



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

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COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD (PARTIAL)* OF THE 851st MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 12 November 2008, at 3 p.m.

Chairperson: Mr. GROSSMAN

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Montenegro (CAT/C/MNE/1 and Corr.1; CAT/C/MNE/Q/1 and Add.1)
(continued)

1. At the invitation of the Chairperson, the members of the delegation of Montenegro resumed their places at the Committee table.
2. Mr. RADOVIC (Montenegro) said that in Montenegro international conventions had primacy over national legislation and could therefore be applied directly. When the Criminal Code had been amended in 2006, efforts had been made to harmonize the definitions of torture and abuse with the definitions contained in the Convention against Torture. Under the Criminal Code, the definition of torture included psychological torture through use of force, threats or other acts that caused severe pain or suffering. The instigation or condoning of torture by persons acting in an official capacity was punishable under the Criminal Code. Omissions or negligence in the performance of duty were also included among criminal offences connected with torture. In 2009, the Criminal Code would be further amended, which would allow more specific definitions of torture to be incorporated.
3. The Constitution and the Code of Criminal Procedure provided for habeas corpus in the context of police custody. A person could not be remanded in custody for more than 48 hours. Pursuant to the Constitution and the Code of Criminal Procedure, the police must issue a decision to remand a person in custody within two hours of that person's arrest. The decision in writing must be transmitted to the person in custody and his or her counsel. The decision could be appealed, and at any time during remand in police custody the detainee or his or her counsel could request a review of the detention, which would be conducted by a court, and a decision would be issued in writing. The courts could examine any case of deprivation of liberty. The duration of deprivation of liberty ran from the time of de facto remand in custody, rather than from the time when the written decision on custody was issued. If a defendant was found guilty and sentenced to imprisonment, the time spent in police custody and pretrial detention would be deducted from the term.
4. Turning to the question of the independence of the judiciary, he said that the Constitution established the basic principles for respecting the independence of the judiciary in relation to courts and prosecutors' offices. Judges were appointed by the Judicial Council, which was a constitutional body responsible for the appointment and dismissal of judges, and also disciplinary action. The conditions for the dismissal of a judge were set out clearly in the Constitution. Judges were appointed to permanent positions until they retired.
5. The procedure for drafting legislation on the establishment of the Judicial Council had begun almost immediately after the adoption of the Constitution, with the participation of representatives of the Council of Europe. That legislation clearly defined and regulated the procedure for recruiting members of the Judicial Council and defined the nature of its work. Funding for the Judicial Council was provided in the State budget. In the event that the President of the Supreme Court disagreed with the budget as submitted to parliament by the executive, he

or she could intervene in the parliamentary vote to adopt the budget. The Judicial Council had been established on 19 April 2008 and was already fully operational. It had appointed a large number of judges and initiated disciplinary proceedings, which represented considerable progress in ensuring the impartiality and independence of judges.

6. Although the Code of Criminal Procedure of 2006 contained provisions that limited confidential communication between a defendant and his or her counsel, amendments made since 2006 ensured confidential communication before questioning and during detention. Visual monitoring of that communication was allowed, usually by means of a glass screen through which a prison guard could watch the interview. No complaints had been received concerning denial of that right.

7. Turning to the case involving members of the Roma community, mentioned in paragraph 140 of the State party report (CAT/C/MNE/1), he said that an out-of-court settlement had been reached in order to meet the Committee's recommendations. The group of Roma citizens from Danilovgrad who had been subjected to torture had been paid a total of 1 million euros. Criminal prosecution had not been pursued when the Committee's recommendation had been made owing to the statute of limitations.

8. Montenegro had signed the International Convention for the Protection of All Persons from Enforced Disappearance and had thus expressed its commitment to fulfil the obligations therein. His Government had undertaken a comprehensive analysis of the instrument, and was preparing the legal and institutional frameworks necessary for its implementation. The Government had recently communicated its replies to the Working Group on Enforced or Involuntary Disappearances.

9. The case of the disappearance of 15 citizens near the border between Montenegro and Kosovo had occurred in 1999 during NATO airstrikes, which had been carried out pursuant to a policy not supported by Montenegro. In that context, there had been Montenegrin resistance to mobilization of the army of the Federal Republic of Yugoslavia. The 15 persons in question had been taken from the border in a bus belonging to the Yugoslav army. The Working Group was very interested in the case. Although it could not be linked to the Montenegrin State authorities, his Government wished to cooperate with the Working Group, and had therefore taken measures to clarify the situation and obtain further information. Although no further information was yet available, the authorities would continue to cooperate with the Working Group.

