performance of police duties inflicted him damage is entitled to court protection and compensation.

142. Where means of force are used against the detained person, the Institution for Enforcement of Criminal Sanctions has to draw up and submit to the Ministry of Justice and Human Rights a report including the findings and assessment concerning powers overstepping. In turn, the head of the Institution is obliged to inform thereof the president of the court who exercised control concerning the lawful treatment of detainees. Activities of the Institution's administration are aimed at eliminating any form of torture by the staff of the Institution, focusing on training, especially of the security staff, concerning the topics related to human rights, with emphasis on the fight against torture and inhuman or degrading treatment or punishment of persons under arrest. Sentenced persons and detainees are enabled to report possible cases of torture to the competent instances at the Institution, by using complaint boxes that were set up in all organizational units, as well as government bodies and NGOs representatives.

143. Law on Enforcement of Criminal Sanctions also prescribes the legality of prison term enforcement via the authorized employee of the Ministry of Justice. Having interviews with sentenced persons, determining the necessary facts and acting upon sentenced persons' complaints is an extremely successful form of suppressing all forms of torture. Job descriptions of these officers clearly state that they would be performing tasks related to protection against torture. Based on the reports filed by authorized staff, the Minister of Justice orders measures to eliminate the irregularities found and the head of the organization has to comply with the order immediately.

144. For statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture, attempted torture and complicity or participation in torture,

which have been filed during the reporting period, as well as related investigations, prosecutions, convictions and penal and disciplinary sentences, see- annex VI)

**Reply to the issues raised in paragraph 26 of the list of issues**

145. In relation to the torture case against Aleksandar Pejanović, Basic Public Prosecutor's Office in Podgorica formed the case Kt.br.829/09 and filed a bill of indictment on 1 September 2009 against Ivica Paunović, Goran Stanković, Milan Kljajević, Bojan Radunović, Milanko Leković and Dobrivoje Djuričić on the account of the crime - torture and *ill-treatment* under article 167, paragraph 3 in conjunction with paragraph 2 of the Criminal Code. The judgment K.br.09/1172 of 8 June 2010 of the Basic Court in Podgorica declared Ivica Paunović, Milan Kljajević and Milanko Leković guilty. Paunović was sentenced to a prison term of three months, while Kljajević and Leković were sentenced to prison terms of five months each. However, the prosecutor withdrew from further prosecution of Goran Stanković, Bojan Radunović and Dobrivoje Djuričić, issued a judgment dismissing the charge. Basic Public Prosecutor's Office appealed to the High Court in Podgorica against the said judgment. The High Court issued a decision Kž.br.2387/10 of 23 October 2010 upholding the appeal and the case was remanded for retrial. The procedure is ongoing.

146. In relation to the torture case against Dalibor Nikezić and Igor Milić, on 27 October 2009 in Podgorica Prison, the Basic Public Prosecutor's Office in Podgorica opened three cases:

(1) Case Kt.br.189/10 under criminal complaints filed by parents of the injured parties, against Igor Marković, Radovan Todorović and several unidentified perpetrators on account of the crime of *ill-treatment* under article 166a of the Criminal Code. After conducting preliminary investigation, the criminal complaint was dismissed due to lack of a reasonable doubt that the reported crime or another crime which is prosecuted *ex officio* had been committed. The injured parties were delivered a decision dismissing the criminal complaint and instructed of their right to assume prosecution. The injured parties have assumed prosecution by submitting a request to investigate to the Basic Court in Danilovgrad. The Criminal Chamber of the Basic Court in Danilovgrad upheld the disagreement of the investigating judge with the request to investigate. The High Court in Podgorica dismissed the appeal of the injured parties and confirmed the said decision;

(2) The case Kt.br.684/10 was opened pursuant to the complaint of injured parties filed against 10 persons on account of the crime of *torture* under article 167 of the Criminal Code, in concurrence with the crime of *grievous bodily injury* under article 151 of the Criminal Code. After conducting preliminary investigation, the criminal complaint was dismissed due to lack of a reasonable doubt that the reported crime or another crime which is prosecuted *ex officio* had been committed. The injured parties were delivered a decision dismissing the criminal complaint and instructed of their right to assume prosecution;

(3) The case Kt.br.66/10 pursuant to the criminal complaint filed by Milijana Milić, mother of the injured Igor Milić, against one person on account of the crime of *torture* under article 167 of the CC and on account of the crime *coercion* under article 165 of the CC. After conducting preliminary investigation, the criminal complaint was dismissed and the injured party was delivered a decision instructing him of the right to assume prosecution.

