



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

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Committee against Torture Seventy-third session

Summary record of the 1889th meeting*

Held at the Palais Wilson, Geneva, on Wednesday, 27 April 2022, at 10 a.m.

Chair: Mr. Heller

Contents

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

Third periodic report of Montenegro

* No summary record was issued for the 1888th meeting.

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

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

Third periodic report of Montenegro (CAT/C/MNE/3; CAT/C/MNE/QPR/3)

1. *At the invitation of the Chair, the delegation of Montenegro joined the meeting.*
2. **Mr. Božović** (Montenegro), introducing his country's third periodic report (CAT/C/MNE/3), said that progress had been made in a number of areas since the report's submission in 2018. A bill had been introduced to amend the Criminal Code in order to remove the statute of limitations for acts of torture and ill-treatment, in line with a United Nations recommendation, and to provide for mandatory disqualification from service for officials convicted of torture and rule out the possibility that they could be sanctioned with a mere warning. In cases where national legislation on torture was not in line with the Convention, judicial authorities upheld the constitutional provision stipulating the primacy of international law. Efforts were under way to amend the law on legal aid to recognize victims of torture and ill-treatment as priority beneficiaries of free legal aid.
3. The Criminal Code had also been amended to prescribe harsher penalties for domestic violence and extended family violence. A special body to provide support to victims of domestic violence was being established. The issue of domestic violence had been debated several times in the national parliament, and the Government had urged the competent authorities to make every effort to combat it.
4. In March 2022, the Government had adopted a decision to grant temporary protection for one year to nationals of Ukraine, stateless persons who had been resident in Ukraine and persons granted international protection by Ukraine who had been forced to leave Ukraine as a result of the armed conflict. A coordination body would be put in place to supervise implementation.
5. The Criminal Procedure Code would be amended to set out the criteria for presentation before the national courts of evidence already presented before the International Tribunal for the Former Yugoslavia, with a view to improving cooperation with the International Residual Mechanism for Criminal Tribunals and facilitating the prosecution of war crimes by the national courts. The Committee for Missing Persons had been established to resolve the issue of persons who had gone missing from the territory of Montenegro during armed conflicts in the former Yugoslavia, in line with the international commitments of Montenegro and in coordination with international and regional efforts. During the reporting period, the Committee had resolved a number of cases and had facilitated the return of the remains of 33 persons who had been citizens of Montenegro or whose disappearance had been reported by a citizen.
6. All attacks on journalists and media outlets committed in 2021 had already been resolved by the police. The Government of Montenegro was making every effort to facilitate the resolution of pending historic cases. In 2021, a new commission to monitor threats and violence against journalists had been established to replace the one active since 2013. In addition to representatives of the media and media associations, its membership included representatives of the Ministry of the Interior, the National Security Agency, the police and the prosecution service. A new media strategy and legislative framework for the media were currently being developed. The Criminal Code had been amended to provide for stronger protection of media freedoms and freedom of expression.
7. To reduce prison overcrowding and improve conditions of detention, European Union funding had been secured for the construction of four new prison facilities, including a special medical unit and a new prison for the northern region. The latter was currently at the design stage; construction of the medical unit was due to start in December 2022. A new juvenile prison that met all relevant international standards had opened in 2020.
8. Montenegro had a modern legislative framework for the protection of the rights of minorities and was the only State of the former Yugoslavia not to have experienced ethnic conflicts. However, there were some challenges relating to the enjoyment of social and economic rights by Roma persons. The Government had adopted a strategy and action plan

for the social inclusion of Roma in 2021. The objective of the strategy, which was in line with the European Union Roma strategic framework for equality, inclusion and participation, was to improve the socioeconomic and legal position of Roma persons by building an inclusive and open society and eliminating all forms of discrimination, anti-Gypsyism and poverty. It included a commitment to improve the political representation of Roma communities by introducing a lower electoral threshold for Roma political parties.

9. Religious tensions had arisen during the inauguration of the new leader of the Serbian Orthodox Church in Cetinje. However, the police had reacted professionally, respecting the need to balance the freedom of religion of the church dignitaries with the freedom of assembly of those opposed to the inauguration. No similar interfaith tensions had been observed subsequently.