10. With regard to the deportation of Muslim citizens to Bosnia and Herzegovina, he disagreed with the statement by some NGOs that the Montenegrin authorities had played an obstructive role in that regard. The Prosecutor-General had ordered a special investigation, and proceedings had been initiated against six Montenegrin citizens for the crime of enforced deportation. One of them had died during the investigation. The others were former officials of the Ministry of the Interior. One had been the chief of the Herceg Novi security centre and another chief of the Bar security centre. The investigation had been completed in June 2008 but the Prosecutor-General had subsequently ordered that additional information should be gathered on a further three suspects: one had held the office of Deputy Minister of the Interior and had thus been responsible for public security throughout Montenegro; a second had headed the organizational

unit for the territory of Herceg Novi; and a third had been chief of the Ulcinj security centre. Intensive investigation work was still under way and it was expected that the Prosecutor-General would decide whether to bring charges before the end of the year.

11. Immediately after assuming office in early 2008, the Chief Justice of the Supreme Court had ordered investigating judges handling war crimes cases to work more vigorously to obtain evidence and shed light on the facts. Five such cases were currently being investigated; charges had already been brought in two - the Kaludjerski Laz case concerning crimes committed on the border between Montenegro and Kosovo, and the Morinj case, in which six persons had been charged with war crimes involving torture. Court proceedings in those cases were expected to begin shortly.

12. Steps were being taken to compensate 83 persons who had been deported from Montenegro to Bosnia and Herzegovina. It was expected that an amicable settlement would be reached in the near future.

13. When torture occurred, responsibility for providing compensation lay with the State, and not the perpetrator. The amount of pecuniary or non-pecuniary damages awarded depended on the intensity and duration of the physical or mental pain inflicted. In the case involving the Roma community in Danilovgrad, the victims had not applied to the courts for compensation, although nobody had prevented them from doing so.

14. With regard to the "Eagles' Flight" operation, 17 persons had been charged with planning a serious criminal offence against the Montenegrin legal order and violating the country's territorial integrity. The first-instance judgement in the lengthy and complicated court proceedings had been handed down in August 2008. Eleven persons had been convicted of planning the offence and the others of unlawful possession of weapons. They had been sentenced to terms of imprisonment ranging from two to six and a half years. It was expected that the first-instance convictions would be appealed.

15. No court in Montenegro would rule on the basis of evidence obtained through torture, since the investigating judge was required to exclude such evidence from the file. Statements made by a suspect to the police were inadmissible as evidence unless a lawyer had been present during the questioning. There was no record of any case in which a court had ruled on the basis of a confession obtained through torture.

16. With regard to corporal punishment, violence against schoolchildren as defined in the Education and Child-rearing Act was prohibited. A teacher's employment would be terminated if he or she was found guilty of humiliating or insulting pupils or inflicting corporal punishment.

17. Domestic violence was characterized as a criminal offence in the 2006 amendments to the Criminal Code and penalties were prescribed for various offences against victims' physical or mental integrity. The Ministry of Justice and the Ministry of Health, Labour and Social Welfare were currently drafting a law that would provide for protection against such violence, including preventive measures. The draft would be presented to the general public and NGOs for comment. He undertook to shortly provide statistics regarding cases of domestic violence in recent years.

18. In response to a question about the state of emergency in Serbia, he said that the Ristic case had no implications for Montenegro because Serbia was the successor to the State of Serbia and Montenegro.

19. A new Code of Criminal Procedure was being drafted and every effort was being made to harmonize it with international legislation and with Council of Europe and United Nations standards.

20. Prosecutors were required to investigate cases of torture in response to allegations by members of the public and also if they learned about such cases from any other source.

21. With regard to extradition, Montenegro had recently rejected a request from Belarus for extradition of a Belarusian national because of the risk that that person's rights might be violated, since he had helped to finance a campaign against the candidate for the office of Belarusian Head of State.

22. In response to a question about minority rights to proportional representation, he said that Montenegro was a country that promoted intercultural dialogue and had preserved balance and harmony among ethnic and minority groups during the recent turbulent decades. Minority rights were protected in the new Constitution, and the Minister for Minority Rights, who was an ethnic Albanian, had informed him that amendments to the legislation on minority rights to strengthen affirmative action and improve minority representation in parliament were currently being drafted. Ensuring proportional representation in public administration was a time-consuming task and it was necessary to strike a balance between proportionality and the quality of the human resources employed.

