



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Additional information submitted by Montenegro under
article 29 (4) of the Convention***

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I. Introduction

1. International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the United Nations General Assembly on 20 December 2006 and was open for signature on 06 February 2007.

2. Montenegro ratified the International Convention for the Protection of All Persons from Enforced Disappearance by adoption of the Law on Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (Official Gazette of Montenegro – International Treaties no. 8/2011), and by depositing ratification instruments on 20 October 2011 it became the State Party. By ratifying this Convention, Montenegro joined the group of states which intend to apply the Convention in the framework of their legislation, while taking all the appropriate measures to prevent and sanction enforced disappearances.

3. Pursuant to Article 3 of the Law on Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, at the moment of depositing the ratification instruments, Montenegro gave statements by which: pursuant to the provisions of Article 31 paragraph 1 it recognised mandate of the Committee on Enforced Disappearances to receive and consider applications by persons or on behalf of such persons for whom it has mandate, and who claim that Montenegro violated their rights by violating this Convention; pursuant to the provisions of Article 32 it recognised mandate of the Committee to receive and consider applications in which one State Party claims that another State Party does not fulfil obligations arising from this Convention.

4. The Initial Report on Implementation of the International Convention for the Protection of All Persons from Enforced Disappearance was presented to the Committee on Enforced Disappearances on 08 and 09 September 2015. The initial report was prepared in 2013, in accordance with Article 29 of the Convention, which lays down obligation of each State Party to submit to the Committee on Enforced Disappearances the report on the measures it took to fulfil its obligations arising from this Convention, within two years from the date on which this Convention enters into force in the State Party concerned.

5. After consideration of the Initial Report on Implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, on 16 September 2015 the Committee on Enforced Disappearances adopted the Concluding Observations with recommendations.

6. Pursuant to the provisions of Article 29 of the Convention and item 40 of the Concluding Observations on the report submitted by Montenegro in accordance with Article 29 paragraph 1 of the Convention, the Periodical Report was prepared containing updated information on implementation of all the recommendations and measures taken to efficiently apply the Convention, while an overview of the results achieved in the protection and exercise of the rights guaranteed under the Convention was given as well.

7. The report was prepared in cooperation with the Ministry of Justice, Human and Minority Rights, Ministry of Interior, Ministry of Finance and Social Welfare, Supreme Court of Montenegro, Supreme State Prosecutor's Office of Montenegro, Administration for the Execution of Criminal Sanctions, Human Resource Management Authority, Centre for Training in Judiciary, State Prosecution Service and Police Academy.

II. Definition and Incrimination of Enforced Disappearance (Articles 1–7)

A. Follow-up information relating to paragraph 9 of the concluding observations (CED/C/MNE/CO/1)

8. Definition of enforced disappearance set out in the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter referred to as: the Convention) became an integral part of the legal order of Montenegro through ratification, in

accordance with Article 9 of the Constitution of Montenegro (Official Gazette of Montenegro 1/2007 and 38/2013). Provisions of the Convention have supremacy over domestic legislation and are directly applicable when regulating matters differently from domestic legislation.

9. Even though Montenegro does not incriminate the separate criminal offence described under Articles 2 and 4 of the Convention, it is still incorporated in the following criminal offences: unlawful deprivation of liberty referred to in Article 162; abduction referred to in Article 164, crime against humanity referred to in Article 427 and war crime against civilian population referred to in Article 428 of the Criminal Code of Montenegro.¹

10. The object of protection from the criminal offence referred to in Article 162 is human freedom i.e. freedom of movement of people, and the act takes the form of confinement, keeping confined or unlawful deprivation or limitation of the freedom of movement in some other manner.

11. The act of commission of the basic form of the criminal offence referred to in Article 164 consists of taking away or keeping a person by the use of force, threat, deception or in some other manner. This criminal offence contains the elements of the criminal offence of unlawful deprivation of liberty, coercion and extortion.

12. One of the acts of commission of the criminal offence referred to in Article 427 is “detention or abduction of persons followed by a refusal to acknowledge that deprivation of freedom with the intention of removing them from the protection of the law”, while one of the acts of committing the criminal offence referred to in Article 428 is “unlawful deprivation of freedom and detention”.

13. Since the acts described in the Convention are included in the criminal offences mentioned above, the valid legal arrangement does not pose any disruption for the implementation in practice.

14. It is worth noting that Montenegro has been continuously monitoring and improving criminal legislation, primarily in respect of its implementation, but also with regard to harmonisation with the European and other international standards and recommendations of the relevant committees of the Council of Europe and United Nations. In that regard, further improvement of certain legal provisions and modernisation of the general and specific parts of the Criminal Code of Montenegro on the basis of good practice of other European criminal law systems will be given priority in the coming period.

B. Follow-up information relating to paragraph 11 of the concluding observations

15. Montenegro is State Party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity² (New York, 1968) and European Convention on Non-Applicability of Statutory Limitation to the Crimes against Humanity and War Crimes³ (Strasbourg, 1974).

16. General provisions on the course and ending of statutory limitations of criminal prosecution are regulated under Article 125 of the Criminal Code of Montenegro. This article sets out that statutory limitations of criminal prosecution starts to run as from the day of commission of the criminal offence. If a consequence of a criminal offence occurs at a later time, statutory limitations for criminal prosecution start to run from the date on which the consequence occurred.

17. Moreover, Article 129 of the Criminal Code of Montenegro prescribes that statutory limitations are not applicable to criminal prosecution and execution of penalties for criminal

¹ “Official Gazette of RMNE”, no. 70/2003, 13/2004, 47/2006 and “Official Gazette of MNE”, no. 40/2008, 25/2010, 32/2011, 64/2011 – other law, 40/2013, 56/2013, 14/2015, 42/2015, 58/2015 – other law, 44/2017, 49/2018, 3/2020 and 26/2021 – correction.

² “Official Gazette of SFRY-International treaties and other agreements”, no. 50/1970.

³ “Official Gazette of MNE-International treaties”, no. 11/2010.

offences set forth in Articles 264 to 276b, 401, 401a, 422 do 424 and 426 to 431 of this Code, nor to the criminal offences which may not be subject to statutory limitations under ratified international treaties. The set of these criminal offences also includes crime against humanity referred to in Article 427 and war crime against civilian population referred to in Article 428.

III. Criminal responsibility and judicial cooperation in relation to enforced disappearance (Articles 8–15)

A. Follow-up information relating to paragraph 13 of the concluding observations

18. The Commission on Missing Persons of Montenegro concluded and signed the Agreement on Cooperation with the Commission on Missing Persons of the Government of the Republic of Kosovo (22 October 2015), Protocol on Cooperation with the Croatian Directorate on Detained and Missing (22 December 2017), and the Protocol on Cooperation in the search for the missing persons was signed between the Government of Montenegro and Council of Ministers of Bosnia and Herzegovina (11 October 2019).

