

Committee against Torture

Concluding observations on the third periodic report of Montenegro*

1. The Committee against Torture considered the third periodic report of Montenegro¹ at its 1889th and 1892nd meetings,² held on 27 and 28 April 2022, and adopted the present concluding observations at its 1953th meeting, held on 10 May 2022.

A. Introduction

2. The Committee expresses its appreciation to the State party for submitting its periodic report under the simplified reporting procedure, as this improves the cooperation between the State party and the Committee and focuses the examination of the report and the dialogue with the delegation.

3. The Committee appreciates the dialogue held with the State party's delegation and the additional information and explanations provided to the concerns raised by the Committee.

B. Positive aspects

4. The Committee welcomes the following legislative, administrative and institutional measures taken by the State party in areas of relevance to the Convention:

(a) The amendment to the Criminal Code to prescribe stricter penalties for criminal offences of domestic violence or extended family violence, adopted in December 2021;

(b) The amendments to the Criminal Code to provide stronger punishments in cases of endangering the safety of journalists, adopted in December 2021;

(c) The amendment to the Criminal Code to ensure the criminalisation of certain types of violence against women as required by the Istanbul Convention - stalking, female genital mutilation and forced sterilisation, adopted in 2017

(d) The amendment to the Family Law in 2016 which incorporated a prohibition of all forms of violence against children including corporal punishment of children in all settings, as recommended by the Committee;³

(e) The adoption of the Strategy for the Prevention and Protection of Children from Violence for 2017-2021;

* Adopted by the Committee at its seventy-third session (19 April - 13 May 2022).

¹ CAT/C/MNE/3.

² See CAT/C/SR.1889 and CAT/C/SR.1892.

³ CAT/C/MNE/CO/2, para. 21.

(f) The adoption of a new five-year Strategy for Social Inclusion of Roma and Egyptians in Montenegro (2021-2025);

(g) The adoption of the Strategy to Improve the Quality of Life of LGBTI Persons in Montenegro (2019-2023).

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

5. In its previous concluding observations,⁴ the Committee requested the State party to provide information on its implementation of the Committee's recommendations on ensuring or strengthening legal safeguards for detained persons;⁵ conducting prompt, impartial and effective investigations;⁶ and, prosecuting suspects and sanctioning perpetrators of torture or ill-treatment.⁷ While noting with appreciation the replies submitted by the State party on 15 July 2015⁸ under the follow-up procedure and in its third periodic report, and referring to the letter dated 29 August 2016 from the Committee's Rapporteur for follow-up to concluding observations addressed to the Permanent Representative of Montenegro to the United Nations Office at Geneva, the Committee considers that the above-mentioned recommendations have been only partly implemented (see paras. 8, 18 and 22 below).

Definition of torture

6. While noting the State party's statement that upcoming amendments to the Criminal Code will address the Committee's previous recommendations in this regard, ensuring full alignment with article 1 of the Convention and removing the statute of limitations in regard to acts of torture, the Committee is concerned that, at present, the definition of torture in the Criminal Code is still not aligned with article 1 of the Convention, that acts of torture or ill-treatment are not yet punished with penalties commensurate with their grave nature, and that the statute of limitations for the crime of torture remains in place (arts. 1 and 4).

7. **The Committee recalls its previous concluding observations⁹ and urges the State party to expedite the adoption of amendments to article 167, paragraph 2, read in conjunction with paragraph 1, of the Criminal Code in order to incorporate into the legal definition of torture all the elements contained in article 1 of the Convention and ensure that penalties for torture are appropriate to the gravity of the crime, as set out in article 4 (2) of the Convention. The State party should further ensure that the offence of torture is not subject to any statute of limitations, in order to preclude any risk of impunity in relation to the investigation of acts of torture and the prosecution and punishment of perpetrators.**

Fundamental legal safeguards

8. While appreciating the measures taken by the State party to amend article 268 of the Criminal Procedure Code in 2015, addressing its previous recommendation¹⁰ to remove conditionality of access for detained persons to a medical examination on a request being made by the public prosecutor, the Committee is concerned at reports indicating that key legal safeguards for detained persons are not effectively implemented in practice from the very outset of the deprivation of liberty. The Criminal Code allows for the police to detain suspects for up to 24 hours before bringing them before the public prosecutor, and it is during this initial period that the majority of alleged violations occur. This is a particular concern in regard to effective access to legal counsel, to medical examination, and notification of a

⁴ CAT/C/MNE/CO/2.