10. The protocol for dealing with children living and working on the streets was currently being revised under the coordination of the Ministry of the Interior. The protocol provided guidance for all stakeholders working with such children and their families and set out the measures necessary to protect the children's rights.

11. **Ms. Racu** (Country Rapporteur) said that she would like to know whether the definition of torture in article 167 of the Criminal Code would be amended to bring it fully into line with the definition in article 1 of the Convention, particularly with regard to possible perpetrators. She wondered whether there were any plans to increase the penalties so that they were commensurate with the gravity of the offence, prohibit suspended sentences, and rule out amnesties and pardons for public officials convicted of torture. She would also appreciate clarification as to whether accused or convicted perpetrators of torture could currently benefit from presidential pardons and amnesties and whether there had been any cases in which such pardons or amnesties had been granted.

12. It would be useful to have more specific information about the role, functions and effectiveness of the Protector of Human Rights and Freedoms of Montenegro (Ombudsman), which had been designated as the national preventive mechanism. She would like to know whether there were legally defined procedures for the appointment of the mechanism's members, whether any measures were in place to provide it with funding and what specific budgetary and logistical resources had been allocated in recent years to allow it to fulfil its mandate under the Optional Protocol to the Convention. She would also like to know whether the current membership included doctors, psychiatrists and other experts.

13. It would be useful to know whether the national preventive mechanism had unhindered and unannounced access to all places of detention, including social care homes, psychiatric institutions and military units. She would also like to know how many monitoring visits had been carried out in the previous two years and whether the coronavirus disease (COVID-19) pandemic had affected the mechanism's access to places of detention. In addition, she would be interested to hear about how the State party intended to ensure access to places of detention for non-governmental organizations (NGOs) working on human rights, including during periods of pandemic-related restrictions. The Ombudsman had issued a number of opinions relating to ill-treatment and other human rights violations by State officers. Unfortunately, however, the Ombudsman's recommendations had not always been implemented. She would be interested to hear the delegation's thoughts on how implementation might be improved.

14. According to information received by the Committee, the majority of ill-treatment by police allegedly occurred between the time of arrest and the time detainees appeared before the State prosecutor. She would appreciate an update on any progress made in ensuring that police officers respected their obligation to bring detainees before the State prosecutor without delay. She wondered whether there were any plans to amend the Code of Criminal Procedure to ensure that all detainees had the right to an independent lawyer and doctor of their own choosing. She would welcome details of the steps the State party had taken to implement the recommendations regarding access to legal assistance issued in 2017 by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

15. While the Committee welcomed the State party's expansion of the criteria for free legal aid, it was not clear whether free legal aid was also provided for administrative

proceedings and whether there were any plans to extend such aid to victims of torture or ill-treatment by public officials. It would be useful to know what steps the authorities planned to take to ensure that free legal representation was available throughout criminal proceedings, including at the initial stage of police custody, and whether the State party intended to make mandatory the recording of all interviews conducted by police officers and State prosecutors with suspects, witnesses and others.

16. She would appreciate information on the State party's efforts to ensure that medical examinations were conducted on admission to police detention units, including whether such examinations were confidential and whether the doctors who performed them reported to a specific health authority. She also wished to learn about the internal provisions for reporting possible cases of torture or ill-treatment and about any specific registers for recording injuries or violent incidents. She would welcome data on the number of such cases that had been recorded during the reporting period, together with details of the outcomes of those cases. It was unclear how the authorities monitored the application of another fundamental legal safeguard, namely detainees' right to notify a person of their choosing of their arrest. Clarification on that point would be appreciated. She would be grateful for information on the measures in place to ensure that detained foreign nationals were promptly provided with an interpreter if they required one and were not requested to sign statements or other documents in a language they could not understand unless they had received the relevant linguistic assistance.