19. In addition to Bosnia and Herzegovina, Kosovo, Serbia, Albania, Croatia, Germany, United Kingdom, Austria, Bulgaria, Italy, Slovenia and Poland, on 10 July 2018 Montenegro signed in London the Joint Declaration on Missing Persons in the framework of the Berlin Process by which, amongst other things, it reiterated its commitment to support the efforts in finding 12,000 persons who are still reported missing as a result of the conflict in the territory of former Yugoslavia. On 06 November 2018, the presidents of the bodies competent for the search of missing persons of Montenegro, Bosnia and Herzegovina, Serbia, Croatia and Kosovo signed in The Hague the Framework Plan to Address the Issue of Persons Missing from Conflicts on the Territory of the Former Yugoslavia, which establishes steps for further improvement of cooperation and increase of effectiveness of the search of missing persons in the region as a whole.

20. Persons missing in armed conflicts in territory of the former Yugoslavia, who are searched for by the Commission on Missing Persons of Montenegro, include 51 Montenegrin nationals and persons who, according to those who reported their missing, were domiciled in Montenegro, of whom 39 persons are searched for in the territory of the Republic of Kosovo, 9 persons are searched for in the territory of Bosnia and Herzegovina and 3 persons are searched for in the territory of the Republic of Croatia.

B. Follow-up information relating to paragraph 15 of the concluding observations

21. Montenegro ratified the most important international instruments which regulate extradition, primarily the European Convention on Extradition, Additional Protocol to the European Convention on Extradition, Second Additional Protocol to the European Convention on Extradition,⁴ European Convention on Mutual Assistance in Criminal Matters, with Additional Protocol thereto,⁵ Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.⁶

22. Mutual legal assistance in criminal matters in Montenegro is provided on the basis of multilateral and bilateral agreements. If the international agreement does not exist or if certain matters are not regulated by agreements, domestic legislation applies. The most important regulations related to judicial cooperation in criminal matters are Law on Mutual Assistance in Criminal Matters,⁷ Criminal Procedure Code,⁸ Law on the Prevention of Money

⁴ “Official Gazette of FRY-International treaties”, no. 10/2001.

⁵ “Official Gazette of FRY-International treaties”, no. 10/2001.

⁶ “Official Gazette of Serbia and Montenegro – International treaties”, no. 2/2006.

⁷ “Official Gazette of MNE”, no. 4/2008, 36/2013 and 67/2019.

⁸ “Official Gazette of MNE”, no. 57/2009, 49/2010, 47/2014 – Decision of the Constitutional Court of

Laundering and Terrorist Financing,⁹ Law on Witness Protection,¹⁰ Law on Liability of Legal Persons for Criminal Offences,¹¹ Law on the Confiscation of the Proceeds from Crime,¹² Law on Courts,¹³ Law on State Prosecution Service,¹⁴ Law on Special State Prosecutor's Office,¹⁵ as well as the Law on Judicial Cooperation in Criminal Matters with European Union Member States¹⁶ which entered into force on 04 January 2019 and will become applicable on the day Montenegro joins the European Union.

23. If the international treaty does not exist or certain matters are not regulated by an international treaty, the mutual assistance is provided in accordance with the Law on Mutual Assistance in Criminal Matters, provided that there is reciprocity or that it may be expected that the foreign country would execute the letter of request for mutual assistance of the domestic judicial authority (Article 2). The practice has so far demonstrated that the article mentioned above is applied without any obstacles which is crucial for efficient international cooperation and mutual assistance, which are prerequisites for a faster and more effective procedures in complex criminal matters.

24. In order to create bilateral conditions for a stronger, binding and more efficient cooperation with the Balkan countries, Montenegro organised fora with the countries of the region in the reporting period. The main goal of these meetings was the need to boost cooperation between the Balkan countries, as well as to facilitate exchange of information and experiences in the field of international judicial cooperation. Since judicial cooperation is a requirement for successful functioning of the justice system as a whole, and a requirement for quality administration of justice in all states, particularly when it comes to cooperation with the countries of the region with which majority of the mutual assistance activities take place, the organisation of such fora was a quality framework for the discussions between competent authorities of the participating states on improvement judicial cooperation in the region.

25. In line with the Strategy for the Research of War Crimes, the Special State Prosecutor's Office established cooperation with the prosecution services of the countries in the region, for the purpose of identifying criminal perpetrators of war crimes who are Montenegrin nationals and possibly transferring cases, formed in these prosecution services, in which Montenegrin nationals were perpetrators.

26. In the framework of the regional project "Strengthening Regional Cooperation in respect of Prosecution of War Crimes and Search for the Missing Persons" several meetings were held from 2017 to date and these meetings were attended by the Special Prosecutor of Montenegro and managers and representatives of the state prosecution services of the countries of the region, as well as the representatives of the Commission on Missing Persons, at which point future cooperation between state prosecution offices was specified and agreed upon, so as to identify common regional priorities for the improvement of regional cooperation and exchange data and evidence in prosecuting the perpetrators of war crimes.

27. Furthermore, the Special State Prosecutor who handles war crime cases had a number of bilateral meetings with state prosecutors of the State Prosecution Service of Bosnia and Herzegovina, State Prosecution Office for War Crimes of the Republic of Serbia and State Prosecution Service of the Republic of Croatia, to consult and exchange data and evidence in respect of specific cases formed in these prosecution offices, in which checks are

MNE, 2/2015 – Decision of the Constitutional Court of MNE, 35/2015 (Articles 88–91 are not in the consolidated version of the text), 58/2015 – other law, 28/2018 – Decision of the Constitutional Court of MNE AND 116/2020 – Decision of the Constitutional Court of MNE.

⁹ "Official Gazette of MNE", no. 14/2007, 4/2008 and 14/2012. The law ceased to be valid on 12 August 2014, except for provisions of Articles 28 and 29 which will be applied until entry into force of Article 7 paragraph 3 of the Law – 33/2014-16 – see: Art. 108. of the law – 33/2014-16.

¹⁰ "Official Gazette of RMNE", no. 65/2004 and 31/2014.

¹¹ "Official Gazette of RMNE", no. 2/2007, 13/2007, 30/2012 and 39/2016.

¹² "Official Gazette of MNE", no. 58/2015 and 47/2019.

¹³ "Official Gazette of MNE", no. 11/2015 and 76/2020.

¹⁴ "Official Gazette of MNE", no. 11/2015, 42/2015, 80/2017, 10/2018, 76/2020 and 59/2021.

¹⁵ "Official Gazette of MNE", no. 10/2015 and 53/2016.

¹⁶ "Official Gazette of MNE", no. 85/2018 of 27 July 2018.

performed as to whether the Montenegrin nationals participated in the commission of war crimes in the territories of these states, while potential transfer of evidence to the Special State Prosecutor's Office of Montenegro was discussed as well.

28. The Special State Prosecutor's Office acted upon the letters of request for the provision of mutual assistance received from the State Prosecution Service of the Republic of Serbia, State Prosecution Service of Bosnia and Herzegovina, State Prosecution Service of the Republic of Croatia, State Prosecution Service of Kosovo, International Criminal Court from The Hague (EULEX Kosovo), at which point necessary data, evidence and documents were collected and accused persons and witnesses were interrogated as well.

29. In 2015, five letters of request for mutual assistance were acted upon, in 2016 four letters of request were acted upon, in 2017 seven cases were handled on the basis of seven letters of request, in 2018 five letters of request were acted upon, in 2019 eight letters of request were acted upon, in 2020 eight letters of request were acted upon and in 2021 eight letters of request for mutual assistance were acted upon.

