



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 1892nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 28 April 2022, at 3 p.m.

Chair: Mr. Heller

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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)*

Third periodic report of Montenegro (continued) (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) said that torture was comprehensively defined in article 167 of the Criminal Code, which provided for various purposes and motives, including discrimination, and stipulated a basic penalty of 1 to 6 years' imprisonment or 2 to 10 years' imprisonment and professional disqualification when the offence was committed by a public official. The bill to amend the Criminal Code had been fully aligned with the recommendations made under the universal periodic review (A/HRC/38/13) with regard to prosecution and sentence enforcement in cases of torture and the removal of the statute of limitations for that offence. The bill would also prohibit suspended sentences for officials who engaged in torture with wrongful intent.
3. **Ms. Piletić** (Montenegro) said that the offence of domestic violence was defined in article 220 of the Criminal Code. There had been 252 court cases in 2020, resulting in 130 convictions and 3 acquittals; 282 court cases in 2021, leading to 138 convictions and 2 acquittals; and 173 court cases so far in 2022, with 24 convictions and 2 acquittals. Penalties ranged from warnings to community service, fines, suspended sentences and imprisonment. Between 2019 and 2021, protection measures had been ordered on 21 occasions. In that same period, the courts had ordered the removal of an abuser from the home on four occasions. The Ministry of Justice had not reported any breaches of protection measures, but if such breaches did occur, they carried a penalty of up to 1 year in prison.
4. An analysis by women's rights organizations and the Council of Europe had shown that the response of the criminal justice authorities to cases of domestic violence tended not to be commensurate with the gravity of the offences and that judicial decisions were sometimes ill-founded and inconsistent, especially with regard to convicting the perpetrators, indicating that judges did not fully grasp the seriousness of the offence and were insufficiently aware of gender issues. The current response did not provide satisfaction for victims or prevent repetitions of the offence. The Supreme Court had issued recommendations to all criminal court judges regarding the need to be stricter in cases of domestic violence, particularly at the sentencing stage, as the penalties handed down were typically one third of the suggested duration. Nevertheless, in a recent case of the murder of a 1-year-old child, the stepfather had been sentenced to 40 years in prison and the mother, who had been found to be an accessory, to 30 years.
5. Training in line with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence was provided to judges on a continual basis, in cooperation with various partners, including the Embassy of the United States of America, the European Union, the Organization for Security and Cooperation in Europe and the Advice on Individual Rights in Europe (AIRE) Centre.
6. Courts were precluded from basing their rulings on testimony or other evidence obtained through torture or ill-treatment or in any manner that violated human rights and fundamental freedoms. When judges were made aware of a defendant's claim to have been tortured into confessing, they were required to take action on the claim *ex officio*. Allegations of the use of unlawfully obtained evidence were examined by the public prosecution service. In a recent case, a man had been acquitted following an investigation into his allegation that his confession had been coerced.
7. **Ms. Milanović** (Montenegro) said that the independence of the Special State Prosecutor's Office was ensured by the Prosecutorial Council and the law governing the public prosecution service. In cases of torture, there could be no connection between the alleged perpetrator and the public prosecutor. Pursuant to a general instruction issued by the Supreme State Prosecutor in June 2019, prosecutors carrying out the preliminary investigation in cases of alleged torture were required to record all information gathered from

the alleged victim and could order a medical examination regardless of whether or not there were visible injuries. Allegations of ill-treatment, torture and coerced confessions were investigated ex officio by a prosecutor, who was required to keep victims and their representatives apprised of all the steps taken. Alleged perpetrators could be questioned in the presence of the accuser, who was authorized to present evidence. Eight training sessions on how to handle cases of torture had been held from 2018 to 2021; information on the content of the training would be provided in writing.

8. Between May 2018 and April 2022, 98 cases relating to ill-treatment, torture or forced confession had been opened against some 180 identified and unidentified police officers and against 2 prison officials. Court decisions had been rendered in 6 cases, 5 of which were guilty verdicts with sentences ranging from a suspended sentence to 4 months' house arrest; three of the decisions had been appealed. No cases of torture or ill-treatment had been reported by a doctor.