17. The Committee would appreciate updated data on the number of allegations of torture and ill-treatment made in the previous four years and details of how many of those had resulted in investigations, prosecutions and punishments. It would welcome the delegation's comments on the apparent disparity between the number of complaints of torture and the number of sentences handed down to perpetrators. The Committee would also be grateful for information on the number of ex officio investigations that had been opened in connection with alleged cases of torture or ill-treatment and on the number and the outcomes of any such cases that had been reported by doctors following medical examinations of detainees.

18. It would be helpful to receive an update on the measures in place to ensure that all complaints of torture or ill-treatment, including allegations of the use of force, were investigated promptly, impartially and effectively; that the perpetrators were prosecuted and punished accordingly; and that all victims received appropriate redress and compensation. She would like to learn whether the State party had a standard protocol for the investigation of torture and ill-treatment and whether the standards set out in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) were applied systematically in torture investigations.

19. It would be useful to know whether there were clear regulations on disciplinary investigations within the National Police and the penitentiary system. She would welcome details of any plans to further strengthen the independence and effectiveness of the Special State Prosecutor's Office in investigating claims of torture and ill-treatment or to create a separate official mechanism with the capacity to carry out such investigations and to hold perpetrators of torture accountable before the courts. She wished to know how many inspections had been carried out by the Department for Internal Control of the Police during the previous two years and what the outcome of those inspections had been.

20. Turning to the investigation of cases relating to the armed conflicts in the former Yugoslavia, she noted that few war crimes had been prosecuted and that no investigations into such crimes had been launched ex officio since the State party had achieved its independence. Between 2014 and 2022, 24 persons had been indicted in connection with war crimes, but only 5 had been convicted, and those individuals had reportedly not received sentences that were commensurate with the seriousness of the offences. In 2020, the International Residual Mechanism for Criminal Tribunals had submitted to the State party a file on more than 15 suspects who could be investigated for serious offences, including sexual violence. Since then, only one person had been heard as a witness. She would welcome the delegation's comments on those issues and on what action might be taken to expedite the prosecution of war crimes in the State party.

21. The State party had ratified the International Convention for the Protection of All Persons from Enforced Disappearance in 2011, but it had not yet amended its legislation to criminalize enforced disappearance as a separate offence. Were there plans to do so and to adopt a specific law on missing persons?

22. She welcomed the enactment of the Law on International and Temporary Protection for Foreign Nationals, the adoption of the procedure to determine statelessness and the improvements made to birth registration, in line with the Committee's recommendations in its previous concluding observations (CAT/C/MNE/CO/2). She would appreciate clarification of whether there were standard procedures in place for the effective referral of asylum seekers to the appropriate authorities. It would be helpful to hear about any training that was provided to relevant law enforcement bodies on asylum procedures and the protection of refugees. She wished to know how the State party ensured that State border guards were properly trained and competent to assess asylum applications and decide whether foreign nationals faced a risk of torture or inhuman treatment in their country of origin or had been victims of such acts.

23. The Committee had received reports of concerns about the interpretation of the safe third country concept, which allegedly put some asylum seekers at risk of so-called chain refoulement, as a result of which they might be transferred to a country that was considered safe but that might then expel them to their country of origin. The Committee would welcome the delegation's comments on that issue. It would be interesting to receive details of the steps taken to improve the procedures to identify refugees who had been victims of torture and the measures in place to document signs of torture and to guarantee access to medical care for persons who had experienced torture. Updated information on the coordination and registration mechanisms for migrants and asylum seekers would also be appreciated, as would information on any recent changes in legislation or practices designed to improve the situation of such persons, including unaccompanied minors. It would also be useful to know how many complaints had been submitted by migrants and how many of them had been investigated.

24. The Committee noted with appreciation the many legislative, policy, awareness-raising and educational measures taken by the State party to prevent and combat gender-based violence. However, it would welcome the delegation's comments on the apparent trend towards lenient sentences for perpetrators of such violence, particularly in the light of the decision by the Judicial Council to impose harsher sentences.