C. Follow-up information relating to paragraph 17 of the concluding observations

30. The Special State Prosecutor's Office worked on eight cases formed on the basis of criminal charges filed by physical persons, as well as on the basis of letters of request for criminal prosecution received from the State Prosecution Service of Bosnia and Herzegovina. After taking all the necessary investigative actions – data collection, evidence and necessary information in the procedures for the provision of mutual assistance by the competent authorities of the countries of the region, as well as by the Office of the Prosecutor of the Residual Mechanism in the Hague, six cases were closed because there was no reasonable suspicion that the war crimes had been committed, while two cases are still at the preliminary investigation stage.

31. In November 2020, the Special State Prosecutor's Office took over documentation from the Office of the Prosecutor of the Residual Mechanism so as to establish whether Montenegrin nationals participated in the war crimes committed in the nineties in the territory of the neighbouring countries of former Yugoslavia. After receiving the evidence materials, the Special Investigative Team was set up comprising special state prosecutor who handles war crime cases, associate at the Special State Prosecutor's Office and authorised police officers of the Special Police Division, and they took measures and actions to identify possible perpetrators of war crimes, while cooperation was also established with the prosecutors of the Residual Mechanism in order to interrogate witnesses – victims; this procedure is at the preliminary investigation stage.

32. Cooperation with the State Prosecution Service of Bosnia and Herzegovina was established in April 2021 in order to criminally prosecute and conduct criminal proceedings before the competent court of Montenegro against one person, Montenegrin national, on the ground of reasonable suspicion that he committed war crime against civilian population.

33. In the framework of the UNDP regional project "Strengthening Regional Cooperation in the Prosecution of War Crimes and Search for Missing Persons", the chief state prosecutors from Croatia, Bosnia and Herzegovina, Montenegro and Serbia held several meetings in 2017 in which they reached full agreement on the structure of direct cooperation between state prosecution offices handling war crime cases in these countries. Direct prosecutorial cooperation takes place through a coordinated action of state prosecution services, exchange of data and evidence, evidence production in specific cases on a bilateral basis; these activities are still ongoing.

34. The Memorandum of Understanding was concluded in February 2019 between the Supreme State Prosecutor's Office of Montenegro and Residual Mechanism, which establishes guidelines on further cooperation. Special state prosecutors and associates handling war crime cases visited the Residual Mechanism (former ICTY) several times where they, together with the Office of the Prosecutor, searched through the database of the tribunal to find and collect evidence for the cases formed at the Special State Prosecutor's Office, and

which are currently at the preliminary investigation stage, while also collecting and finding evidence for possible new war crime cases in which Montenegrin nationals were perpetrators of these crimes.

35. In respect of the part of the recommendation concerning proper training of the Special State Prosecutor's Office and of all the other competent bodies, the Centre for Training in Judiciary and State Prosecution Service organised a number of training courses on enforced disappearances and missing persons, in cooperation with international partners. These training courses were attended by a large number of judges and state prosecutors, but also by employees of the Police Directorate and representatives of public administration.

36. These training courses were also the opportunity to strengthen regional cooperation and hear about experiences of other states with missing persons and their mechanisms for addressing these issues.

2015

37. In cooperation with the US Embassy in Montenegro, i.e. State Department Bureau of International Narcotics and Law Enforcement (INL), the Centre organised the seminar "New Trends in Investigation and Criminal Prosecution of War Crimes". The aim of the seminar was to upgrade knowledge and skills of judges and state prosecutors in respect of investigations, criminal prosecution and adjudication in war crime cases, with a strong focus on general principles in war crime cases, core principles and facts developed in ICTY cases and cooperation with ICTY/MICT, investigative techniques in war crime cases, including engagement of and work with insider witnesses, protection of vulnerable witnesses and victims, use of EDS database, logistic documents and personnel documents, principles of adjudication and rules for drafting judgments in war crime cases etc. Specific topics addressed in the event were: General principles in war crime cases, including the need to prosecute for crimes committed outside of Montenegro; cooperation with ICTY/MICT; lessons learnt from Bosnia and Herzegovina, Special Division for War Crimes and implications of the new protocol between Bosnia and Herzegovina and Montenegro; Overview of core principles and facts developed in ICTY cases; Investigative techniques in war crime cases, including engagement of and work with insider witnesses, and protection of vulnerable witnesses and victims; Investigative techniques in war crime cases, including the use of EDS database, logistic documents and personnel documents; Overview of core principles and facts developed in the cases before ICTY, lessons learnt from the Division for War Crimes of Bosnia and Herzegovina and drafting judgments in war crime cases; Search for missing persons in the Balkan. The seminar was attended by 22 participants, of whom 5 were representatives of the prosecution service (deputy supreme state prosecutor, professional associate at the Special State Prosecutor's Office, 3 deputy high state prosecutors), 10 were representatives of the judiciary (2 presidents, 5 judges and 2 advisors – High Court Podgorica, Basic Court – the president and the judge) and 4 were representatives of public administration (Ministry of Labour and Social Welfare – Commission on Missing Persons and Ministry of Human and Minority Rights), 3 were representatives of the Police Directorate and 2 were guests from the region: state prosecutor and deputy state prosecutor for war crimes from the Republic of Serbia.

2016

38. 15–20 May 2016 Study visit to Bosnia and Herzegovina (Sarajevo) and Netherlands (The Hague) on the topic of: "war crimes", organised by the US Embassy in Podgorica, i.e. by the State Department Bureau of International Narcotics and Law Enforcement (INL). Participants of the study visits were judges and state prosecutors.

39. 07–08 July 2016 – The Centre organised: "Training on Application of the Montenegrin Strategy for Investigation into War Crimes", in cooperation with the US Embassy in Montenegro, i.e. State Department Bureau of International Narcotics and Law Enforcement (INL). The aim of the seminar was to upgrade knowledge, exchange experiences among colleagues and discuss issues and problems faced by judges and state prosecutors in practice when prosecuting and conducting trials for the crimes against humanity and other resources protected under international law. The seminar included 4 sessions with the following topics: Session 1: Investigating war crimes, part I – General

principles of investigating war crimes including enforced disappearances and missing persons; Cooperation with ICTY/MICT; Session 2: Investigating war crimes, Part II – Investigative techniques in war crime cases, part I, including engagement of and working with insider witnesses – insider witnesses and protection of vulnerable witnesses and victims; Application of regulations on war crimes in the cases of terrorism and foreign fighters; Investigative techniques in war crime cases, part II, including the use of EDS database, logistic documents and personnel documents; Session 3: Practical issues regarding war crimes investigation – Role of the members of Montenegrin paramilitary groups and Montenegrin soldiers in the commission of war crimes in Bosnia and Herzegovina and Kosovo, and discussion on the evidence available in the Hague and in countries of the region; Importance of the relationship with media in war crime investigations; Session 4: Regional and international experiences in investigating war crimes – Experiences of the Special Division for War Crimes of Bosnia and Herzegovina and impact of the new protocol between Bosnia and Herzegovina and Montenegro; Cooperation with the USA in investigation and criminal prosecution of war crimes. The seminar was attended by 29 participants, of whom: 19 were representatives of judiciary and state prosecution service (6 judges and 5 judicial advisors; 4 special state prosecutors, 3 state prosecutors and 2 advisors at the state prosecution service) and 10 were representatives of the Police Directorate.