9. With regard to the cases at the Dobrota psychiatric hospital, a dentist had been charged with inflicting a serious physical injury and a medical technician had been charged with ill-treatment; both individuals had been found guilty. The dentist had received a partially suspended prison sentence of 4 months, while the technician had received a suspended sentence. The verdict against the medical technician had been overturned on appeal, but his conviction on additional counts in the retrial had been overturned on the grounds that the statute of limitations had expired.

10. The prosecutorial authorities had opened two cases following alleged incidents of ill-treatment and torture in connection with protests over the installation of the new leader of the Serbian Orthodox Church in Cetinje in September 2021. One of the cases had been initiated ex officio on the basis of media footage. Investigators had approached health-care institutions for the medical records of the people who had sought treatment for injuries and had also requested footage of the events from the internal police oversight department in order to identify potential victims. Investigations were ongoing.

11. As for the prosecution of war crimes, in May 2019, a national of Montenegro had been convicted by the High Court of war crimes against civilians committed in Kosovo and had been sentenced to 14 years; the decision had been upheld on appeal. Pursuant to a letter rogatory from the authorities of Bosnia and Herzegovina, an individual suspected of crimes against humanity in that country had been indicted by the High Court of Montenegro in October 2021; proceedings in that case were ongoing. In February 2019, the Supreme State Prosecutor had signed a memorandum of understanding with the International Residual Mechanism for Criminal Tribunals on guidelines for further action. Four cases, currently in the preliminary investigation phase, were before the Special State Prosecutor's Office, which in November 2020 had retrieved the relevant documentation and evidence from the Residual Mechanism to determine whether Montenegrin nationals had participated in war crimes in Foča, Bosnia and Herzegovina. The authorities continued to liaise with the Residual Mechanism regarding the interviewing of witnesses and victims.

12. Under a United Nations Development Programme regional project to strengthen cooperation on the prosecution of war crimes and the search for missing persons, the prosecutorial authorities of Croatia, Bosnia and Herzegovina, Montenegro and Serbia had met on several occasions to determine the framework for communication and cooperation. Good cooperation had been established with those authorities, particularly with regard to the handover of cases involving Montenegrin nationals. Meetings had also been held between the various prosecution services and associations of missing persons to agree on next steps to improve cooperation and the exchange of information in order to facilitate the prosecution of war crimes.

13. Bilateral meetings between the Special State Prosecutor for war crimes and counterparts in Croatia, Bosnia and Herzegovina and Serbia had resulted in proceedings being launched against two individuals. Over 30 letters rogatory had been transmitted to neighbouring countries since 2018.

14. The case concerning the shooting of the journalist Olivera Lakić in 2018 had been referred to the Special State Prosecutor's Office in 2020, which had proceeded to interview the victim and open an investigation into seven individuals suspected of being involved in a

criminal organization. Requests for international assistance had been issued in order to collect further evidence.

15. **Mr. Vukčević** (Montenegro) said that two individuals were currently held at the new Department for Juveniles. The staff appointed to work with juveniles, including security officers and psychologists, were highly experienced and received regular training on juveniles' rights. The detainees attended courses on social skills, anger management, cooking and reading, and received individual and group therapy and counselling. All juvenile detainees were kept separate from adult detainees, except during sport and work activities, when they were supervised by security officers. A report outlining the treatment received and the progress made in terms of resocialization of juvenile offenders was drawn up every three months and sent to the relevant court. Judges and other court officers could visit and interview juvenile offenders and detention centre staff to discuss the resocialization programme and conditions of detention. No complaints had been made regarding conditions at the juvenile detention centre. A number of current and former detainees had successfully completed various education and training programmes, including secondary school studies or vocational training courses.

16. Hygiene products were provided in sufficient quantities on a weekly basis to all detained persons who were unable to purchase them. Good hygiene had been a priority in the past two years to prevent the spread of the coronavirus disease (COVID-19). Places of detention underwent regular maintenance and had been improved significantly through refurbishment and renovation work, including expansion of areas for recreation and exercise. Toilets in cells were surrounded by opaque walls and had doors to allow privacy. As part of efforts to ease overcrowding, plans had been drawn up for the construction of a new prison in Mojkovac.