147. In relation to the torture case against Vladana Kljajić, the Basic Public Prosecutor's Office in Podgorica opened the case Kt.br.1542/08 and filed a bill of indictment on 6 April 2009 against Vukica Vukićević and Sandra Brajović, security staff at the Institution for the Execution of Criminal Sanctions, on account of the crimes of torture and *ill-treatment* under article 167, paragraph 3, in conjunction with paragraph 2 of the CC in concurrence with the crime of light bodily injury under article 152, paragraph 2 in conjunction with paragraph 1

of the CC, committed to the detriment of Vladana Kljajić. The judgment of the Basic Court in Danilovgrad K.br.13/09 of 31 January 2011 declared the accused Vukica Vukićević and Sandra Brajović guilty and sentenced them to suspended sentences involving prison terms of four months each. The judgment also specified that the prison terms will not be enforced if they do not commit a new criminal offence within two years after the judgment becomes final. The Basic Public Prosecutor's Office filed a complaint against this judgment on 25 March 2011, which the High Court in Podgorica rejected by its decision Kž.br.806/11 of 26 May 2011 and confirmed the first instance judgment.

## **Article 14**

### **Reply to the issues raised in paragraph 27 of the list of issues**

148. Title XXX of the Criminal Procedure Code<sup>30</sup> stipulates the proceedings for rehabilitation, termination of legal consequences of conviction and security measures while Title XXXI stipulates the proceedings for compensation of damages, rehabilitation and exercise of other rights of unjustifiably convicted persons, persons illegally or groundlessly deprived of liberty. Hence, Art. 498-506 stipulate that persons who have been unlawfully or groundlessly placed under arrest or unjustifiably sentenced shall be entitled to rehabilitation, the right to damages from the state, as well as other rights laid down by law. The right to damages for groundless conviction is one of the basic rules laid down by the Criminal Procedure Code. In addition to this right, another stipulated right is the one to damages for persons groundlessly placed under arrest. As regards the above right, persons groundlessly placed under arrest are obliged to submit to the Ministry of Justice and Human Rights a request for damage agreement including the type and amount of compensation. If an agreement is not reached with the Ministry of Justice and Human Rights, persons may bring an action before the court of appropriate jurisdiction. The right to damages becomes barred by limitation within three years. There are also provisions on the inheritance of the right to compensation of damages, provided that the injured party died before the period of limitation expired and that the injured party did not waive this claim.

149. For an overview of the Criminal Procedure Code provisions relating to compensation of damages, rehabilitation and exercise of other rights of unjustifiably convicted persons, persons illegally or groundlessly deprived of liberty (art. 498-506), see annex VII..

150. There were no actions for pecuniary damage/non-pecuniary damage by virtue of groundless conviction filed in the period from 2009 until 1 July 2012.

### **Reply to the issues raised in paragraph 28 of the list of issues**

151. In the period following the adoption of the initial report, Montenegro has acceded to the European Convention on the Compensation of Victims of Violent Crimes<sup>31</sup> (Council of Europe).

152. Government of Montenegro's programme of work for 2012 provides for the IV quarter the adoption of the proposal for a Law on the Compensation of Victims of Serious Crimes. This Law will govern the right to financial compensation for victims of violent crimes committed with wrongful intention, the conditions and procedure for exercising the right to compensation, decision-making bodies and bodies which participate in the

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<sup>30</sup> Official Gazette of MNE 57/09 and 49/10.

<sup>31</sup> Official Gazette of MNE – International Treaties 6/2009



decision-making on the right to compensation, the authorities and the procedure to be used in cross-border cases.

153. Articles 10-12 of the Law on Domestic Violence Protection stipulates urgent intervention of the police after learning of the violence, with a view to protect the victim in accordance with regulations. Also, centres for social welfare or other social welfare and child protection institutions, medical institutions, and other bodies and institutions involved in providing protection are obliged to provide protection and assistance to the victim without delay, in accordance with their competences. These authorities and institutions are obliged to take care of all the victims' needs and allow them access to all forms of assistance and protection. The law lays down the making of a victim assistance plan. Social Welfare Centre forms a professional team composed of representatives of the centre, local government bodies and services, police, NGOs and experts on family issues, in order to establish a plan to assist the victim and coordinate activities in the process of assisting the victim, in accordance with the victim's needs and choices. The victim assistance plan provides specifically for measures to be taken in accordance with the law governing social and child protection. If the victim is a child, the victim assistance plan also contains measures to protect the child in accordance with the law governing family relations. In view of carrying out these activities, the professional team may also be formed by another body, institution or organization providing protection. When it comes to social protection, this law stipulates that social protection provided to a victim includes pecuniary and non-pecuniary assistance, accommodation and social welfare services, in accordance with the law governing the social welfare and child protection. Social welfare centres are required to maintain accurate records of children and persons with special needs in their territories. For the purposes of protecting these persons against violence, the centres have to set up special teams in charge of visiting families which accommodate children and persons with special needs or in which they live. The visits have to be paid at least once a month, so as to control the treatment of these persons, and draw up a report on the basis of findings. Social welfare centres are required to submit to the ministry responsible for social welfare duties at least once in six months a written report on the level of social protection of children and persons with special needs.

154. Domestic violence protection is exercised in conformity with the Strategy on domestic violence protection, as set forth by article 12 of the Law. Montenegrin Government adopted the Strategy on domestic violence protection for the period 2011-2015.