2017

40. 20–21 April 2017 – In the framework of TAIEX (Technical Assistance and Information Exchange instrument), the Centre organised a workshop/expert mission, on the topic of: “Implementation of international and domestic legislation in the area of war crimes”. The aim of the workshop was to upgrade knowledge of judges and state prosecutors who apply provisions of international humanitarian law and national criminal legislation in war crime cases. By analysing case law, strong focus was placed on the following topics: Principle of complementarity, which regulates jurisdiction of the International Court and assigns primary responsibility and right to the national authorities to prosecute perpetrators of international crimes; Different forms of criminal responsibility, particularly aiding and assisting and their impact on fixing the penalty; Definition, elements and forms of command and responsibility of the superior; Constituent elements in the cases of enforced disappearances as the crime against humanity. The workshop was attended by 17 representatives of the justice system (3 state prosecutors, 3 judges, 8 judicial advisors and 3 advisors from the Special State Prosecutor’s Office).

2018

41. 07–08 June 2018 – The Centre organised the conference on war crimes, in cooperation with the US Embassy in Podgorica, i.e. State Department Bureau of International Narcotics and Law Enforcement (INL) – Programme of the Resident Legal Advisor. The aim of the conference was to upgrade knowledge, exchange experiences among colleagues and discuss issues and problems faced by judges and state prosecutors in practice when prosecuting and conducting trials for the crimes against humanity and other resources protected under international law. More specific topics of the conference that was organised in sessions were the following: Session 1: Introduction into investigations and criminal prosecution of war crimes; War crimes – Current issues in Montenegro; Session 2: US experiences in criminal prosecution and investigations of war crimes, including cooperation between Montenegro and USA; Role of the Federal Bureau of Investigations (FBI) in criminal prosecution and investigations of war crimes; Role of the Ministry for Homeland Security in criminal prosecution and investigations of war crimes, including issues related to the immigrants to the USA; Session 3: Experience of Bosnia and Herzegovina; Experience of Bosnia and Herzegovina with war crime investigations; Session 4: Cooperation between MICT and Unit for Missing Persons; Cooperation with MICT in war crime cases; Search for missing persons and EULEX experience in criminal prosecution and investigations of war crimes. The conference was attended by 22 participants (5 state prosecutors, 10 judicial advisors and 2 advisors at the state prosecution offices and 5 representatives of the Police Directorate).

2019

42. 30 September–01 October 2019 – The Centre organised the international conference on the topic: “Efficient Investigation, Criminal Prosecution and Adjudication in War Crime Cases in Montenegro”, in cooperation with the US Embassy in Montenegro, i.e. State Department Bureau of International Narcotics and Law Enforcement (INL). Session 1: Introduction to investigations and criminal prosecution of war crimes, Session 2: Current issues, including work with the victims. Session 3: US experiences with criminal prosecution and investigations of war crimes, Session 4: Bosnian experiences with war crimes and cases of missing persons, presented in panel discussion on Bosnian experiences with investigations of war crimes, searches for missing persons and regional cooperation. Session 5: Adjudication in war crime cases, Session 6: Cooperation with the Hague. The conference was concluded with session 7: Search for missing persons, in which deputy chief of the Western Balkans Programme of the International Commission on Missing Persons spoke on enforced disappearances and missing persons. The conference was attended by 6 judges, 12 state prosecutors, 2 judicial advisors, representatives of the Police Directorate and Administration for Inspection Affairs and 2 representatives of the Secretariat of the Centre for Training in Judiciary and State Prosecution Service.

2020

43. 29–30 June 2019 – The Centre organised the training in framework of the 2020 Programme for In-service Training of Judges and State Prosecutors on the topic: “Efficient Investigation, Criminal Prosecution and Adjudication in War Crime Cases in Montenegro” in cooperation with the State Department Bureau of Narcotics and Law Enforcement – INL Programme. The topics that were discussed were as follows: Specificities of investigation and criminal prosecution of crimes against humanity and other resources protected under international law; General principles of investigations of war crimes, including lessons learnt and the phenomenon of “weekend warriors”; Current issues in relation to war crimes in Montenegro; Case study; Hearing accused persons and evidence collection procedure in war crime cases; Montenegrin experience with judgements in war crime cases. The seminar was attended by 16 participants (5 judges, 4 judicial advisors and 7 state prosecutors).

2021

44. 17–18. June 2021 – The Centre for Training in Judiciary and State Prosecution Service organised the seminar on the topic of “War Crimes and Enforced Disappearances” as part of the 2021 Programme for In-service Training of Judges and State Prosecutors. The specific topics that were discussed were as follows: Investigation of war crimes – issues faced in prosecutorial practice; Case law in relation to war crime cases – experience of Montenegro; Prosecutor-led investigation and handling war crime cases in Bosnia and Herzegovina – current issues and case law; War crimes – experiences from the perspective of international prosecutor and advisor for war crimes; Case study and current issues faced in prosecutorial practice; Evidence collection procedure in war crime cases. The seminar was attended by 11 participants (3 judges, 6 state prosecutors and 2 advisors at the state prosecution service).

D. Follow-up information relating to paragraph 19 of the concluding observations

45. In order to ensure unhindered conduct of criminal proceedings, in accordance with Article 12 paragraph 4 of the Convention, the Criminal Code of Montenegro prescribes, as part of the criminal offences against judiciary, the criminal offence of *obstruction of justice* (Article 396a), which sets out that whoever by means of force of threats or otherwise seriously obstructs or prevents a judge, state prosecutor, their deputies, notary public or enforcement agent in performance of their duties in order that they deliver or not deliver a decision shall be punished by prison sentence for a term from six months to five years. Whoever in the commission of the offence set forth in paragraph 1 of this Article threatens to use weapons or inflicts on the persons set forth in paragraph 1 of this Article a light bodily injury shall be punished by a prison sentence for a term from one to eight years.

46. In order to strengthen and properly apply Article 12 paragraph 4 of the Convention, the Law on Civil Servants and State Employees¹⁷ sets out in Article 111 the ground for temporary limitation of the discharge of duty, where civil servant and state employee against whom criminal or disciplinary proceedings have been initiated for severe breach of official duty may be limited in the discharge of duty until the end of the proceedings, if their presence would harm interest of the state authority, by means of: limiting or revoking the powers granted to them; imposing the measure of interim reassignment to another position; prohibiting them to perform tasks in state authority (suspension).

47. The Law on Home Affairs¹⁸ also prescribes the ground for temporary removal of police officers from work, as follows: if they are caught in the commission of a severe breach of official duty for which mandatory imposition of the measure of termination of employment is prescribed, until finalisation of the disciplinary proceedings; while in detention; or if criminal proceedings have been initiated against them for committing criminal offence with elements of corruption referred to in article 127 paragraph 2 of this Law or for criminal offence committed at work or in relation to work, until finalisation of the criminal proceedings. Police officers may be temporarily removed from the workplace if the criminal proceedings have been initiated against them for the criminal offence which is prosecuted *ex officio* or if disciplinary proceedings have been initiated for the severe breach of official duty, if their presence at the workplace would harm interest and reputation of the Ministry and police or would hinder the course of disciplinary proceedings. Police officer may be temporarily removed from the workplace before the commencement of criminal proceedings if an order on conducting investigation against him/her has been issued for a criminal offence prosecuted *ex officio* where their presence at the workplace would harm interest and reputation of the Ministry and the police. Direct superior is obligated to submit a reasoned motion for temporary removal of the police officer from the workplace, within five days, if any of the requirements for temporary removal referred to in paras. 1 and 3 of this Article has been met and is obligated to inform him/her thereof. Police director is obligated, without delay, to submit the received motion for temporary removal from the workplace, along with his/her opinion on the motion to the minister for the purpose of decision-making. Official badge, official ID, weapons and other equipment that have been entrusted with the police officer being removed, for the purpose of discharging duties, are taken away from him/her for as long as the removal lasts (Article 176).