17. Over the period 2018–2021, six prisoners had died of natural causes, one had died from a drug overdose and one had committed suicide. Overcrowding exacerbated the problem of inter-prisoner violence. Between 2018 and 2021, there had been approximately 200 incidents involving inter-prisoner violence, 38 of which had been reported to the competent authorities. At the remand prison in Podgorica, there had been just over 100 cases of violence over the same period, 12 of which had been referred to the police. At the Institute for the Execution of Criminal Sanctions, 14 officers had received and successfully completed training on mediation, which focused on how to handle causes of violence in places of detention. A zero-tolerance approach had been adopted towards violations of prisoners' rights under international and national law, and training on human rights issues was provided to everyone who worked with persons deprived of their liberty.

18. Understaffing at the Institute for the Execution of Criminal Sanctions remained a problem. Staff turnover was mostly due to retirement of employees and career change. It currently had 500 full-time employees, including security officers, health-care personnel and teaching staff, and was seeking to fill just under 30 vacancies.

19. **Ms. Bojadžić** (Montenegro) said that in order to reduce prison overcrowding, the Government encouraged the use of alternative punishments, including house arrest, community service and conditional release. Measures under the new strategy for the prevention of abuse and violence among inmates had been incorporated into the Strategy for the Execution of Criminal Sanctions for the period 2017–2021. The final report on the implementation of the strategy would be reviewed in the second half of 2022, and a new strategy was expected to be launched in the third quarter of the same year. It would remain in force until 2026.

20. Funds provided under the Free Legal Aid Law covered all or part of the costs of legal advice, preparation of pleadings, representation before the courts, and out-of-court dispute settlement proceedings. The Bar Association was responsible for assigning public defenders. There were no restrictions regarding the type of service or organization that could provide legal assistance. Such aid was not provided in administrative proceedings, with the exception of applications for international protection under the Law on International and Temporary Protection of Foreigners. Immigrants seeking international protection were provided with free legal advice in a language that they understood. Under the Law on Internal Affairs, police officers who faced prosecution for the use of coercion or similar actions in the performance

of their official duties were provided with free legal aid by the Ministry of the Interior, which also bore the court costs.

21. **Mr. Božović** (Montenegro) said that the Free Legal Aid Law did not specifically name victims of torture and other cruel, inhuman or degrading treatment or punishment as beneficiaries of free legal assistance. However, that would change when the Law was amended as part of the Government's reform strategy, which was expected to be completed in the fourth quarter of 2022.

22. **Ms. Živković** (Montenegro) said that the health-care service of the Institute for the Execution of Criminal Sanctions followed the instructions for the provision of health care to detainees and convicts, which had been revised in March 2019 and which conformed to the recommendations of Council of Europe experts and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Significant improvements had been made in the provision of health care, the conduct of medical examinations and record-keeping. All detainees were examined by the prison physician within the first 24 hours of detention and the relevant information was entered into their medical file. In the event of any injuries sustained on admission or during detention, the prison physician took photographs of the injuries and provided a detailed description in a medical report, which included information about the size, shape and appearance of the injuries as well as the manner in which they were presumed to have been inflicted. The physician also noted the extent to which the injuries were consistent with the patient's account of how they had been sustained and whether further treatment was required outside the place of detention. The report was incorporated into the patient's medical file and copies were provided to the prison warden and the patient. Medical records were accessible only to health-care service staff and the patients to whom they pertained. However, the courts were able to request copies of medical records under specific circumstances.

23. The rule book on detention currently required security officials to attend the medical examination of detainees, but amendments had been planned to bring the rule book into line with the instructions for the provision of health care to detainees and convicts, according to which medical examinations had to be carried out in private and security officers could be present only at the request of the attending physician. The presence of such officers was recorded in the medical report.