155. Article 3 of the proposal for a Law on Social and Child Protection, adopted on 26 July 2012 by the Government of Montenegro stipulates that the goal of social and child protection is support to social inclusion of individuals and families. While achieving the objectives of social and child protection, children are particularly protected (without parental care; whose parent is unable to take care of him; with disabilities and special needs; in conflict with the law; for abuse of alcohol, drugs or other narcotic substances; if there is a danger that he will become a victim or is the victim of abuse, neglect, domestic violence and exploitation; THB victim; and if the parents do not agree on ways to exercise parental rights; who needs an adequate form of social protection due to special circumstances and social risk) and adults and older persons (if the person has a disability; due to the misuse of alcohol, drugs or other narcotic substances, and if there is a danger that it will become a victim or is the victim of neglect, abuse, exploitation and domestic violence; THB victim, if a homeless person; who needs an adequate form of social protection due to special circumstances and social risk).

## Article 16

### Reply to the issues raised in paragraph 29 of the list of issues

156. The Law on the Treatment of Juveniles in Criminal Proceedings<sup>32</sup> was adopted in December 2011 and entered into force on 6 January 2012, and its application started on 1 September 2012. On its session held on 29 Mar 2012 the Government also adopted the Implementation Plan for the Law on the Treatment of Juveniles in Criminal Proceedings. In its conclusions the Government has obliged all the competent authorities to fulfil all the obligations stipulated in the Implementation plan within the deadlines set, so as to make sure full and effective implementation of the law is ensured as of 1 September 2012.

157. The Law on the Treatment of Juveniles in Criminal Proceedings governs the treatment of juvenile offenders, children and juveniles participants in the process, based on respect for human rights and fundamental freedoms while recognizing the best interests of juveniles, taking account of their maturity, level of development, skills and personal qualities, as well as the gravity of offence, with the intention of their rehabilitation and social reintegration.

158. The law is fully compliant with the Convention on the Rights of the Child. Recommendations of the United Nations and the Council of Europe are incorporated into its text: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (The Beijing Rules), United Nations Guidelines for the Prevention of Juvenile Delinquency of 1990 (The Riyadh Guidelines), United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990 (The Havana Rules), United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency, Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures.

159. The most important novelties are: the introduction of new diversion measures, reprimand in addition to attendance orders; extended application of attendance orders for criminal offenses – prison term of up to 10 years; establishment of expert services to provide expert assistance to courts and public prosecution offices; new correctional measures-specific obligations that have similarity with attendance orders; protection of juveniles participating in proceedings; treatment of juveniles during the execution of custodial correctional measures and juvenile prison sentences; execution of the custodial measure of *referral to a correctional home* and *juvenile prison sentence* within a special organizational unit of the Institution for Enforcement of Criminal Sanctions.

### Reply to the issues raised in paragraph 30 of the list of issues

160. The Police Directorate employs staff educated at the Police Academy. In the previous period, no members of the Roma population have expressed an interest to be educated at the PA.

### Reply to the issues raised in paragraph 31 of the list of issues

161. Strategic Framework - On 28 July 2011 the Government of Montenegro adopted the Strategy on finding durable solutions for displaced and internally displaced persons in Montenegro, with special emphasis on the Konik area. The Coordination Committee to monitor the implementation of the Strategy on finding durable solutions for displaced and internally displaced persons in Montenegro, with special emphasis on the Konik area was set up by the Government on 22 September 2011.

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<sup>32</sup> Official Gazette of MNE 64/11 dated 29 December 2011.

162. Legal Framework - So as to ensure full protection of human rights and integration of DPs and IDPs into the Montenegrin society, Montenegrin Parliament adopted the Law on Amendments to the Law on Foreigners, which entered into force on 7 November 2009. This Law enabled DPs and IDPs in Montenegro to obtain the permanent resident alien status in Montenegro under privileged and more favourable conditions.

163. According to the existing legislation, resolving the status of displaced persons is also possible via admission to the Montenegrin nationality. Accordingly, 723 displaced persons were admitted to the Montenegrin nationality up to 28 June/2012 and 147 guarantees were issued that they would acquire Montenegrin nationality when they bring a certificate of release from the nationality of their country of origin. There are still 302 pending applications, which will be resolved within the term specified by law.

164. For More details on the legal status of refugees and internally displaced persons - please see response to the issues raised in paragraph 12 of the list of issues.

165. Provision of accommodation is one of the key elements for the local integration of DPs and IDPs. Plans are for their accommodation to be provided through a regional initiative, via international donations, favourable loans and from our own sources. The contribution of Montenegro will be primarily the allocation of land and the provision of primary infrastructure.

166. When it comes to the regional initiative to secure durable solutions for DPs (Sarajevo Process/Belgrade Initiative), a draft of the institutional, political and legal framework for the housing projects has been prepared.

167. On 15 February 2012 Ministry of Labour and Social Welfare formed an expert team - National implementing unit in charge of drafting the National Housing Programme within the Sarajevo Process/Belgrade Initiative, tasked with drafting the national housing programme together with the municipalities, UNHCR and local and foreign experts. A number of activities were taken in cooperation with the Union of Municipalities in order to meet the initial requirements for participation in the National Housing Programme. Moreover, presidents of municipalities expressed their full political will to support the National Housing Programme and to adapt their detailed urban development plans and define the locations for the construction of housing units. National Implementing Unit has made a proposal for an Action plan, which includes the activities of all agencies involved in the National Housing Programme.