48. The Law on Army of Montenegro¹⁹ also regulates removal of persons employed in the army, whereby Article 113 sets out that the person employed in the army is removed from duty in the following cases: while in detention; while serving prison sentence; if caught in the commission of a disciplinary offence or if criminal or disciplinary proceedings have been initiated against him/her, if his/her presence at the workplace would harm the interests of the service. The period of removal from duty is not calculated into the time for promotion, unless it is established that the reason for removal did not exist. Appeal on the decision on removal from duty does not delay its enforcement. In the case referred to in paragraph 1 item 3 of this Article, the person employed in the Army cannot come to work during the period of removal from the workplace.

49. Article 19b of the Criminal Procedure Code sets out that when it is prescribed that conducting the criminal proceedings results in limitation of certain rights, such limitations, unless otherwise provided for by the law, become effective: by confirmation of the indictment; by summons to the main hearing in the course of summary proceedings in accordance with Article 454 paragraph 1 of this Code or by issuance of the decision on penal order without holding a main hearing in accordance with Article 461 paragraph 1 of this Code; by summons to the main hearing in the procedure for imposition of security measure of mandatory treatment and confinement in the health care facility, or of mandatory out-patient psychiatric treatment in accordance with Article 471 paragraph 2 of this Code. The court informs *ex officio* the authority or employer with which the accused person is employed about the circumstances referred to in paragraph 1 of this Article within three days. The court also

¹⁷ "Official Gazette of MNE", no. 2/2018, 34/2019 and 8/2021.

¹⁸ "Official Gazette of MNE", no. 70/2021.

¹⁹ "Official Gazette of MNE", no. 51/2017 and 34/2019.

informs the authority or employer with which the accused person is employed on imposition of detention in the manner and within the time-limit referred to in paragraph 2 of this Article. The court informs the accused person and his/her defence attorney of the notification of data in accordance with paras. 2 and 3 of this Article, at their request.

E. Follow-up information relating to paragraph 21 of the concluding observations

50. The principle of legality of criminal prosecution represents one of the fundamental principles of criminal prosecution set out under Article 19 of the Criminal Procedure Code, under which state prosecutor is obligated to commence criminal prosecution if there exists a reasonable suspicion that a person has committed a criminal offence which is prosecuted *ex officio*, unless otherwise provided for by this Code.

51. In accordance with Article 12 paragraph 4 of the Convention, the Criminal Code of Montenegro prescribes, as part of the set of criminal offences committed against justice system, the criminal offence of *obstruction of production of evidence* (Article 390) which sets out that whoever gives, offers or promises a gift or another advantage to a witness or expert witness or another participant before a court or another state authority, or a member of his/her family or family community or who uses force or threatens against him/her in order for that person to affect the outcome of proceedings by giving false testimony or refraining from giving testimony is punished by a prison sentence for a term from six months to five years. Whoever, intending to prevent or impede production of evidence, conceals, destroys, damages or makes unusable, in whole or in part, another person's document or other objects which serve as evidence shall be punished by a fine or a prison sentence for a term not exceeding one year.

52. In respect of witness protection, the Law on Witness Protection regulates requirements and procedure for the provision of protection and assistance to the witness outside of the court if there is reasonable concern that by giving testimony for the purpose of proving commission of a criminal offence, for which this law sets out the possibility of protection, he/she would be exposed to the large-scale, real and serious threat to life, health, physical integrity, freedom or property, when other protection measures are not sufficient. Protection and assistance within the meaning of paragraph 1 of this Article may, at the request of the person, also be granted to his/her close family member (Article 1). The protection programme is applied only if the criminal offence could not be proven without witness testimony or if the proving thereof in other way would be made significantly more difficult, when a set of criminal offences is being proven, such as criminal offence against humanity and other resources protected under international law (Article 5).

53. Witness protection and protection of the person close to him/her are ensured by application of the Witness Protection Programme. The Witness Protection Programme is a set of measures prescribed by this law which are applied for the purpose of protecting life, health, physical integrity, freedom or property of a large scale of the witness, or of the person close to him/her. The Witness Protection Programme may be applied only subject to consent of the witness, or the person close to him/her. The Witness Protection Programme may be applied to a minor as well only subject to consent of his/her parents or guardians, while it can also be applied to the person who is either partly or fully deprived of legal capacity only subject to the consent of the person authorised to represent him/her or consent of guardian (Article 2).

54. Since 2009, the High Courts in Podgorica and Bijelo Polje have had a functioning Service for the Support to Witnesses/Injured Parties i.e. Victims of War Crimes, which employs persons authorised to provide support to the injured parties/witnesses in the cases for this criminal offence. In order to inform public about the work of the Services, the Informative Brochure was printed containing detailed information on the courts with territorial and subject-matter jurisdiction, importance of witness testimony before the court and on the testimony itself (security – protection measures, who can be heard as a witness, who can be relieved of the duty to testify, what is presentation, what is confrontation, who can ask witness questions, what happens once the testifying is over), information on the work

of the Service (first contact with the court, support) and contact details of the persons authorised to provide support to the witnesses/injured parties. The authorised persons from the Service for Support are at disposal to give answers to the questions, give explanations regarding the work of the court, criminal proceedings, seating arrangement in the courtroom and they do their best so that the testimony is a positive experience for the victim, instead of it being a discomfort.

55. Informative brochure was published and distributed to courts, and also posted on the web portal of courts at www.sudovi.me.

IV. Measures to prevent enforced disappearances (Articles 16–23)

A. Follow-up information relating to paragraph 23 of the concluding observations

56. In addition to the instruments for human rights protection of the United Nations, the Rome Statute of the International Criminal Court²⁰ and Council of Europe conventions in the field of human rights protection which are, under Article 9 of the Constitution of Montenegro, directly applicable in Montenegro and are directly applied when regulating relations differently from the Montenegrin legislation, the domestic legislation regulates this matter in more detail.

57. When it comes to extradition procedure, it is worth noting that the competent authorities in Montenegro, when deciding on a specific extradition case, take account of all the relevant circumstances, including potential existence of systematic, serious, evident and mass violations of human rights in the state requesting the extradition. In respect of the procedure for extradition of the accused and convicted persons, Article 22 of the Law on Mutual Assistance in Criminal Matters sets out that the minister competent for justice affairs will not permit extradition of the person who enjoys asylum right in Montenegro or if it can be reasonably assumed that the person whose extradition is requested would, in the case of extradition, be subject to persecution or punishment on the grounds of his/her race, religion, nationality, membership of a particular group or political beliefs or if his/her position would deteriorate because of some of the reasons mentioned above.