⁵ Ibid., para. 7.

⁶ Ibid., paras. 13 and 14.

⁷ Ibid., paras. 13 and 14.

⁸ CAT/C/MNE/CO/2/Add.1

⁹ CAT/C/MNE/CO/2, para. 6.

¹⁰ Ibid, para. 7.

relative or other person of the detainee's choosing. Inconsistent filling-in of custody registers and individual detainee records is a further source of concern (art. 2).

9. **Recalling its previous recommendations,¹¹ the Committee urges the State party to ensure that all persons who are arrested or detained are afforded in practice all fundamental legal safeguards against torture, and not merely in law, from the very outset of their deprivation of liberty, including the rights to:**

(a) To be promptly informed, in a language that they understand, the reasons for their arrest and the charges against them; to sign the appropriate record confirming that they have understood the information provided to them;

(b) To notify family members, or any other person of their choice, that they have been taken into custody;

(c) To have immediate access to an independent lawyer;

(d) To request and receive a medical examination by an independent medical doctor from the outset of the deprivation of liberty; to medical examinations that are conducted out of hearing and out of sight of police officers and prison staff, unless the doctor concerned explicitly requests otherwise; to have their medical record immediately brought to the attention of a prosecutor whenever the findings or allegations may indicate torture or ill-treatment; and to health-care professionals that are not exposed to any form of undue pressure or reprisals when fulfilling their duty;

(e) To have their detention systematically recorded in a register at the place of detention and in a central register of persons deprived of their liberty, which their lawyers and family members can access, in line with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Legal aid

10. While acknowledging the efforts made by the State party to expand access to legal aid, notably in relation to administrative procedures (asylum, statelessness determination),¹² the Committee nonetheless remains concerned in regard to implementation of the Law on Legal Aid (2011), in view of the reported lack of awareness among potential beneficiaries, reflected in the low level of annual expenditure reported by the State Party on this item. The Committee is also concerned at the vagueness of provisions in the Law on International and Temporary Protection of Foreigners in regard to access to legal aid, which prescribes that such aid is conditional on not having "money or belongings of high value, and filed charge is not obviously ungrounded"(arts. 3, 11 and 16).¹³

11. **Recalling its previous recommendations,¹⁴ the Committee calls on the State party to:**

(a) Intensify its efforts to provide an effective free legal aid system and to ensure appropriate protection and access to the legal system for vulnerable persons and groups, in particular by providing adequate resources for effective implementation of the Law on Legal Aid;

(b) Take appropriate steps to ensure that criteria determining access to legal aid are clearly and objectively defined and not left open to interpretation;

(c) Amend the Law on Free Legal Aid to include victims of alleged torture and ill-treatment by state officers as privileged beneficiaries of the right to legal aid;

(d) Allow NGOs and other competent entities to provide State-sponsored free legal aid.

¹¹ Ibid., para. 7.

¹² Law on International and Temporary Protection of Foreigners as of 1 January 2018

¹³ Ibid.

¹⁴ CAT/C/MNE/CO/2, para. 8.

National human rights institution

12. The Committee is concerned at the negative impacts of the 2018 Law on the Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro, in relation to the Protector of Citizens' independence, autonomy and effectiveness. It is further concerned that, under the 2018 Law, the confidentiality and independence of visits carried out by the National Preventive Mechanism – a sub-entity within the office of the Protector of Citizens – is compromised by an obligation to have visit reports signed by a representative of the visited institution. The Committee welcomes reports that the NPM enjoys a good level of access to prisons and places of detention, but notes that implementation by the authorities of the Protector's recommendations ('Opinions') remains a concern (arts. 2 and 11).

13. The State party should:

(a) Strengthen the capacity of the Protector of Citizens, and in particular the NPM, by: ensuring the impartiality and independence of its members; providing the resources necessary for it to operate effectively, ensuring that it enjoys complete financial and operational autonomy when carrying out its functions; strengthening follow-up on the implementation of its recommendations; and ensuring the NPM's recommendations are implemented efficiently;

(b) Guarantee the regular participation of representatives of civil society organisations in NPM visits of places of detention;

(c) Amend Article 43a paragraph 1 of the 2018 Law on the Amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro, in order to remove the requirement that the NPM's visit reports be signed by the head of the institution visited, as currently stipulated.