168. With a view to create the prerequisites for the construction of 90 housing units in the area of Konik, on 16 February 2012 municipal assembly Podgorica adopted the following decisions: The decision on the participation of the capital Podgorica in the construction of collective housing structures with related amenities, for the purposes of the project to meet the housing needs of IDPs and residents of Konik camp, The decision on amendments to the General urban development plan for Konik-Vrela ribnička II in Podgorica and The decision on the Detailed urban development plan for Konik-Vrela Ribnička II in Podgorica.

169. Ministry of Labour and Social Welfare has obtained an extract from the planning documents and zoning and technical specifications for the Detailed urban development plan for Konik-Vrela Ribnička II, in: construction plot 1 in zone B and construction plot 1 in the zone A, which meant conditions are satisfied for the development of design specifications and for calling a tender by the Public Works Directorate. The sum of EUR 100,000.00 was allocated for this purpose. In cooperation with the Public Works Directorate, the following were made: the design specifications for the master project to construct housing units in Camp Konik II and the design specifications for the master project of multipurpose facility Camp Konik II. Public invitation to tender was announced on 9 August 2012 for the construction of the master project of housing units and of the multipurpose facility. The submitted bids were opened and their evaluation process is under way.

170. Further to The decision on the participation of the capital Podgorica in the construction of collective housing structures with related amenities, for the purposes of the project to meet the housing needs of IDPs and residents of Konik camp, an agreement will be signed soon with the Government of Montenegro - Ministry of Labour and Social Welfare, which will create all the prerequisites for the further continuation of the implementation of IPA Project activities.

171. The Strategy recognized Camp Konik as an area of special importance. In this regard, members of the Coordination Committee visited this site in order to assess activities achieved so far and get acquainted with the planned activities related to the adoption of the Detailed Urban Development Plan and implementation of the IPA project. In accordance with recommendations from the second session of the Coordinating Committee, a working group was formed to consider the methods for strengthening the safety and security of lives and property in Camp Konik, composed of representatives of the Refugee Care and Support Office, Ministry of Interior, Police Directorate, the Red Cross and UNHCR.

172. Providing assistance in obtaining documents - As for obtaining the documents required to obtain the permanent resident alien status or temporary resident alien status, Refugee Care and Support Office, in cooperation with the Ministry of Labour and Social Welfare and the UNHCR organized 13 visits to Kosovo for the most vulnerable IDPs, involving a total of 529 persons. Further visits to Kosovo are planned.

173. UNHCR has allocated funds within the project Delivering as One to organize three visits to Kosovo for the purpose of obtaining documents required for the regulation of the legal status of IDPs residing in Montenegro. Ministry of Labour and Social Welfare has fully taken over the implementation of this activity and has signed a Memorandum of Cooperation with the NGO Legal Centre. Besides persons from Camp Konik, visits to Kosovo include the regulating of assistance for persons who are accommodated in specialized institutions. There were two visits organized involving 110 persons. Providing assistance in obtaining documents has been extended to the following municipalities in Kosovo: Peć, Klina, Istok, Kosovo Polje, Vučitrn, Obilić and Priština.

#### **Reply to the issues raised in paragraph 32 of the list of issues**

174. Article 70 of the Family Law clearly prohibits subjecting children to degrading actions and punishment that offend human dignity of the child and stipulates the obligation of parents to protect the child from such actions of other persons. Article 87 stipulates that a parent who abuses parental rights or grossly neglects the performance of parental duties shall be deprived of the parental right. Abuse of the right is present in particular if a parent: abuses the child in a physical, sexual or emotional manner; exploits the child by forcing it to excessive work or to work that threatens morality, health and education of the child, or work which is forbidden by law; instigates the child to perpetrate criminal acts; develops bad habits and propensities and the like.

175. Article 9a of the General Law on Education<sup>33</sup> states that the following are not allowed in the institutions: physical, psychological or social violence; ill-treatment or neglect of children and pupils; physical punishment and abuse of personality, or sexual abuse of children and students or employees or any other form of discrimination within the meaning of the law (which relates to the Law on Prohibition of Discrimination). Further, paragraph 8 of article 97 refers to the rights of pupils and students to protection against all types of violence in schools, against discrimination, ill-treatment and neglect; while article 111 provides that the teachers' employment will be terminated, in addition to the cases prescribed by the Labour Law, where the teacher: (5) incites any student or any employee

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<sup>33</sup> Official Gazette of the Rep. of MNE 64/2, Off. Gazette of MNE 49/07, 45/10, 40/11 and 45/11.

in the institution to sexual intercourse or gross indecency; (9) humiliates, insults or punishes students physically, (10) causes ethnic or religious intolerance.