58. The most important component of the refugee status and asylum is safeguard from return to the country in which a person feels a reasonable fear of persecution. This kind of protection is embedded in the principle of non-refoulement which is generally accepted by Montenegro as a legal principle in relevant legislation.

59. Article 11 of the Law on International and Temporary Protection of Foreigners²¹ sets out that it is forbidden to expel or in any way return a third-country national or a stateless person to a country where his/her life would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion, or where he/she could be subjected to torture, inhuman or degrading treatment, or which could extradite that person to another country where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion, or where he/she could be subjected to torture, inhuman or degrading treatment.

60. Article 116 of the Law on Foreigners²² prescribes prohibition of the enforced removal of a foreigner to a state where his/her life or freedom would be threatened on account of his/her race, religion or nationality, membership of a particular social group or political opinion or where he/she might be exposed to torture or inhuman and degrading treatment or punishment, or where he/she could be subject to a death penalty, and to a state where he/she would be in danger of being subject to enforced removal to the country of origin. It also

²⁰ Law on Ratification of the Rome Statute of the International Criminal Court, “Official Gazette of FRY” – International treaties”, no. 5/2001.

²¹ “Official Gazette of MNE”, no. 2/2017 and 3/2019.

²² “Official Gazette of MNE”, no. 12/2018.

prescribes prohibition of the enforced removal of a foreigner if that would be contrary to the European Convention for the Protection of Human Rights and Fundamental Freedoms, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment, Convention on the Rights of the Child and Convention on the Exercise of Children's Rights. Also, considering the best interests of the unaccompanied child, an unaccompanied foreigner who is a minor is subject to enforced removal to a state in which he/she is handed over to a member of his/her family, to an appointed guardian, or to an institution for admitting children.

B. Follow-up information relating to paragraph 25 of the concluding observations

61. Montenegro is fully committed to the protection of human rights and freedoms and everyone is obligated to respect rights and freedoms of others. The Constitution of Montenegro sets out that the person may be detained and kept in custody only on the basis of decision by the competent court, where there is reasonable suspicion that the person committed criminal offence and only if that is necessary for the conduct of criminal proceedings.

62. The Criminal Procedure Code also defines rights of the persons deprived of liberty. Article 5 sets out that a person deprived of liberty must, in his/her native language or any other language that he/she understands, be immediately informed about reasons for his/her apprehension and, on the same time, instructed on the fact that he/she is not obliged to make a statement, that he/she has the right to a defence attorney of his/her own choosing, and right to request that that the person of his/her choosing be informed on his/her deprivation of liberty, as well as the diplomatic-consular representatives of the country whose national he/she is and representative of an appropriate international organisation if he/she is stateless or refugee. Furthermore, the Code also prescribes the right to defence whereby the accused person is entitled to defend himself/herself alone or with the professional assistance from the defence attorney he/she chooses from among lawyers; the accused person is entitled to having a defence council present in his/her hearing; prior to the first hearing, the accused person will be instructed on the right to hire a defence attorney, to agree with the defence attorney on the methodology of defence and that the defence attorney is entitled to attend his/her hearing. He/she will be warned that everything he/she says may be used against him/her as an evidence; if the accused person does not hire a defence attorney, the defence attorney will be appointed for him/her *ex officio*, when that is provided for by this Code; the accused person must be given sufficient time and possibility to prepare defence; and that the suspect also is entitled to a defence attorney in accordance with this Code. Article 73 of the Code prescribes communication between the accused person in detention and defence attorney stating that the accused person in detention may correspond and have conversation with defence attorney without supervision. Defence attorney enjoys the right to have a private conversation with the suspect who is deprived of liberty even before the suspect is interrogated. The control of this conversation before the first hearing is allowed only by observing, and not by listening.

63. In respect of the recommendation to include the right to contest legality of detention on the list of rights that may not be restricted in the times of war or during emergencies, the Constitution of Montenegro sets out that during the proclaimed state of war or emergency, the exercise of certain human rights and freedoms may be restricted, to the necessary extent. Such restriction may not be imposed on the grounds of sex, nationality, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or any other personal feature. Moreover, there shall be no restrictions on the rights to: life; legal remedy and legal aid; dignity and respect of a person; fair and public trial and the principle of legality; presumption of innocence; defence; compensation of damage for illegal or ungrounded deprivation of liberty and ungrounded conviction; freedom of thought, conscience and religion; entry into marriage. There shall be no abolishment on the prohibition of: inflicting or encouraging hatred or intolerance; discrimination; trial and conviction for one and the same criminal offence (*ne bis in idem*); forced assimilation. Measures of restriction may be in effect at the most for the duration of the state of war or emergency. (Article 25)

64. Taking into account Article 17 paragraph 3 of the Convention, the Rulebook on the more detailed manner of enforcement of detention²³ regulates admission of detainees, their identification etc.

65. Detainees placed at the investigative detention facility in Podgorica and in the prison in Bijelo Polje are given the possibility of communicating with the outside world in accordance with provisions of the Criminal Procedure Code and Rulebook on more detailed manner of the execution of detention.

66. Since detention is the measure which ensures presence of the suspect and unhindered conduct of the criminal proceedings, and whose execution is supervised by the judge assigned to the case who is authorised for that purpose or the judge he/she appoints, the persons on whom this measure is imposed or detainees may establish contact with the outside world (visits, correspondence and phone calls) only subject to consent of the investigative judge. Furthermore, detainees establish contact with the outside world through visits by their spouses or persons they live with in a permanent extramarital community, their close relatives, defence attorney and, at their request, with medical doctor and other persons, representatives of domestic organisations engaged in the protection of human rights, representatives of the international committee for the fight against torture when that is set out in the ratified international treaties, while detainees who are foreign nationals also may receive visits of the representatives of diplomatic missions and consular representatives of the foreign countries of their nationality. Detainees may also establish contact via correspondence with persons outside of the prison and by means of phone calls which they can make only from the telephone booth located in the prison facility, at the time and in the manner established in daily schedule.

67. At the point of admission to the prison, the detainee is registered in the records and that person is informed of the fundamental rights and duties he/she has while in detention. At the point of admission to the prison, identity is established on the basis of the decision on the imposition of detention and warrant for admission of the detainee, personal ID documents and other documents, while detainee is searched as well. The court which imposed detention submits to the prison the decision on the imposition of detention and written warrant for the admission of detainee.

68. The warrant mentioned above contains the following: family name and first name, month and year of birth, place of birth, address of permanent or temporary residence, legal basis for the criminal offence, date and time of deprivation of liberty, time needed for separation from other detainees and signature of the authorised person who issued the warrant. If the detainee does not have any ID documents or his/her identity raises suspicion, the prison administration will request from the investigative judge to submit, without delay, the data needed for identification of the detainee.