25. Given the reports of an increase in the number of persons seeking help for domestic violence during the COVID-19 pandemic, she wished to receive updated figures on the number of cases of gender-based and domestic violence in the previous four years and information on the measures the Government had taken to prevent and address such violence. Information on the number of investigations launched, sentences handed down and protection orders issued would also be appreciated. She would be interested to know what measures had been taken in the previous two years to provide medical care, psychological support, shelter and legal assistance to victims of gender-based and domestic violence. She also wondered what steps had been taken to ensure that the police were more willing to respond to cases involving such violence and to treat them as human rights violations. It would be useful to learn how the courts ensured that protection orders were adequately enforced in cases of domestic abuse, how many temporary restraining orders had been issued and how many persons had been convicted for failing to comply with such orders.

26. Lastly, she wished to know whether, since the consideration of its previous report, the State party had rejected, for any reason, any request for extradition by another State in respect of an individual suspected of having committed an offence of torture, and whether it had subsequently initiated criminal proceedings against the individual. She would welcome information on the status and outcome of any such proceedings.

27. **Ms. Pūce** (Country Rapporteur) said that she would appreciate more details of the training related to the prohibition of torture that was provided to law enforcement personnel, medical personnel, public officials and others involved in the custody, interrogation or treatment of persons who were arrested, detained or imprisoned. In particular, she wondered what training system was in place for the various officials dealing with persons deprived of

their liberty and whether the training was mandatory, comprehensive, sustainable and continuous. It would be useful to have information on the curricula of such courses. She would be interested to hear about courses on the Istanbul Protocol for medical personnel, for example, and about the methods taught to law enforcement officers for dealing with juveniles, with persons under the influence of substances of various kinds, with victims of sexual or domestic abuse and victims of trafficking, and with persons attending mass events.

28. She would like to know whether training was available for prosecuting officers in investigating cases of torture. According to information received, prosecutors did not feel able to investigate victims' complaints of torture and tended to refer cases back to the police, which was not acceptable, as in many cases the police were the alleged perpetrators. In addition, many victims did not take their complaints to prosecutors for fear of reprisals, which meant that there was a problem of underreporting. What was the State party doing to rectify that situation? She would be interested to know whether the Montenegrin courts had ever excluded evidence on the grounds that it had been extracted under torture and what training members of the judiciary received in recognizing such evidence.

29. Staff in psychiatric institutions were apparently trained to deal with patients who became agitated or violent, but she would like to know whether the security personnel employed in such institutions, especially those subcontracted through private companies, also received training in dealing with such persons. She would appreciate information on the regime in place for patients at the forensic psychiatric unit at the Dobrota psychiatric hospital, particularly with regard to security arrangements and the use of restraints on patients. She would also like to learn what progress had been made in the investigations into the cases of ill-treatment of patients at the Dobrota facility and what lessons had been learned from them.

30. She would like to know what training was available for staff in reception centres for asylum seekers to enable the staff to identify victims of trafficking, torture and sexual violence. More generally, she would be interested to know what progress had been made in developing official instructions and rules to regulate the conduct of staff in such institutions and centres and, in particular, to enable them to deal with situations without resorting to violence.

31. With regard to the treatment of juveniles deprived of their liberty, she understood that the Department for Juveniles opened in 2020 was in fact a part of the prison complex at Spuž. She would appreciate more information on the organization of that juvenile wing, the number of inmates and the conditions of detention; whether the children had any educational opportunities or literacy training beyond primary schooling; whether the physical arrangements precluded contact with adult prisoners, including young adults aged 20 to 23; and what staff were employed at the facility and what training they received.

32. She noted that, under Montenegrin law, juveniles aged 14 to 16 were supposed to be sent to correctional centres and that 16- to 18-year-olds could be sent either to correctional centres or to prison. However, Montenegro had no such correctional centres, which meant that juveniles effectively had to go to prison. She would be interested to know how the State party intended to resolve that situation.

33. Despite certain improvements, the women's unit at the Spuž complex showed signs of dilapidation and the space available per inmate was less than that recommended under international standards. In addition, hygiene items were not always provided, which was a particular concern in the current pandemic. She would appreciate more information on the situation in that unit.

