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**Permanent Mission of Montenegro to the United Nations Office,  
WTO and other International Organizations in Geneva**

No:

The Permanent Mission of Montenegro to the United Nations, WTO and other international organizations in Geneva presents its compliments to the Secretariat of the Committee on Enforced Disappearances at the Office of the High Commissioner for Human Rights and has the honor to deliver answers to your note CED/SG/GA68 concerning the answers refer to GA resolution A/RES/67/180 "International Convention for the Protection of All Persons from Enforced Disappearance".

The Permanent Mission of Montenegro to the United Nations Office, WTO and other international organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the Committee on Enforced Disappearances at the Office of the High Commissioner for Human Rights assurances of its highest considerations.

Geneva, 21th May 2013



## **INFORMATION**

### **on the implementation of Resolution 67/180 of the General Assembly of the United Nations (International Convention for the Protection of All Persons from Enforced Disappearance)**

According to the policy of comprehensive reform of the judicial system which Montenegro implements in accordance with The Judicial Reform Strategy and The Action Plan for implementing the Strategy, Montenegro has ratified International Convention for the Protection of All Persons from Enforced Disappearance on 22. June 2011. By ratification of this Convention Montenegro joined the countries which under its legislation seek to implement the Convention and undertake all appropriate measures to prevent and sanction enforced disappearances.

During the ratification of this Convention, Montenegro has made the declaration by which, according to:

- Article 31 paragraph 1 Montenegro recognizes the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by Montenegro of provisions of this Convention.
- Article 32 Montenegro recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention.

According to the Article 29 of the Convention, Montenegro shall submit to the Committee on Enforced Disappearances, within two years after the entry into force of this Convention, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention. The preparation of Initial report on Implementation of International Convention for the Protection of All Persons from Enforced Disappearance is now in progress, and the report will be delivered to the Committee on Enforced Disappearances within the prescribed period.

#### **The legislative framework**

The Constitution of Montenegro guarantees human rights and freedoms. Rights and liberties shall be exercised on the basis of the Constitution and the confirmed international agreements (Article 17). Guaranteed human rights and freedoms may be limited only by the law, within the scope permitted by the Constitution and to such an extent which is necessary to meet the purpose for which the limitation is allowed, in an open and democratic society. Limitations shall not be introduced for other purposes except for those for which they have been prescribed (Article 24). During the proclaimed state of war or emergency, the exercise of certain human rights and freedoms may be

limited, to the necessary extent. The limitations must not be introduced on the grounds of sex, nationality, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or any other personal feature. There shall be no limitations imposed 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; defense; 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 of the prohibition of: inflicting or encouraging hatred or intolerance; discrimination; trial and conviction twice for one and the same criminal offence; forced assimilation. Measures of limitation may be in effect at the most for the duration of the state of war or emergency (Article 25).

The Constitution prescribes that Montenegro guarantees dignity, security, inviolability of the physical and mental integrity of a person, his privacy and personal rights with the determination that no one shall be subjected to torture or inhuman or degrading treatment and no one shall be kept in slavery or servile position (Article 28).

Article 29 of the Constitution of Montenegro stipulates that everyone is entitled to individual liberty. Deprivation of liberty is allowed only for reasons and in the procedure as specified in the law. Persons deprived of liberty must be notified immediately of the reasons for deprivation of liberty, in their own language or in the language they understand. Persons deprived of liberty must be informed that they are not obligated to give any statement. At the request of persons deprived of liberty, the authority is obliged to immediately inform about the deprivation of liberty the person that those deprived of liberty have chosen. Persons deprived of liberty are entitled to have the defence counsel of their own choosing present at their interrogation. Unlawful deprivation of liberty is punishable.