176. During the academic 2005/2006 year the project *Schools without Violence - Safe School Environment* was started in cooperation with the Ministry of Education and Sport and UNICEF Montenegro. The project was initially started in two elementary schools and then continued in six schools. After a comparative study on the effects of its implementation eight new schools were included in the project during the academic 2011/2012 year. The project has a concept implemented in seven steps: it is to raise the awareness and knowledge about the problems of bullying; build the so called safety net - define and establish the values and rules to be respected and applied in schools; establish a system of cooperation and referral of cases of violence to other services on the basis of the Protocol. The final version of the Handbook is being drafted and its printing and distribution in schools are expected in the future.

#### **Reply to the issues raised in paragraph 33 of the list of issues**

177. The rulebook on the conditions of accommodation of sentenced persons, which applies to cases of detainees, provides that every prisoner should have at least 8 m<sup>2</sup> or 20 m<sup>3</sup> of space. According to the criteria of the Rulebook, the total capacities of the Institution for Enforcement of Criminal Sanctions correspond to 1,100 persons under arrest. These are the figures showing the number of persons placed in the organizational units of the Institution for Enforcement of Criminal Sanctions: investigative prison in Podgorica - 276 detainees, Bijelo Polje prison - 32 detainees and 58 sentenced persons; short term incarceration facility - 123 sentenced persons and 702 sentenced persons in the Correctional Facility in Podgorica. Comparing the numbers of sentenced persons and detainees in the Institution to the previous year, we can see that the figures were reduced significantly and that it now has 91 person more than the actual design capacities. Overcrowding is strongly marked only in the organizational unit of Correctional Facility in Podgorica which has the capacity to accommodate 470 sentenced persons, and the problem of overcrowding is no longer present in other organizational units of the Institution.

178. The adoption of the Law on Amendments to the Law on Enforcement of Criminal Sanctions<sup>34</sup> has contributed greatly to combating overcrowding. It provided for adequate normative and organizational prerequisites for the execution of alternative sanctions and diversion measures which have probation as a common feature. Supervision of sentenced persons released during parole, suspended sentence, suspended sentence with protective supervision, community service and other measures stipulated by law, is under the responsibility of the Ministry of Justice and Human Rights – Probation Division, which relieves the design capacities of the Institution for the Enforcement of Criminal Sanctions.

#### **Reply to the issues raised in paragraph 34 of the list of issues**

179. In cases of attacks on journalists, intensive measures and actions are taken from the moment of reporting the event to identify and bring the perpetrators before the competent public prosecutor. A total of 11 cases were registered in the period from 2008 until 31/05/2012 where members of the journalistic profession were the subjects of the use of physical force or serious threat of an attack. In cooperation with the competent prosecutors, nine cases were resolved and criminal complaints were filed against the perpetrators. In one case the case files formed were submitted to the competent prosecutor.

180. The event of 23 May 2008 when an unidentified perpetrator attacked journalist Mladen Stojović in his apartment and inflicted him grievous bodily injuries remains

<sup>34</sup> Official Gazette of MNE 32/11.

unresolved. In cooperation with the competent prosecutor measures and actions are still taken to resolve the event and discover the perpetrator.

181. There were 5 reported cases during 2011 and 2012 of unidentified persons threatening journalists over the phone. Three of the cases were to the detriment of journalists of the daily Vijesti: Jasmina Muminović, Olivera Lakić and Marija Ivanović. Pursuant to the established procedure, consultations were conducted with the competent prosecutor immediately after the filing of complaints, who ordered the taking of concrete measures and actions in order to identify the perpetrator and secure evidence for the offense. In these cases, the competent prosecutor filed a bill of indictment against one person. However, during the proceedings it was found that he is not the perpetrator of these crimes, so he was charged with the crime of fraudulent crime reporting.

182. As regards the complaints of Sanja Radošević, journalist of the radio station Naša riječ and editor of the portal Slobodna Crna.eu, after the taking of measures and consultations with the competent prosecutor, the prosecutor stated that these cases do not contain elements of the definition of the criminal offence which is prosecuted ex officio.

183. In accordance with its statutory powers and obligations regarding the protection of citizens and property safety, the Police Directorate will conduct a threat assessment analysis of employees in the print and electronic media in the future and it will direct its activities accordingly and take appropriate measures to prevent such unlawfulness ( For statistical data on the number of complaints received and investigated, as well as the number of prosecutions of attacks on journalists and convictions, see annex VIII).

## IV Other issues

### **Reply to the issues raised in paragraph 35 of the list of issues**

184. In September 2010 the Government of Montenegro adopted the strategy for prevention and suppression of terrorism, money laundering and terrorist financing for the period 2010-2014 and the Action plan for prevention and suppression of terrorism, money laundering and terrorist financing for the period 2010-2012. The Strategy follows the goals and values defined in The United Nations Global Counter-Terrorism Strategy and The EU's Counter-Terrorism Strategy. The National Commission controls the implementation of the Strategy and the Action plan.

185. Montenegro has not so far been confronted with the crime of terrorism. However, Montenegrin approach to counter-terrorism implies that modern terrorism knows no state boundaries and is considered to be international - in terms of goals and modus operandi, and therefore, responses to the causes, incidences and consequences should be an expression of joint action with the international community. Therefore, Montenegro seeks to contribute as far as possible to the general security, both at the regional and global level. To that effect, greatest attention is paid to counter-terrorism preventive mechanisms: the strengthening of international cooperation, prevention of radicalization, monitoring the flow of people and goods across the green and blue borders and the exchange of information and intelligence.