34. The Committee had received no reports of ill-treatment at the Spuž complex. However, in 2019 the European Committee for the Prevention of Torture had reported the use of restraints to tie prisoners down, sometimes for days at a time and with only one medical examination during that period. She would like to know whether that practice had been discontinued.

35. She would be grateful if the delegation would explain the State party's strategy to improve the procedures for initial medical examination on admission to places of detention. The Committee had heard numerous reports of superficial examinations in which prisoners were not asked to undress and of examinations being conducted in the presence of a police

officer. The State party should take action as a matter of priority in that regard, since such check-ups were crucial for detecting signs that torture might have taken place in police custody.

36. Although violence by prison staff was apparently not prevalent, violence among prisoners was reportedly frequent and widespread. She would be interested to know whether the strategy put in place by the Directorate for Execution of Criminal Sanctions to deal with the problem had yielded any results and, if so, what the State party's next steps would be. She would also like to know how the strategy was implemented. For example, were additional staff allocated to places where such violence was prevalent, and did prison staff receive training in defusing potentially violent situations?

37. The delegation had mentioned plans to build new prisons as a means of reducing overcrowding. Those plans had also been mentioned during the Committee's previous dialogue with the State party, but there appeared to be little sign of progress, which caused her to wonder how realistic and feasible the construction plans were. She would like to know what steps the State party intended to take to address overcrowding and lengthy stays and improve conditions in the remand prison at Podgorica. She would particularly appreciate a comment on reports that detainees were sometimes held in the remand prison for up to two years and that they lacked access to daily outdoor exercise, which was a breach of Montenegrin law.

38. Although the State party had had ample time to address the problem, many police detention facilities were reportedly still in a poor state of repair, with inadequate lighting and unsatisfactory sanitary amenities. She would appreciate information on any progress made in improving the practical arrangements made for detainees. She was particularly keen to hear whether there were any plans to provide food and install outdoor exercise yards.

39. She would be grateful for information on the regime in place at reception centres for asylum seekers, who were reportedly held for up to two years. Were individuals confined to the facility or could they move about freely? She would like clarification of the arrangements in place for legal aid and interpretation services for asylum seekers. The Committee had heard that the legal aid provided free of charge was in fact made available by an NGO rather than the State party.

40. She wished to know if the State party had any plans to introduce a system of redress for torture victims, one that did not rely solely on monetary compensation but took due account of victims' need for a holistic approach that restored their dignity, physical and mental ability and social independence and ensured their full reintegration into society. Lastly, she understood that violence against journalists had become so widespread as to appear systematic. Did the State party have a strategy to prevent such attacks? What progress had been made in the investigation into the attack on Olivera Lakić in 2018?

41. **Mr. Rouwane** said that he would welcome an explanation of the practice by which parliament adopted the reports of the Ombudsman, which seemed contrary to the principle of the confidentiality of such reports. He understood that the Ombudsman's reports on prisons were signed by prison directors, which was a concern. Clarification in that regard would be appreciated. It would also be useful to have clarification of the reasons behind the demotion of the Ombudsman's office to B status by the Global Alliance of National Human Rights Institutions. He would be grateful if the delegation would provide more details on the measures taken to strengthen the prevention of torture.

42. He wished to know whether there was a mechanism for the early identification at borders of asylum seekers who had been victims of torture or trafficking and other persons in need of international protection. He would also like to know what procedures were in place to enable individuals to appeal against expulsion or extradition decisions that might expose them to a risk of torture. Statistics on the number of persons currently held in remand detention, disaggregated by ethnic origin, would be appreciated. It would also be helpful to have updated statistics on the number of persons who had died in detention and information on the causes of death and on the investigations conducted into injuries caused by violence or excessive use of force in places of detention. Lastly, he would be interested in learning more about the State party's strategy for preventing violence among detainees.

The meeting was suspended at 12.10 p.m. and resumed at 12.30 p.m.