69. In accordance with valid legislation, the competent authorities are obligated to keep records on detainees. These records contain the following data: identity of the person deprived of liberty; date, time and place of deprivation of liberty of the person and name of the authority which deprived the person of liberty; name of the authority which ordered deprivation of liberty and grounds for the deprivation of liberty; name of the authority authorised to conduct supervision of deprivation of liberty; place where the person deprived of liberty is accommodated, date and time when the person was accommodated in the place of deprivation of liberty and authority competent for the place of accommodation of the person deprived of liberty; data on health condition of the person deprived of liberty; in the event of death of the person deprived of liberty, circumstances and cause of death and place where the person's remains are; date and place of release from detention or transfer to another detention unit, destination and authority competent for the transfer. The records on detainees also include the following: unique identification number (JMBG) of the detainee, date and time of admission to prison, family name, father's name and name at birth, day, month, year, place, municipality and state of birth, place of permanent or place of temporary residence, nationality, occupation, name and member of criminal offence, data on the indictment which has been brought.

²³ "Official Gazette of MNE", no. 042/12 of 31 July 2012.

70. Immediately upon admission to the prison, a medical examination is carried out and medical record of the detainee is compiled. Medical examination of the detainee is also carried out when he/she is released from detention. Detainee may be temporarily accommodated in another organisational unit, subject to prior consent of investigative judge, due to overcrowdedness of accommodation capacities of the prison, as well as for security or health reasons. Detainee is released from prison on the basis of the decision on termination of detention and warrant on the release of detainee.

71. When released, the detainee will be examined by the prison doctor in order to establish health condition at the moment of leaving the prison, of which the doctor compiles a report. The report is entered into the medical record of the detainee. In the event of death of the detainee, the person managing the prison informs the court president who issued the decision on imposition of detention, Police Directorate, competent state prosecutor, family of the detainee, prison service which keeps records, his/her defence attorney and Ministry of Justice, Human and Minority Rights. Remains of the detainee are handed over to the family for funeral, and where that is not possible, he/she will be buried in the local cemetery.

C. Follow-up information relating to paragraph 27 of the concluding

72. The Human Resource Management Authority, which is competent for professional development and training of civil servants and state employees, delivered training courses for civil servants and state employees, in accordance with relevant strategic documents and action plans, at the national and local level for the purpose of acquiring skills and knowledge of certain areas and raising awareness of international acts among the employees. Local and international experts in certain areas and practitioners who shared their experiences were hired to deliver these very important training courses.

73. Training courses were delivered on the following topics: anti-discrimination; European Charter of Human rights – trial within a reasonable time; Protection of human rights in Montenegro; European Convention for the Protection of Human Rights and Fundamental Freedoms; Resolution 1925 – women, peace and security; Process of admitting recidivists.

74. The Police Academy, as the institution whose primary activity is to educate future police officers, emphasises the importance of respect for human rights in all contexts of the police work by teaching the subject Human Rights and Ethics. For that purpose, professional and specialist training courses were delivered for the students of the Police Academy. The following workshops on human rights were organised in cooperation with the Centre for Civic Education: “Human Rights through the Concept of Transitional Justice and Wars in the Nineties” and “Human Rights of the Marginalised Groups in the Society”, at which point the topic concerned was discussed.

75. As for training of judges and state prosecutors, please see the reply in respect of the recommendation number 5.

V. Measures to provide reparation and to protect children against enforced disappearance (Articles 24 and 25)

A. Follow-up information relating to paragraph 29 of the concluding observations

76. The notion of victim of violent crime, within the meaning of Article 3 of the Law on the Compensation of Victims of Violent Crimes²⁴ is the person who, as a result of the violent crime, died, sustained severe bodily injury or suffered severe harm to his/her physical or mental health. The victim is also a person who, as a result of violent crime committed intentionally by using physical force or other actions which cause harm to the physical

²⁴ “Official Gazette of MNE”, no. 35/2015.

integrity, died, sustained severe bodily injury or suffered severe harm to his/her physical or mental health, when the commission of such crime was directed against that person. The victim is also a person who died, sustained severe bodily injury or suffered harm to his/her physical and mental health in the event of: attempt to prevent commission of violent crime; aiding police during deprivation of liberty of the perpetrator of violent crime; provision of assistance to the victim.

77. By acknowledging the European Convention on the Compensation of Victims of Violent Crimes, which Montenegro is a State Party to,²⁵ and also recognising provisions of the secondary sources of the European Union legislation, the Law on Compensation of Victims of Violent Crimes regulates the right to a monetary compensation to the victims of violent crimes committed intentionally, as well as conditions and procedure for acquiring the right to compensation, authorities which make decisions and participate in the decision-making procedure regarding the right to compensation, authorities and procedure applied in cross-border cases. The Law on Compensation of Victims of Violent Crimes also regulates conditions, manner and procedure for exercising the right to compensation of victims of violent crime. The law entered into force on 15 July 2015 and will become applicable on the day of accession of Montenegro to the European Union.

78. Moreover, the Criminal Code of Montenegro defines a broad term of victim prescribing that, within the meaning of that Code, victim is a person who has sustained, by means of an unlawful act which constitutes a crime under law, physical or mental pain, or suffering, damage to property or violation of human rights and freedoms.

B. Follow-up information relating to paragraph 31 of the concluding observations

79. All the victims of war crimes or their families in Montenegro are guaranteed access to justice, compensation and reparation.

80. According to valid legislation, victims of crimes may exercise the right to the compensation of damage in two ways, as follows: from the convicted person, by filing motion for the satisfaction of property claim in criminal procedure or by filing action in civil procedure. The Criminal Procedure Code sets out that the property claim which resulted from commission of the crime will be deliberated at the request of the person who is authorised to satisfy such claim in civil procedure, if that would not lead to a significant delay in the procedure. Property claim may refer to the compensation of damage, return of objects or annulment of a specific legal transaction. The motion for satisfaction of property claim is filed with the state prosecutor, and to the court before which criminal procedure is conducted, at the latest until finalisation of the main hearing before the first instance court. If the authorised person has not filed motion for satisfaction of the property claim in the criminal procedure by the time of bringing the indictment, he/she is notified that he/she may file such motion until the finalisation of the main hearing.

81. In civil procedures, initiated by the victims of war crimes by filing actions for compensation of intangible and/or tangible damage, the courts will act in accordance with provisions of the Law on Obligations²⁶ and Law on Civil Procedure.²⁷

82. In accordance with the Law on Obligations, the victim of human trafficking is legally entitled to file action for the compensation of tangible/intangible damage. The court decides on the complaint on the basis of oral, direct and public deliberation. Upholding or rejection of the claim will exclusively depend on whether the complaint is grounded, and the court

²⁵ Law on Ratification of the European Convention on the Compensation to the Victims of Violent Crimes, "Official Gazette of MNE – International treaties", no. 6/2009.

²⁶ "Official Gazette of MNE", no. 47/2008, 4/2011 – other laws and 22/2017.

²⁷ "Official Gazette of RMNE", no. 22/2004, 28/2005 – Decision of the Constitutional Court of RMNE, 76/2006 and "Official Gazette of MNE", no. 47/2015 – other law, 48/2015 (Articles 84 and 85 are not in consolidated version of the text), 51/2017, 75/2017 – Decision of the Constitutional Court of MNE, 62/2018 – Decision of the Constitutional Court of MNE, 19/2019 – Decision of the Constitutional Court of MNE, 34/2019, 42/2019 – correction and 76/2020.

decides, at its discretion, which facts it will find proven, after conscientious and careful assessment of all the evidence presented individually and as a whole and taking into consideration the results of the entire proceedings. In terms of existence of criminal offence and culpability, the court is bound in civil procedure by the final judgment of the court by which the accused person is found guilty. In that regard, in every proceeding, including the proceedings in which the victim of human trafficking seeks the compensation of damage, the court is obligated to comply exclusively with the law and to apply it directly to every specific case, regardless of who the parties to the proceedings are.