186. For the purpose of a coordinated and effective implementation of strategic measures to combat organized crime and terrorism, the Government of Montenegro adopted a significant number of laws and strategic documents in the previous period. These are primarily: Criminal Procedure Code, Criminal Code, Judicial reform strategy, Strategy on combating trafficking in human beings, Strategy to control small arms and light weapons (SALW), Integrated border management strategy, Integrated migration management

strategy, National strategic response to drugs, Strategy to fight corruption and organized crime, etc.

187. Montenegro will continue to participate actively in the prevention and suppression of terrorism at the global and regional level, especially within the United Nations system, EU, NATO, OSCE, CoE, INTERPOL and EUROPOL, and other relevant organizations and initiatives and contribute to the strengthening and development of counter-terrorism cooperation at the interregional level as well.

188. As for the prevention of terrorism, Montenegro puts special emphasis on cooperation with other countries, especially within the SEE region. This action consists of two components. First of all, it involves cooperation of security sectors of the countries of the region in the prevention of terrorism, which takes place through police, intelligence and cooperation in the field of border control. To that effect, it is important to underline the successful cooperation between the Montenegrin institutions on the one side and SEPICA and SELEC on the other. The second component is the cooperation with the countries of the region, focusing on the development of political, economic, social and cultural relations as manners to achieve long-term stabilization of the entire region. Montenegro will continue to pay special attention to international cooperation, especially in terms of adopting international legal documents, applying conventions and protocols, exchanging information, experiences and good practices in the implementation of counter-terrorism measures, strengthening cooperation in the field of mutual legal assistance and extradition matters, examining possible new terrorist threats and developing adequate countermeasures and mechanisms and strengthening vocational, scientific and educational dimensions.

**Anti-terrorism measures and their compliance with all obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005)**

189. The establishment of a modern and comprehensive legislative framework, in accordance with relevant international standards, represents one of the key prerequisites for effective prevention and suppression of terrorism, as well as for improving the legal measures to suppress the crimes of money laundering and terrorist financing. In respect of terrorism, criminal legislation is largely compliant with the relevant international conventions. Montenegro has ratified many conventions in the field of terrorism, such as: The European Convention on the Suppression of Terrorism (1977), The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005), The International Convention for the Suppression of Terrorist Bombings (2001), The Convention on the Physical Protection of Nuclear Material (1980), The International Convention for the Suppression of the Financing of Terrorism (1999), The European Convention on the Prevention of Terrorism (2005), The Convention for the Suppression of Unlawful Seizure of Aircraft (1970), The International Convention against the Taking of Hostages (1979).

190. With a view to joining the European Union, Montenegro implements the Common Position 2001/931/CFSP on the application of specific measures to combat terrorism. Montenegro promotes cooperation in this field in accordance with Security Council resolutions 1373(2001), 1535(2004), and resolution 1624(2005) and other relevant United Nations resolutions, international conventions and other instruments. Via its permanent representative our country cooperates actively with the United Nations Counter-Terrorism Committee (CTC), established by Security Council resolution 1373(2001).

**Relevant training given to law enforcement officers**

191. The 2011 data: further to annual training programmes; Montenegro conducts continuous trainings of officers to successfully counter all forms of terrorism in its own territory. In cooperation with the Police Directorate, Police Academy continuously organizes vocational and specialized trainings of officers of the Police Directorate to fight terrorism. The training is carried out in accordance with the annual program of vocational and specialized training. A special segment of the annual programme is vocational and specialized training of the Border Police staff.

192. In cooperation with international organizations, the following seminars were implemented: With the U.S. ICITAP programme, seminars on topics of: suppression of organized crime, economic crime, cyber-crime, counterfeiting currency - preventive and repressive aspects, training for undercover operations and specific surveillance techniques.

193. With the OSCE Mission, seminars were organized on the topics of: suppressing drug trafficking, border police training to suppress smuggling across state borders and system to protect the border against possible terrorist actions.

194. Seminars on topics of: crisis management, undercover agents, extortions and kidnappings and tactical training were organized with the international training centre in Hungary.

195. With the Austrian Development Agency, seminars are organized on topics of: protected witnesses, identification of forged documents, conducting interviews and trafficking in persons.

196. With the Ministry of Defence of the United States, through the Export Control and Related Border Security Assistance (EXBS) and DETRA programmes, seminars were organized on topics of: crisis management, preventing the proliferation of WMD and preventing smuggling across the state border.

197. With the Council of Europe, a seminar was held on the topic of: conducting interviews.

198. In accordance with the training programme, Special Police Anti-terrorist Unit carries out continuous trainings aiming to train and qualify Unit staff to:

- Carry out actions to overpower terrorists and free hostages in the building (room), plane, vessel and road and rail traffic facility;
- Use special protection equipment, anti-sabotage and other types of equipment efficiently;
- Suppress large-scale disruption of public peace and order more rapidly and effectively, as well as to train specifically;
- Team leaders to organize training for the team and lead the team during actions;
- Team commanders to manage counter-terrorist actions and resolve incidents.