23. Work on establishing a separate system of juvenile justice would begin in 2009. An analysis that would serve as a platform for drafting comprehensive legislation was currently being undertaken.

24. Mr. MIHALJEVIC (Montenegro) said that his country was a party to the Rome Statute of the International Criminal Court and was determined to comply with all the international obligations it had thus assumed. In 2007, it had reached an understanding concerning article 98 of the Rome Statute with the United States of America by means of an exchange of notes verbales. No formal agreement had been signed or ratified. Montenegro felt that such an arrangement would strengthen cooperation with the United States and assist in reforming the security and defence sectors. It was fully aware of the implications and had expressed its willingness to contribute to the investigation and prosecution of crimes within the jurisdiction of the International Criminal Court. The fact that Montenegro had agreed to engage in consultations with the United States in cases where the latter's citizens were in the territory of a contracting party did not mean that it would refuse to surrender a suspect to the International Criminal Court or undermine the implementation of international law. He emphasized that the understanding was subject to review and could be denounced. No case requiring consultations had arisen to date. It was to be hoped that the issue would be resolved through contacts between the European Union (EU) and the United States or through further integration of Montenegro into the EU. His Government planned to submit a bill on implementation of the Rome Statute before the end of the year.

25. Ms. VUKANIC said that the security services comprised the police, the army, the National Security Agency, the customs authorities and the internal affairs agencies. None of them except for the police had authority to interrogate or interview a person unless the law prescribed otherwise. Arrested persons must be informed of the grounds for their arrest and were entitled to the assistance of counsel of their own choosing. The National Security Agency gathered intelligence on matters that had a bearing on national security. According to a law published in Official Gazette No. 28, the Agency had no authority to exercise police powers of investigation or interrogation.

26. Montenegro had 5,470 NGOs, 10 per cent of which could be described as active. Their relationship with the Government's Office for Cooperation with NGOs was on a fair and sound footing. In May 2008, public consultations had been held on a national plan for the integration of Montenegro into the EU covering the period from 2008 to 2012. A memorandum had been signed with NGOs on their active involvement in the process and a number of human rights NGOs had submitted proposals for specific activities.

27. NGOs took part in all key governmental and parliamentary working parties that determined policies and strategies, especially in the field of human rights. NGO representatives participated in the national commission for implementation of the action plan to combat corruption and organized crime, the Council for European Integration, and the ethics committee of the police service. State funding was made available to help finance the operation of NGOs. The resources were provided through both ministerial and local-government budgets. The allocation of those funds was regulated by the Law on Non-governmental Organizations, and NGOs themselves had a say in their distribution. NGOs could also receive funding through public tenders.

28. Turning to a question on asylum, she said article 6 of the Law on Asylum stated that a person who had been granted asylum or whose asylum had ceased or been revoked must not be returned to, or expelled to the border of, a State where he or she could be subjected to torture, or inhuman or degrading treatment or punishment. Once granted asylum, foreigners were issued with residence permits. Pursuant to article 13 of the Law on Citizenship, they were also entitled to apply for Montenegrin citizenship. Stateless persons enjoyed certain privileges when it came to acquiring Montenegrin citizenship. Under the Stabilization and Association Agreement signed with the EU, Montenegro had agreed to conclude readmission agreements with all neighbouring countries. Agreements had been concluded thus far with Slovenia and Croatia; negotiations with Bosnia and Herzegovina and Serbia were under way. Montenegrin citizenship could be acquired in accordance with international agreements; reciprocal agreements were being negotiated with Croatia and Serbia to provide for dual citizenship.

29. On the question concerning the right of torture victims to an effective remedy, she said that any person deprived of their liberty had the right to complain about ill-treatment. The protection of persons in police custody was governed by the Law on the Police and relevant regulations. Persons subjected to torture could complain to the police, the Council for Civil Control of Police Work, the police ethics committee, or the Ministry of the Interior. The Law on the Police provided for compensation and judicial protection of torture victims.

30. Ms. JOVOVIC (Montenegro) added that persons in custody had the right to a medical examination, subject to the approval of the competent court, and to submit the medical report as evidence of torture.