24. Since 2017, no method of physical restraint other than canvas belts had been used on persons deprived of their liberty, in line with the recommendations of the Protector of Human Rights and Freedoms of Montenegro and other human rights bodies. Medical and security staff were trained in the correct use of such restraints and they were used only when the detainee posed a threat to him or herself or to others and when all less restrictive measures had proved ineffective. Restraints were used for the shortest time necessary and in a manner that was not humiliating or degrading, did not deprive the detainee of his or her ability to communicate, and did not inflict physical pain or cause psychological distress. Restraints had been used on four occasions since 2018.

25. Decisions to apply such methods were taken solely by the psychiatrist employed by the Institute for the Execution of Criminal Sanctions, who explained to the person concerned, in an understandable manner, the reasons for the use of restraint, the presumed duration and the conditions under which the person would be released. Medical staff frequently monitored the vital signs of persons subject to physical restraint and isolation measures, including their heart rate, body temperature, ability to communicate, and food and water intake. The condition of such persons, the identity of the official who ordered the restraint or isolation measure, the duration thereof, the means of restraint used, any injuries inflicted during restraint and any medicines prescribed were recorded in the medical file, which was signed by the head of the health-care service.

26. **Ms. Cimbalević** (Montenegro) said that a toll-free helpline for victims of domestic violence had been set up in 2015. It provided confidential and anonymous services, including legal counselling and information about safe housing, in Montenegrin and Albanian, and was available 24 hours a day, 7 days a week. In 2020, almost 3,000 calls had been received on

the helpline, and just over 2,000 the following year. The annual budget allocation for the helpline was approximately €38,000.

27. There were shelters for victims of domestic violence in Nikšić, Podgorica and Bijelo Polje. The latter also housed child victims of domestic violence. Services included occupational therapists and self-help groups, and the shelters were open around the clock. The number of victims at the shelters had increased substantially over the period 2020–2021.

28. A protocol on action and procedures for dealing with cases of domestic and gender-based violence had been introduced in January 2019. Its aim was to ensure that the relevant institutions and organizations provided adequate protection in line with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Electronic data exchange systems had been set up and data collection methods had been streamlined in order to create a single database. The Government was in the final stages of developing its national plan for the implementation of the Istanbul Convention.

29. **Ms. Pajović** (Montenegro) said that, under the Law on Internal Affairs, police officers were required to inform detainees of the reasons for their arrest and to notify a family member or trusted third person. In the case of foreign nationals, notice was given to the diplomatic or consular representative of their country of origin or, in the case of stateless persons, the relevant international organization. All detainees were entitled to appoint their own lawyer and to undergo a medical examination by a doctor of their choosing. Police officers were not permitted to place persons who clearly needed medical assistance or who were heavily under the influence of alcohol or drugs in holding cells and were required to arrange for their transportation to the nearest health-care facility. Any medical assistance provided was recorded in the detainee's file.

30. Police officers who held detainees on remand for more than 24 hours without charge faced disciplinary action, and the Ministry of the Interior carried out regular inspections of police detention facilities. Prosecutors were generally responsible for conducting interviews of suspects, although they could be carried out by the police under certain circumstances. Audio recordings and transcripts were made and incorporated into the case file, and suspects were required to sign the relevant written records. Interviews were not generally videorecorded. Interpreters must be provided in all cases where the detained person did not understand the official language, and only records signed by the interpreter were considered to be legally valid.

31. Persons deprived of their liberty whose rights had been violated by police officers were able to file a complaint within 30 days of the incident. The police administration was required to respond within 30 days of submission of the complaint, but was expected to respond as soon as possible. If the complainant was unsatisfied with the response, he or she was entitled to appeal to the Ministry of the Interior within 15 days. Victims whose human rights were found to have been violated while they were held in detention were granted judicial protection and awarded compensation. The Ministry actively encouraged persons whose rights had been violated to file a complaint.

32. Measures had been adopted to prevent corruption and other criminal offences by police officers, and the Department for Internal Control of the Police would follow up on complaints of abuse of authority. The Department could institute disciplinary or criminal proceedings on its own initiative or in response to reports from citizens or other police officers, and could take urgent action where any delay would likely result in further human rights violations. It could also take statements from police officers, Ministry employees, victims and citizens; inspect police premises; and require police officers to undergo polygraph tests.