199. The training laid down under this programme is divided into:

- Specialized trainings of counterterrorist teams A and B (police officers and teams as a whole);
- Basic training and training for targeted tasks of police officers from the antiterrorist team C and the team as a whole; and
- Organizing training courses.



200. Specialized trainings for counterterrorist teams are held, whereas courses for acquiring additional specialized skills are implemented in parallel with the training.

201. During the training process, Special Anti-terrorist Unit cooperates actively with renowned special forces from the region and beyond (the UK police service special operations units, the French special police unit, the American special police units, etc). Hence, members of the Special Anti-terrorist Unit also participated in the following trainings-courses and seminars:

- PTSS-Marshall Centre's Program on Terrorism and Security Studies, Germany; Analysis of operations of terrorist groups and improvised devices they use; Solving conflict situations - negotiation and negotiation skills; Combat shooting course, a continuation of the basic course on special operations tactics, conducted in late 2008 at the Special Forces Training Centre in the USA;
- Advanced course on special operations tactics; workshop *Eko Cobra* - Austria; Fort Myers-Florida - special operations tactics on water; Negotiating techniques in crisis situations - OSCE;

202. Training in the field of crisis management for unit heads and in terms of perpetrators, hostage situations, aircraft seizures, dog handlers and security of VIPs – was organized by the Ministry of Interior of the Republic of Serbia, the French Embassy in Belgrade and the French special operations tactical unit (RAID); basic and advanced techniques of intelligence and analytical work - organized by the U.S. Embassy in Podgorica, Montenegro. As part of the specialized training, thirteen members of the Special Anti-terrorist Unit stayed at the U.S. special force training camp. During 2011, members of the Special Anti-terrorist Unit organized two trainings for the members of Special Forces Company from the Army Brigade.

203. Methodological and demonstration exercise *Aircraft Hijacking* was carried out at Podgorica Airport in July 2011. The exercise was carried out by members of the Special Anti-terrorist Unit with the following national entities: Ministry of Transport and Maritime Affairs, Ministry of Health, Agency for Civil Aviation Control, Airports of Montenegro, National Airline *Montenegro Airlines*, Flight Control, MoI's Department of Emergency Situations, aeronautical base of the Montenegrin Army, Department for Protecting Dignitaries and Facilities and the Border Police Department.

204. National Security Agency and Police Directorate staff engaged in the working field of counter-terrorist activities have continued to attend specialized courses and studies in our country and abroad which are focused on identification and prevention of all kinds of radicalizations and extremism which might grow into terrorism.

#### *Court statistics*

205. In the case K.br.281/06, 17 persons were indicted: Lj.D, D.Đ, S.A, S.V. as co-offenders in associating for unconstitutional *activities* under article 372, paragraph 1, in conjunction with article 365 of the CC and *preparing acts against the constitutional order and security of Montenegro* under article 373, paragraph 2 in conjunction with article 365 of the CC. In addition to that, B.Z, I.S, I.Đ, L.Đ, D.V, D.P, D.R. and D.K. were accused for *associating for unconstitutional activities* under article 372, paragraph 3 in conjunction with paragraph 1 in conjunction with article 365 of the CC and *preparing acts against the constitutional order and security of Montenegro* under article 373, paragraph 2 in conjunction with paragraph 1 in conjunction with article 365 of the CC.

- D.Đ. was accused for the crime of *unauthorized possession of weapons and explosive materials* under article 403, paragraph 1 of the CC;

- L.J.N.J. was accused for the crime of *unauthorized possession of weapons and explosive materials* under article 403, paragraph 2 of the CC;
- I.M. was accused for the continuing crime of *aiding unauthorized possession of weapons and explosive materials* under article 403, paragraph 2 in conjunction with paragraph 1 in conjunction with articles 25 and 49 of the CC;
- K.V. was accused for the crime of *unauthorized possession of weapons and explosive materials* under article 403, paragraph 2 of the CC;
- B.M. was accused for the crime of *unauthorized possession of weapons and explosive materials* under article 403, paragraph 2 in conjunction with paragraph 1 of the CC.

206. They were sentenced to prison terms of: cumulative prison sentence of six years and six months L.J.D, a U.S. national; cumulative prison sentence of five years D.Đ; cumulative prison sentence of six years, S.A.; cumulative prison sentence of five years S.V.; cumulative prison sentence of four years, B.Z., I.S. - a U.S. national; cumulative prison sentence of three years, D.P, D.R. and D.K - U.S. nationals; cumulative prison sentence of three years and three months, in absentia - Lj.N.; cumulative prison sentence of two years and five months I.Đ.; sentence of six months Lj.N, K.V. and B.M; sentence of seven months and a sentence of three months - D.Đ.