31. Ms. VUKANIC (Montenegro), replying to questions about trafficking, said that human trafficking in Montenegro was decreasing. Compared with other types of criminal offences, incidence was negligible. Detailed statistics compiled by the police, prosecutors and the courts were available on the website of the National Coordinator for the Fight against Trafficking in Human Beings. In 2001, Montenegro had been the first country in the region to launch a national strategy to combat trafficking; it focused on prevention, education and punishment. The relevant action plan established the duties of all the institutions participating in the strategy. A project entitled "Action against trafficking in human beings in Montenegro" had been adopted in 2004. In the fight against trafficking, strong links had been developed with NGOs, and a memorandum of cooperation had been signed to provide better protection for victims. The NGOs Women's Safe House and the Montenegrin Women's Lobby were key partners. The police service had set up an anti-trafficking unit. Foreign trafficking victims were placed in shelters and, after three months, they were granted a one-year residence permit. In cooperation with its international partners, Montenegro had developed its Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism and drawn up a manual for the training of judges and prosecutors in that field.

32. Turning to a question on police disciplinary proceedings, she said that those proceedings were provided for in articles 79-82 of the Law on the Police. For more serious offences, the Law on Civil Servants and State Employees applied; proceedings concerning serious violations fell under the Code of Criminal Procedure. The decisions of the police disciplinary commission could be appealed to the Ministry of the Interior, whose rulings could be appealed in the municipal courts.

33. Since 2006, disciplinary charges had been brought against 491 officers; in 22 cases elements of torture or other human rights violations had been present. Between 2006 and 2008, criminal proceedings had been instituted against four police officers for allegations of torture.

34. Ms. DJONAJ (Montenegro), replying to a question on food for persons in police custody, said that detainees received food from a restaurant run by a special unit of the police service, which was open 24 hours a day.

35. Referring to a question about the case of Milorad Mitrovic, she said that, on 6 May 2008, Mr. Mitrovic had been in a fight involving several people, none of whom had been police officers, in the town of Herceg Novi. The police had eventually intervened and arrested three Serbian nationals, including Mr. Mitrovic, on charges of disturbance of the peace. Mr. Mitrovic had been treated on site for injuries he had sustained during the fight, and had subsequently been taken to hospital in Risan. The individuals arrested had been under the influence of alcohol. The police had confiscated their travel documents to ensure their appearance in court for petty offences the following day.

36. Ms. JOVOVIC (Montenegro), replying to questions about health and psychiatric care for detainees, said that convicted prisoners were treated in the special prison hospital in Podgorica. That hospital was an organizational unit of the prison service established in December 2005; it employed three doctors and 14 nurses and offered services ranging from psychiatric care to minor surgery. For care exceeding the capacity of that hospital, prisoners were sent to ordinary hospitals or health centres. On admission, each prisoner was examined by the prison doctor. Prisoners could also request a doctor of their choice, subject to court approval, which was

granted without fail. On the recommendation of a medical commission and with the consent of the competent court, prisoners suffering from severe mental disorders were sent to the special psychiatric hospital in Kotor.

37. Mr. MARIÑO MENENDEZ, Country Rapporteur, asked for clarification of the legal status of the thousands of internally displaced persons of Kosovar origin in Montenegro. It was not clear whether they were nationals or whether they were foreigners who could be deported and who were consequently not protected by laws governing foreign workers. He asked what measures were envisaged by the Government to address their needs.

38. He trusted that the Government did not impose any conditions on its funding it for NGOs, which were members of civil society and must be free to promote human rights and denounce violations. He requested information on proceedings relating to the murder in 2004 of the newspaper editor Dusko Jovanovic. He asked whether anyone had been convicted of the murder and whether the cause of the murder had been determined. Given that the Office of the Ombudsman was the national preventive mechanism that had been established in keeping with Montenegro's obligations under the Optional Protocol, he asked what measures had been taken to give that Office proper authority to carry out its activities.

39. Ms. KLEOPAS, Alternate Country Rapporteur, said that, although the State party had made progress in developing its legislation, there were still some areas in which there was a large gap between law and practice. The objectives of the Convention could only be met through implementation of the law. She had received reports from NGOs and other European investigative bodies of abuses by the police in connection with pretrial detention. Such abuses were apparently not investigated, despite reliable information given to the State that they had been committed. The reason for the inaction seemed to be that there was no independent mechanism for complaints against the police. Although the Ombudsman was able to receive complaints, he or she did not carry out regular visits to places of detention or police custody. She looked forward to receiving information in writing from the delegation concerning cases of ill-treatment and abuse, particularly of media personnel.