83. A total of EUR 5,714,656.20 were awarded until 2019 in damages. Five complaints were rejected, four proceedings were suspended, while in 20 cases claim was withdrawn. In the case “Morinj” the courts rendered 154 decisions by which complaint was upheld by final decision and a total of 1,485,510.20 were awarded. One complaint was rejected by a decision, 4 proceedings were suspended, and in 6 cases the claim was withdrawn. In the case “Deportation”, court settlement was reached in 42 cases, under which the state of Montenegro committed to pay out EUR 4.135.000,00 to the claimants for the compensation of tangible and intangible damages. In the case “Štrpci”, the complaint was upheld with a final decision in three cases, of which a total of EUR 61,146.00 were awarded in two cases, and 4,200,000.00 dinars (around EUR 33,000.00) were awarded in the third case. In the case “Bukovica” the complaint was rejected in three cases. In the case “Kaluderski Laz” complaint was rejected in one case, while lawsuit was withdrawn in 14 cases.

84. We note that legal grounds of the actions brought earlier (until September 2018) and actions brought after that period are different. In fact, legal ground of earlier actions was compensation of intangible damage due to violation of the individual rights, torture, inhuman and degrading treatment, while in later actions the legal ground was a new form of compensation of intangible damage – due to reduction of general life activity and suffered physical pains and fear.

C. Follow-up information relating to paragraph 33 of the concluding observations

85. Given the gravity of enforced disappearance, and importance of discovering destiny of missing persons, the valid Criminal Code of Montenegro sets out that the criminal prosecution and execution of sentence are never barred by the statute of limitations for the criminal offences against humanity (Article 427) and war crime against civilian population (Article 428) of the Criminal Code of Montenegro, as well as for criminal offences which may not be barred by the statute of limitations under international treaties.

86. Also, the need for family members of the missing persons within the meaning of Article 24 paragraph 6 of the Convention to exercise the rights in the fields such as social welfare, financial matters, family law and property rights is satisfied in the procedure for proclaiming the missing person dead and establishing death of the person for whom there is no evidence of the fact of death. This procedure is regulated by the Law on Non-Contentious Procedure²⁸ in the manner that the court may declare deceased the person who went missing in war or in relation with the armed conflicts and of whose life there has been no account for at least one year from the date hostilities ended.

D. Follow-up information relating to paragraph 35 of the concluding observations

87. Montenegro is strategically committed to the continuous improvement of the system for protection of human rights and freedoms. For that purpose, family, as well as mother and child, enjoy special protection guaranteed under the Constitution of Montenegro (Articles 72–73), other regulations and international instruments in the field of protection of rights of the child that Montenegro is the State Party to – 1989 United Nations Convention on the

²⁸ “Official Gazette of RMNE”, no. 27/2006 and “Official Gazette of MNE”, no. 20/2015, 75/2018 – other regulation and 67/2019.

Rights of the Child;²⁹ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts³⁰ and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.³¹

88. The Constitution of Montenegro sets out that child enjoys rights and obligations appropriate to his/her age and maturity and that the child is guaranteed a special protection from psychological, physical, economic and any other exploitation and abuse (Article 74).

89. The Criminal Code of Montenegro prescribes numerous criminal offences for the purpose of preventing and punishing unlawful taking possession of children. The Criminal Code of Montenegro (Article 217) prescribes the criminal offence of *abduction of a minor* by stating that whoever unlawfully takes possession of or abducts a minor from a parent, adoptive parent, guardian, or other person or institution entrusted with the care of the minor or who prevents enforcement of a decision entrusting the care of a minor to a specific individual is punished by a fine or a prison sentence for a term not exceeding two years. Whoever prevents enforcement of a decision made by a competent authority stipulating the manner in which the minor will maintain a personal relationship with his/her parent or other relative will be punished by a fine or a prison sentence for a term not exceeding one year. Where the offence was committed out of greed or other base motives or where it resulted in a serious threat to the health, upbringing or education of the minor the perpetrator shall be punished by a prison sentence for a term from three months to five years. Change of family status also constitutes criminal offence since whoever foists a child onto another person, who substitutes, or otherwise changes a child's family status shall be punished by a prison sentence for a term from three months to three years (Article 218).

90. In order to protect children from adoption which contradicts valid legislation, the Criminal Code of Montenegro also established a separate criminal offence of *trafficking in minors for adoption* (Article 445) stating that whoever abducts a minor for adoption contrary to valid regulations or whoever adopts such a person or mediates in such an adoption or whoever for that purpose buys, sells or surrenders another person who has not reached the age of fourteen or who transports, provides accommodation for or conceals such a person shall be punished by a prison sentence for a term from one to five years.

91. In the context of Article 25 paragraph 1 of the Convention, it is worth noting that the Criminal Code of Montenegro also prescribes the criminal offence of *illegal crossing of the state border and smuggling of persons*; Article 405 (2) sets out whoever is engaged in illegal transfer of other persons across the border of Montenegro, or who enables another person, with the aim of acquiring financial or other benefit, to illegally cross the border or to illegally stay or transit shall be punished by a prison sentence for a term from three months to five years.

92. In line with the Convention, the qualified form of this criminal offence exists if the offence is committed by several persons, in an organised manner, by abuse of office or in the manner which threatens life or health of persons whose illegal border crossing, stay or transit are facilitated or where a large number of people is smuggled. Prison sentence for a term from one to ten years is prescribed for this kind of perpetration.

93. In order to guarantee legal certainty, the Criminal Code prescribes criminal offences against legal transactions (Articles 412–415). Pursuant to Article 25 1 (b) of the Convention, the Montenegrin legislation prescribes the criminal offence of *counterfeiting documents* stating that whoever produces a fake document or issues a false document or alters a genuine document with the intention to use such a document as a genuine one, or whoever uses such a fake or false document as a genuine one or who obtains it for use shall be punished by a prison sentence for a term not exceeding three years. Where the offence set forth in paragraph 1 of this Article was committed with respect to a public document, will, bill of exchange, cheque, public or official register or another register that must be kept under law, the perpetrator shall be punished by a prison sentence for a term from three months to five years.

²⁹ “Official Gazette of SFRY-International treaties”, no.15/90 and “Official Gazette of FRY – International treaties”, no. 4/96 and 2/97.

³⁰ “Official Gazette of FRY – International treaties”, no. 7/2002.

³¹ “Official Gazette of FRY – International treaties”, no. 7/2002.

In addition to this offence, the Code also prescribes special cases of counterfeiting documents, i.e. criminal offences of *counterfeiting official documents* and *instigation to authenticate false content*.

94. If Montenegro receives a request from another State Party for assistance during the search, identification and finding of children subject to enforced disappearance, children whose father, mother or legal guardian are subject to enforced disappearance or children born during stay or captivity of the mother who is subject to enforced disappearance, Montenegro will handle such request in a responsible and timely manner, in accordance with the Constitution and other regulations and international instruments in the field of protection of the rights of the child.