33. **Ms. Racu** (Country Rapporteur) said that she welcomed the amendments to the Criminal Code, but would appreciate further clarification as to the maximum sentence for the crime of torture. She also wished to know whether prosecutors had effective control over the police, since the vast majority of complaints against police officers reportedly did not result in any charges being brought. Statistics on the number of complaints investigated and prosecuted would be welcome. She would appreciate clarification as to how many cases of war crimes had been investigated, how many sentences had been handed down and how many

victims and their relatives had received compensation and rehabilitation. It would be helpful to have additional information on the action taken by the Government to address the issue of missing persons, including whether there were plans to introduce a specific offence in the Criminal Code related to enforced disappearance. Further information regarding efforts to combat abuse of authority and human rights violations by police officers would also be welcome. Lastly, she would like to know whether there was any specific register for injuries sustained or violent incidents that had occurred in places of detention.

34. **Ms. Pūce** (Country Rapporteur) said that she would like to know what steps were taken by doctors once they had identified a potential case of torture, what the doctor's obligations were and whether a procedure had been established by law, especially in cases where the torture offence had occurred in prison. Further explanation of the specific measures that had been adopted as part of the State party's strategy to combat inter-prisoner violence would be helpful. She would welcome clarification as to whether free legal aid was available to migrants in an irregular situation who wished to apply for asylum in the country. It would be useful to know which laws covered the right to compensation for torture victims and in how many cases compensation or redress had been provided to such victims. Information on cases of violence against journalists would also be appreciated.

35. **Mr. Buchwald** said that he would be interested to learn what progress had been made in the four preliminary investigations into alleged war crimes referred to in the State party report (CAT/C/MNE/3, para. 29), and whether any of those cases concerned high-ranking officials. He asked how the new legislative amendments would enhance cooperation with the International Residual Mechanism for Criminal Tribunals and whether measures had been adopted besides legislation in order to help move forward in the cases before the Residual Mechanism.

36. **Mr. Božović** (Montenegro) said that his Government was well aware of the need to prosecute war crimes. As the ability of the national judicial system to try war crimes was limited, however, closer cooperation with the International Residual Mechanism for Criminal Tribunals was required. All evidence given to the Residual Mechanism would be used by the national courts in future cases, thereby enabling the Public Prosecutor's Office to more easily open new proceedings and avoiding the need to revictimize victims by obliging them to repeat their testimonies. The Ministry of Justice was working with the United Nations Development Programme to amend the Criminal Code and the Code of Criminal Procedure in that regard.

37. Montenegro had ratified the International Convention for the Protection of All Persons from Enforced Disappearance, which had primacy over its national legislation. While enforced disappearance was not a separate offence under national law, it was adequately covered by other offences. The current legal situation presented no obstacle to prosecuting enforced disappearances.

38. Montenegro recognized the requirements for electing officials of the Ombudsman's office, as set out in the Paris Principles. However, that requirement was difficult to meet in practice, as members of Parliament frequently boycotted parliamentary sessions, regardless of the topic of discussion. Nevertheless, all the members of the Ombudsman's team appointed thus far had been highly qualified in terms of their expertise.

39. The Ombudsman's reports were referred to the Parliamentary Committee on Human Rights and Freedoms. All reporting and data were anonymized to protect privacy. Ministries could be held accountable if they failed to implement the recommendations made by the Ombudsman. While the Government was aware of the Parliamentary Committee's calls to ensure the budgetary independence of the Ombudsman, it should be noted that all budgetary requests made by the Ombudsman in the draft 2022 budget had been granted. Lastly, alternative dispute resolution mechanisms were increasingly being used in Montenegro, which would help alleviate prison overcrowding.