40. She wondered whether in the course of its reform any provision had been made for the independent monitoring of the judiciary. With regard to past war crimes, she suggested that the State party should take action to speed up and finalize pending investigations and prosecutions. Given that much time had elapsed since the commission of those crimes, further delays could affect the credibility of the Montenegrin judicial system.

41. She was pleased to note that Montenegro was in the process of drafting legislation on domestic violence, and asked whether marital rape would be characterized as a criminal offence. It was surprising that, in Montenegro, it was necessary to obtain the consent of the court in order to have access to one's own medical records. Such access was a fundamental right that should not require recourse to justice. She wished to know whether, as part of Montenegro's efforts to combat terrorism, it had enacted any laws that might affect the rights of suspects. It was the opinion of the Committee that the rights of detainees must not be restricted in any way, regardless of the circumstances of the detention. She would appreciate a written response to the questions she had raised concerning discrimination against persons of Roma origin.

42. Ms. GAER asked whether it was the Government of Montenegro or the Government of Serbia which was responsible for resolving the Ristic case as a follow-up to the Committee's views on that matter.
43. Ms. SVEAASS asked whether all displaced persons could apply for asylum and whether it was by means of the asylum procedure that they applied for residence in Montenegro. She wondered whether Montenegro had given any consideration to ratifying the Council of Europe Convention on the avoidance of statelessness in relation to State succession.
44. Ms. BELMIR said she was perturbed by the State party's view that it was not concerned by the jurisprudence of the Constitutional Court with regard to certain measures taken during the states of emergency that had been declared when Montenegro had been under the authority of Serbia. She asked what recourse was available to a Montenegrin who felt that his or her rights had been violated during those states of emergency. As part of efforts to reform the Montenegrin justice system, it was highly important to ensure the independence of the judiciary. In view of the greater powers assigned to the prosecutor's office in most countries following the attacks of 11 September 2001, it was also important for reforms to strike a balance between the different branches of government and - within the judicial branch - between the State prosecutor and the examining judge.
45. Mr. GALLEGOS CHIRIBOGA commended Montenegro for the progress it had made in developing its legislation. He agreed with Ms. Kleopas about the need for an independent mechanism to monitor the judiciary, which would add legitimacy to the State party's action in that sphere. Apart from the establishment of the Ombudsman as the national preventive mechanism, he suggested that the Government should consider setting up a similar mechanism to monitor Montenegro's immigration, police and prison systems.
46. The CHAIRPERSON said that there should be no legal vacuum in which people were excluded from the protection of the law. Montenegro's diversity, and the fact that no single group enjoyed a majority, meant that Montenegro was a microcosm of global diversity. To the extent that it developed a harmonious legal system that was in line with the Convention, Montenegro could serve as a model for other States parties. Criminal investigations were made more difficult by Montenegro's complex political situation, but it was required under the Convention to conduct such investigations and to reject impunity. Nothing provided a more effective stimulus for complying with the Convention than the punishment of persons who violated it. The Committee looked forward to continuing its dialogue with Montenegro and to receiving the rest of the delegation's replies in writing.
47. Mr. RADOVIC (Montenegro), referring to proceedings in the Dusko Jovanovic case, said that the person charged had been acquitted, but following an appeal the acquittal decision had been reversed. The case was now being tried in a higher court, and the police were searching for other suspects. In reforming its Code of Criminal Procedure, the Government was attempting to strike a balance between granting sufficient authority to the State prosecutor and respecting human rights. The Ristic case was most definitely not the responsibility of Montenegro. He thanked the Committee for the opportunity to engage in a constructive dialogue, which his Government looked forward to continuing.

48. Ms. KOTLICA (Montenegro) said that, during the 1990s, as a consequence of war in the former Yugoslavia, Montenegro had had some 130,000 internally displaced persons, who, at that time, had made up approximately one fourth of its population. In 2008, centres for refugees and internally displaced persons existed in 16 municipalities. Other forms of government support included the provision of health care and education at all levels. With regard to the law on the employment of foreigners, provision was made for issuing permits to foreigners, including persons who had been granted subsidiary protection. Such permits were fast-tracked at the request of the employer.

The discussion covered in the summary record ended at 5.10 p.m.