Conditions of detention

14. The Committee welcomes the State Party's use of alternatives to detention, the opening of a specialised department for juveniles and improvements at some places of detention, such as the Podgorica police station. However, the Committee regrets the lack of progress in general since its previous recommendations in this regard, notably in relation to overcrowding. The Committee notes that overcrowding and staffing levels, and their link to inter-prisoner violence, remain a concern. Sufficient access to health care (including mental health care) and out-of-cell activities are also of concern in some facilities. While noting the State party's statement that the construction of the new detention facilities foreseen in the Strategy for the Execution of Criminal Sanctions (2017-2021) and its Action Plan is due to commence in December 2022 (completion by end 2024), the Committee is concerned that conditions remain unsatisfactory in the interim period.

15. The State party should:

(a) Intensify its efforts to eliminate prison overcrowding in penitentiary institutions and other detention facilities, including through the application of non-custodial measures. In that connection, the Committee draws the State party's attention to the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules);

(b) Continue to renovate all places of detention in need of repair with a view to improving their infrastructure and material conditions and to bring prison conditions into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the European Prison Rules adopted by the Council of Europe;

(c) Recruit and train sufficient number of prison personnel to ensure the adequate treatment of detainees, strengthen the prevention, monitoring and management of inter-prisoner violence, protection of vulnerable prisoners and other prisoners at risk, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the European Prison Rules adopted by the Council of Europe;

(d) Ensure that the human and material resources needed to provide prisoners with proper medical and health care are allocated;

(e) Discontinue the practice of placing juveniles receiving correctional measures in prison facilities. Foresee the construction of a specialised facility for this purpose.

Psychiatric facilities

16. The Committee notes its further concern that conditions in institutions for persons with psycho-social and intellectual disabilities remain unsatisfactory. While the ‘Special hospital’ due to be constructed will in the medium-term relieve overcrowding at the Dobrota special psychiatric facility in Kotor, and improve material conditions, the current situation is such that action is required without delay (arts. 2, 11 and 16).

17. The State Party should prioritise efforts to improve the conditions of persons with disabilities in psychiatric institutions, particularly at the psychiatric facility in Kotor. Intensify actions to accelerate the de-institutionalisation of persons with psycho-social and intellectual disabilities and increase the investment in community-based services, in collaboration with relevant partners.

Investigations of cases of torture and ill-treatment

18. Recalling its previous recommendations,¹⁵ the Committee remains concerned at the persistence of reports regarding physical and psychological ill-treatment or torture of detainees by the police at the time of questioning with a view to extracting confessions or obtaining information. Additionally, the Committee remains concerned in regard to the effectiveness of investigations (notably regarding identification of alleged perpetrators), the continued leniency of sentences for State agents convicted of such grave offences, including the use of suspended sentences, and the continued failure to suspend State agents under investigation for this type of offence. The Committee is additionally concerned at reports that investigations of alleged acts of torture or ill-treatment can be carried out by the same prosecutor tasked with investigating charges against the detainee who made the allegations. The Committee further regrets the reported practice of transferring investigation responsibilities to the police in cases of alleged torture or ill-treatment in police custody (arts. 12–13).

19. The State party should:

(a) Ensure that all complaints of torture and ill-treatment are promptly investigated in an impartial manner by an independent body, and that there is no institutional relationship between that body’s investigators and the suspected perpetrators of such acts;

(b) Ensure that, in cases of alleged torture or ill-treatment, suspected perpetrators are suspended from official duties immediately and for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, commit reprisals against the alleged victim or obstruct the investigation;

(c) Guarantee that the alleged perpetrators are duly prosecuted and, if found guilty, receive penalties commensurate with the seriousness of their actions;

(d) Ensure that thorough medical screening at admission to prison (in particular, to the remand prison) is conducted without presence of police or prison officials, in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), and in case the medical personnel conducting the screening has a ground to believe that ill-treatment of a person has occurred, the case shall be immediately reported to the prosecutor's office;

¹⁵ CAT/C/MNE/CO/2, para. 14.