40. **Mr. Vukčević** (Montenegro) said that, during his time as director of the remand prison in Podgorica, between June 2015 and February 2019, all persons admitted to the facility had undergone a medical examination upon arrival, and all injuries had been reported to the prosecution service, even where the prisoner denied having experienced violence. Although no register of injuries had been maintained, there were written records of cases that had been

reported. To his knowledge, that procedure had continued to be implemented after he had left the role.

41. The juvenile detention centre opened in 2020 housed both juveniles who had been referred to a reformatory institution and juveniles who had been sentenced to imprisonment. However, the two groups were kept separate at all times. However, the Government acknowledged the need to establish a separate reformatory facility.

42. Non-governmental organizations (NGOs) had full access to persons deprived of their liberty. While access had been prohibited for both NGOs and detainees' families during the COVID-19 pandemic, it had since been fully restored.

43. **Mr. Božović** (Montenegro) said that the maximum sentence for torture offences was 10 years. No one was allowed to interfere in the reporting by the national preventive mechanism. Once the mechanism's reports were adopted, the recommendations were submitted to the relevant ministries.

44. **Ms. Bojadžić** (Montenegro) said that all detainees – as well as their legal representatives and family members – were entitled to submit complaints on any topic to the Director of the Institute for the Execution of Criminal Sanctions, the competent monitoring agencies, the Ministry of Justice, the Ombudsman and NGOs.

45. The criminal sanctions enforcement strategy was undergoing evaluation to measure the impact and identify areas of improvement in the sanctions system. The main areas of work would be strengthening prevention and protection measures, increasing respect for human rights, enhancing cooperation with the national preventive mechanism, improving rehabilitation programmes and the treatment of detainees and prisoners, preventing inter-prisoner violence and ensuring that all injuries were recorded systematically and that all allegations of ill-treatment were processed. Lastly, migrants were entitled to free legal aid, including in administrative proceedings.

46. **Ms. Piletić** (Montenegro) said that all sentences in criminal cases were decided on a case-by-case basis, taking into account a variety of factors set out by law, including the offender's behaviour and any aggravating or mitigating circumstances. Judges were encouraged to apply stricter sentences and avoid suspended sentences, and efforts were under way to amend the legislation to strengthen sanctions that had been identified as being too lenient.

47. **Ms. Milanović** (Montenegro) said that the prosecution service was entirely independent of the police and could prosecute all offenders, including police officers. Criminal reports were filed only where there were grounds for suspicion that an offence had been committed. Indictments could be made only once the preliminary investigations had been completed and the prosecution service had examined the evidence. Indictment decisions were based solely on the evidence collected. In the case of the journalist Olivera Lakić, the proceedings had been suspended to allow for further evidence to be collected. A decision on whether to make an indictment would be made once the investigation had been completed.

48. **Ms. Živković** (Montenegro) said that, in 2017, two prison medical units had been opened, and the first version of the instructions on health care for detainees and prisoners had been issued, setting out guidance on conducting medical examinations and reporting injuries. Training had been conducted for health-care personnel, taking into account domestic and international recommendations in that regard, and the instructions had been updated multiple times.

49. **Ms. Pajović** (Montenegro) said that the Department for Internal Control of the Police was responsible for initiating all disciplinary proceedings against police officers and for referring cases to the prosecution service. In 2021, a disciplinary commission had been established within the Ministry of the Interior to oversee suspensions and disciplinary proceedings. In 2021, 98 internal control cases had been investigated, of which 61 were ex officio cases and 37 were in response to citizen complaints. There was no register of victims of police torture or ill-treatment, although the recommendation had been noted.

50. Audiovisual recording of interviews was conducted primarily by the competent special prosecution service. In extraordinary circumstances, such interviews could be

conducted by the police, with the approval of the special prosecution service and in the presence of the defendant's legal representative. Such cases were rare, however. The minutes of all such interviews were recorded in the relevant case file.

51. **Mr. Božović** (Montenegro) said that his Government acknowledged the areas of improvement that had been identified and would continue to engage with the Committee in that regard.

52. **The Chair** said that the constructive dialogue represented a significant step forward in the implementation of the Convention in Montenegro. While work remained to be done, it was clear that there was political will to make progress.

The meeting rose at 6 p.m.