43. **Mr. Božović** (Montenegro) said that the planned amendments to the Criminal Code would incorporate the definition of torture as outlined by Ms. Racu. Political circumstances had slowed work on the amendments, including those relating to the definition of torture. A lack of political will had affected progress in a number of areas, including the construction of new prison facilities to improve conditions. The prison construction project had also been affected by lack of funding. Nevertheless, he was pleased to report that construction was due to start in December 2022.

44. **Ms. Bojadžić** (Montenegro) said that the amendments to the Criminal Code would provide that persons who had been convicted of torture by a court of law would be disqualified from holding professional positions. A conviction might also result in the termination of their employment. Although the law on pardons and amnesty provided that individuals who had been convicted of criminal offences could be granted pardons, the President of Montenegro had not granted any pardons between 2018 and 2020. The pardons and amnesty law was not applicable to persons who had been convicted of a number of crimes, including war crimes against civilians, terrorism, trafficking in persons, inhuman treatment and other international crimes, nor was it applicable to individuals convicted of rape and other sex crimes, domestic violence, neglect or abuse of children, the establishment of criminal organizations, money-laundering, abuse of authority, bribery or attacking public officials or otherwise preventing them from performing their duties.

45. **Mr. Božović** (Montenegro) said that the Government had not been satisfied with the criminal policy on domestic violence and had therefore drafted amendments to the Criminal Code. Those amendments, which would ensure that there would be no lenient treatment of persons convicted of domestic violence or similar crimes, were part of comprehensive changes to criminal law to be introduced in the following two months.

46. **Mr. Vukčević** (Montenegro), responding to the questions relating to prison visits by the Ombudsman, said that the Ombudsman acted primarily on the basis of reports filed by detainees or reports from the Directorate for the Execution of Criminal Sanctions. The Ombudsman could hold a private meeting with detainees; no prison officers were present during those meetings, and the Ombudsman was not obliged to inform anyone at the prison of what was said during such meetings. The Ombudsman then submitted an opinion on whether detainees' rights had been violated and, if so, recommended the next steps to be taken. The prison director did not sign the report and was not privy to the discussions held in the private meeting.

47. During the COVID-19 pandemic, NGOs had, at times, been denied access to prison facilities, in line with the measures recommended by the Ministry of Health to curb transmission of the disease among detainees, which had been largely successful. Persons who had been remanded in custody had continued to be admitted to the remand prison during the pandemic, but they had been placed in quarantine for a period of 14 to 24 days prior to being transferred to collective accommodation. Detainees had been permitted to contact family members by video call during the quarantine period, with the prior approval of the courts. Persons admitted to prison during the pandemic were those who had been identified as wanted by the police or who had been sentenced for domestic violence. The planned multifunctional facility, construction of which was expected to be completed in 2024, would provide space for religious ceremonies, sports and cultural activities.

48. **Ms. Živković** (Montenegro) said that the planned special prison hospital would provide accommodation and facilities for the treatment of prisoners with mental health disorders. Prisoners would be placed in the hospital if their mental health had deteriorated to the point that they required inpatient hospital treatment or if the court had determined that they should receive mandatory treatment. The new prison hospital would make it possible to treat a larger number of prisoners than could be accommodated at the Dobrota psychiatric hospital, which had very limited capacity. The new prison hospital would provide access for all prisoners to care by a range of specialists, including psychiatrists, surgeons and dentists. It would also reduce the stigmatization of prisoners and improve accommodation conditions.

49. **Ms. Bojadžić** (Montenegro) said that the Government had committed to borrow €15 million from the Council of Europe Development Bank to help fund the construction of the

multifunctional facility and the special prison hospital. A meeting to further discuss that funding would take place in September 2022.

50. **Ms. Pajović** (Montenegro) said that the Ministry of the Interior had made significant financial and strategic investments in mandatory training for police officers, including the establishment of a division responsible for training. A training plan was adopted each year, and police officers were designated to attend training sessions organized by the police academy, the human resources management authority and international bodies. Each police employee had a personal file detailing their training attendance and results. The training covered topics related, inter alia, to torture, the use of force and the treatment of juveniles. Statistics relating to those training courses would be submitted to the Committee in writing.

The meeting rose at 1 p.m.