(e) **Develop training modules for the police and other law enforcement officers on non-coercive interviewing and investigation techniques;**

(f) **Ensure effective implementation of the 2013 Regulation on Police uniforms, insignia, titles and weapons, which requires that all uniformed police officers (including special intervention forces) must wear nametags or identification numbers on their uniforms in the exercise of their duties;**

(g) **Ensure the systematic video recording of the questioning of suspects in custody, and establish mandatory instructions for the storage of recordings, including prescribed minimum duration.**

Asylum system and non-refoulement

20. While noting the adoption of the Law on International and Temporary Protection of Foreigners, which entered into force on 1 January 2018, the Committee is concerned that, in practice, asylum seekers do not always have effective access to the asylum procedure due to insufficient procedural safeguards. The issue of chain refoulement is of particular concern (arts. 2–3 and 16).

21. **The State party should:**

(a) **Ensure that, in practice, no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture or ill-treatment;**

(b) **Ensure that procedural safeguards against refoulement are in place and that effective remedies with respect to refoulement claims in removal proceedings are available. Decisions to expel individuals should be subject to judicial review on a case-by-case basis and should carry a right of appeal that has suspensive effect;**

(c) **Ensure access to the territory and sufficient and effective protection from refoulement at borders by making sure that people seeking asylum at the border receive appropriate information about their rights, including information on procedures, appeal mechanisms and legal aid, immediately and in a language they understand;**

(d) **Provide training on international refugee law and international human rights law, specifically on the principle of non-refoulement and the risk of chain refoulement, to immigration officials, as well as ensure that all standard operating procedures include sufficient safeguards against refoulement;**

(e) **Establish effective and fully accessible referral and complaints mechanisms from point of expression of intention to seek asylum;**

(f) **Enhance efforts to ensure the criminal accountability of perpetrators of acts that put the lives and safety of migrants and asylum seekers at risk, and ensure that victims, witnesses and claimants are protected against ill-treatment or intimidation that may arise as a consequence of their complaints.**

Impunity for war crimes and remedy for victims

22. Recalling its previous recommendations, and while welcoming certain recent efforts to address impunity for war crimes, including torture and ill-treatment, the Committee remains concerned at the lack of progress made by the State Party in prosecuting those under its jurisdiction accused of committing war crimes during the conflicts in the Western Balkans in the 1990s, including the absence of any convictions involving liability on the basis of principles of command or superior responsibility. In the period since 2015, only one person has been convicted of war crimes by final court decision in the State Party. Based on information received from the International Residual Mechanism for Criminal Tribunals (IRMCT) in late 2020, a number of new cases are open for consideration by the State Party. The Committee continues to be concerned that the majority of victims of violations of war crimes in Montenegro have yet to be afforded the right to reparation (arts. 12, 13 and 14).

23. **The State party should intensify its efforts to fight impunity for war crimes by:**

(a) Proactively investigating all allegations and carefully examining all evidence against its citizens or others subject to its jurisdiction, including but not limited to evidence obtained from neighbouring and other foreign jurisdictions and the IRMCT against potential perpetrators, including any evidence of criminal liability based on principles of command or superior responsibility;

(b) Completing investigations of all allegations of war crimes, prosecuting the perpetrators and punishing them with appropriate penalties commensurate with the grave nature of the crimes;

(c) Ensuring that all victims, including their family members, obtain redress and judicial and/or administrative compensation for the sufferings, in line with article 14 of the Convention;

(d) Regularly and actively informing the public of war crimes cases as matters of public importance and interest.

Training

24. While acknowledging the efforts made by the State party to develop and implement human rights trainings for law enforcement officials and other relevant actors, the Committee regrets the lack of monitoring and evaluation of the effectiveness of the training programmes in reducing the incidence of torture and ill-treatment (art. 10).

25. **The State party should:**

(a) Further develop mandatory initial and in-service training programmes to ensure that all law enforcement officials and all other relevant actors working in places of deprivation of liberty are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations will not be tolerated and will be investigated and that those responsible will be prosecuted and, on conviction, appropriately punished;

(b) Ensure that all law enforcement officers, judges and public prosecutors receive mandatory training emphasizing the link between noncoercive interrogation techniques, the prohibition of torture and ill-treatment, and the obligation of the judiciary to invalidate confessions made under torture;

(c) Provide a thorough training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) to medical personnel working in all places of detention;

(d) Develop a methodology for assessing the effectiveness of training programmes in preventing torture and ill-treatment and in ensuring the identification, documentation and investigation of such acts, as well as the prosecution of those responsible.