207. Special procedure was conducted in the case Ks br. 11/08 - (separated procedure) against D.V. - trial in absentia. The defendant was sentenced to a cumulative prison sentence of six years and six months, for *conspiracy to commit unconstitutional activity* under article 372, paragraph 1 in conjunction with article 360 of the CC and *preparing acts against the constitutional order or security of Montenegro* under article 373, paragraph 2 in conjunction with paragraph 1 in conjunction with article 360 of the CC. The cases K.br.281/06 and Ks.br.11/08 are final

## **V. General information on the situation of human rights at the national level, including new measures and developments regarding the implementation of the Convention**

### **Reply to the issues raised in paragraph 36 of the list of issues**

208. See chapter III on information on new measures and developments relating to the implementation of the Convention under articles 1 and 2.

209. The Law on Prohibition of Discrimination<sup>35</sup> adopted on 27 July 2010, as a systemic law, provides the basis and the mechanisms for protection against discrimination under any personal capacity, and a special article governs the prohibition of discrimination based on sexual orientation and gender identity. Instigation to discrimination is characterized by this law as discrimination and contains provisions that provide protection against victimization. Definitions of unlawful practices in this law instruct all, especially courts and other bodies whose task is to protect human rights, to a stricter legal response as a reaction to unlawful conduct. Among many of the stated forms of discrimination, the law contains those which are considered to be particularly gross violations of the principle of equality from the standpoint of the juridical system and moral standards. They were singled out primarily to indicate to serious unlawful acts that are considered to be particularly dangerous to the

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<sup>35</sup> Official Gazette of MNE 46/10.

community. To that effect, discrimination based on sexual orientation and gender identity was specifically stressed.

210. In terms of prevention and protection against discrimination, as well as further development and creation of a tolerant and open society, it is necessary to underline some current activities which are very important. First of all, three working groups were formed on the basis of the decision of Deputy Prime Minister of Montenegro for the political system, internal and external policy issued on 25 October 2011. The groups are composed of representatives of state institutions and non-governmental sector and tasked with developing the following documents: Platform for the Fight against Homophobia with an Action Plan (Strategy to combat homophobia with action plans), Analysis of legal regulations in terms of LGBT rights, Analysis of LGBT human rights in textbooks used in the education system of Montenegro, The findings and recommendations of these working groups will largely guide our future work and overall attitude towards the LGBT population in Montenegro.

211. The Government of Montenegro adopted the Decision to set up the Discrimination Protection Council<sup>36</sup>, consisting of the Prime Minister, ministers of human and minority rights, justice, labour and social welfare, health, education and sports, advisor to the Prime Minister for human rights and protection against discrimination and four representatives of NGOs. As for NGO representatives, the representative of the NGOs whose field of action is protection against discrimination based on gender identity and sexual orientation automatically becomes a member of the Council.

#### *Court decisions*

212. Courts in Montenegro passed four judgments that promote human rights proclaimed in the Convention against Torture, convicting the accused persons.

#### **Reply to the issues raised in paragraph 37 of the list of issues**

213. In the period 2 - 5 September 2011 Government of Montenegro organized the International Conference Toward Europe, Towards Equality, in cooperation with the Justice in the Balkan: Equality for Sexual Minorities International Academic Conference, Williams Institute University of California, Los Angeles School of Law (UCLA), USA, Department of Sociology at Lund university, Lund, Sweden and The European Commission on Sexual Orientation Law (ECSOL). The conference received financial assistance of the Royal Netherlands Embassy in Belgrade. The conference brought together prominent international experts, scholars and human rights advocates from Europe, the United States and Canada, as well as senior officials of the Montenegrin Government and members of the diplomatic corps, with the aim to improve the LGBT human rights and to fight discrimination against this population, through the effective implementation of anti-discriminatory laws and policies, and awareness raising by the ruling structures and the public on these issues. This international conference has included trainings in the fields of law enforcement, the judiciary and human rights (for judges, prosecutors, law enforcement, protectors of human rights and the civil sector).

214. Another conference/round table, with a similar topic, was organized in early 2012 (1 – 2 February 2012). On that occasion, Council of Europe representatives presented the combating discrimination on grounds of sexual orientation and gender identity (LGBT) project, one of whose beneficiaries is Montenegro.

215. A high level international conference was held in March 2012 in Montenegro, under the auspices of the Prime Minister of Montenegro, titled Together against Discrimination,

<sup>36</sup> Official Gazette of MNE 50/11 and 53/11.

whose main goal was to promote Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.

## **VI Additional responses to the concluding observations**

216. In accordance with the recommendation contained in paragraph 24 of the concluding observations of the Committee against Torture, in the period since the previous report Montenegro has ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

217. In accordance with the recommendation contained in paragraph 25 of the concluding observations, in the period since the previous report Montenegro has ratified the United Nations Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto<sup>37</sup> and the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>38</sup>

218. In accordance with the recommendation contained in paragraph 26 of the concluding observations, Montenegro has prepared a common core document.

219. In accordance with the recommendation contained in paragraph 27 of the concluding observations, the second periodic report to the Committee against Torture will be placed on the websites of the Government of Montenegro and of the competent government agencies.

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<sup>37</sup> Official. Gazette of MNE- International Treaties 2/2009.

<sup>38</sup> Official. Gazette of MNE- International Treaties 8/2011.