Attacks on journalists

26. The Committee is seriously concerned about continued reports of intimidation of and physical attacks against journalists. While valuing the efforts by the State party to address this issue, such as the recent adoption of amendments to the Criminal Code which prescribe stronger criminal protection of journalists, the Committee remains concerned. Furthermore, it regrets the continued failure to bring to justice those responsible for the murder of journalist Duško Jovanović in 2004, or to conclude the investigation into the brutal attack against investigative journalist Olivera Lakić in May 2018. The Committee is further concerned at reports that some members of the Commission for monitoring investigations of attacks on journalists do not have the necessary authorisations allowing access to classified information, which hampers the work of this body. (arts. 2, 12, 13 and 16)

27. **The Committee calls upon the State Party to:**

(a) Ensure that journalists are protected against threats and intimidation and take necessary measures to prevent such acts in the future, including by establishing a

national mechanism for the safety of journalists, in coordination with the existing Commission responsible for monitoring investigations into attacks on journalists;

(b) Step up investigations into current as well as old cases of attacks against journalists, ensuring that perpetrators are brought to justice;

(c) Enable all members of the Commission for monitoring investigations of attacks on journalists to have access to classified information without delay;

(d) Carry out an evaluation on the effectiveness of its strategy on improving the safety of journalists.

Gender-based violence including domestic violence

28. The Committee is concerned at reports regarding the prevalence of domestic violence in Montenegro, and the low level of prosecution and leniency of sentencing for perpetrators for this and other forms of gender-based violence. In this regard, the Committee recognizes the State party's efforts to criminalise gender-based violence in its Criminal Code, and welcomes a number of recent or planned initiatives, such as programmes working with perpetrators of domestic violence to reduce recidivism and protect families, and a planned special facility for victims. (arts. 2, 12, 14 and 16)

29. **The State party should:**

(a) Ensure that all cases of gender-based violence, especially those involving the actions or omissions by State authorities or other entities which engage the international responsibility of the State party under the Convention, are promptly and thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately, and that the victims or their families receive redress, including adequate compensation and rehabilitation and have access to legal assistance, safe shelters and the necessary medical care and psychological support;

(b) Provide mandatory training on the prosecution of gender-based violence to all justice officials and law enforcement personnel and continue awareness-raising campaigns on all forms of violence against women.

Data collection

30. The Committee regrets that fully disaggregated data was not provided in most cases, notably in regard to gender. The Committee is concerned that in some areas, explicit data on the number of complaints received was not provided, only the number of cases investigated, which may provide an artificially low assessment of the prevalence of complaints. The Committee is concerned that data relevant to monitoring implementation of the Convention does not appear to be collected and stored in a systematic manner.

31. The State party should ensure the collection of fully disaggregated statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on the number of complaints received and redress measures provided to the victims. The State Party should also consider creating a centralised registry which keeps an official record of victims of torture or ill-treatment in all places of detention.

Redress and rehabilitation

32. The Committee takes note of the information provided by the State Party concerning redress and rehabilitation, but expresses its concern at the limited avenues for redress and rehabilitation available to victims of torture and ill-treatment, and regrets the lack of available data on compensation awarded to victims of torture and ill-treatment.

33. Recalling its general comment No. 3 (2012) on the implementation of article 14, the Committee urges the State party to take all the necessary measures to enable victims of torture and ill-treatment committed in the State party or abroad to obtain full and effective redress, including means of rehabilitation and care specifically tailored to their needs. The State party should compile and provide to the Committee information on redress and on compensation measures, including means of rehabilitation, ordered by

the courts or other State bodies and actually provided to victims of torture or ill-treatment.

Follow-up procedure

34. The Committee requests the State party to provide, by 13 May 2023, information on follow-up to the Committee's recommendations on conditions of detention; investigations of cases of torture and ill-treatment; and impunity for war crimes and remedy for victims (see paras. 15, 19, and 23 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

35. The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.

36. The Committee requests the State party to submit its next periodic report, which will be its fourth, by 13 May 2026. To end, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its fourth periodic report under article 19 of the Convention.