Article 30 of the Constitution of Montenegro stipulates that persons reasonably suspected of having committed a criminal offence may be detained and kept in detention only on the basis of decision of the competent court, if so required for the conduct of criminal proceedings. Detainees must be given the explained ruling on detention at the time of being placed in detention or at the latest 24 hours from being placed in detention. Detainees have the right of appeal against the ruling on detention, upon which the court decides within 48 hours. The Constitution stipulates that duration of detention must be reduced to the shortest possible period, while also setting time limits on duration of detention by specifying that detention may last up to three months from the day of detention imposed on the basis of decision of the first instance court and that this period may be extended for additional three months on the basis of the decision of the higher Court, and if no indictment has been brought until expiry of that period detainee is being released. Detention of juveniles may not exceed 60 days.

Article 31 of the Constitution of Montenegro guarantees respect for human personality and dignity in criminal or other proceedings in case of deprivation or restriction of

liberty and during the execution of imprisonment sentence. Any form of violence against and inhuman or degrading treatment against person deprived of liberty or whose liberty has been limited, including any extortion of confession and statement, is prohibited and punishable. Everyone shall have the right to fair and public trial within reasonable time before an independent and impartial court established by the law (Article 32). Every one shall be guaranteed the right to defense, and especially: to be informed in the language that understands about the charges against thereof; to have sufficient time to prepare defense and to be defended personally or through a defense attorney of his/her own choosing (Article 37).

According to the Article 56, everyone shall have the right of recourse to international organizations for the protection of own rights and freedoms guaranteed by the Constitution.

In the corpus of criminal offences against the rights and freedoms of individuals and citizens (Title fifteen), **The Criminal Code** stipulates criminal offence Unlawful Deprivation of Liberty (Article 162), Abduction (Article 164) and Coercion (Article 165).

Criminal offence **unlawful deprivation of liberty** is conducted by a person who unlawfully incarcerates, keeps in custody or in any other manner unlawfully deprives others of liberty or limits their freedom of movement. For this criminal offence imprisonment sentence up to one year is prescribed. If this criminal offence has been committed by a person in official capacity through abuse of his/her position or authorizations, the imprisonment sentence of six months to five years is prescribed. If the act of unlawful deprivation of liberty lasted longer than thirty days, or if it has been conducted in a cruel manner, or the health of a person unlawfully deprived of liberty in that manner be seriously impaired or other serious consequences occur, the offender shall be sentenced to one to eight years of imprisonment. If as a consequence of this offense a person unlawfully deprived of liberty dies, the offender shall be sentenced to two to twelve years of imprisonment.

Criminal offence **abduction** is conducted by a person who, by use of force, threat, deception or in other manner takes away or keeps someone with the intention to extort money or other material benefit from that person or others or coercing that person or others to do or not to do something or to endure something. For this criminal offence is prescribed sentence to one to eight years of imprisonment. If a person, in view of accomplishing the aim of abduction, threatens by murder or grievous bodily injury to the kidnapped person, shall be sentenced to two to ten years of imprisonment. If the kidnapped person is being kept more than ten days or treated with cruelty or the kidnapped person's health be heavily impaired or other serious consequences occur, or if this offence is being committed against a juvenile, the offender shall be sentenced to two to twelve years of imprisonment. If as a consequence of this offense the kidnapped person dies or the act is being committed by several persons in an organized manner, it has prescribed sentence to five to fifteen years of imprisonment.

Criminal offence **coercion** is conducted by a person who by use of force or threat compels someone to do or not to do something or to endure something. For this criminal offence sentence of three months to three years of imprisonment is prescribed. If this offence has been committed in a cruel manner or by threat of murder or grievous bodily injury or abduction, the prescribed sentence is six months to five years of imprisonment. If due to offence, a grievous bodily injury be inflicted or other serious consequences occur, the offender shall be sentenced to one to eight years of imprisonment. If due to the offence, the person under coercion dies, or the offence is being committed by several persons in an organized manner, the offender shall be sentenced of two to twelve years of imprisonment.

Criminal Code contains a group of criminal offence against humanity and the other values guaranteed under international law (Article 426-449a Criminal Code) such as: Genocide, Crimes against Humanity, War Crime against Civilian Population, War Crime against the Wounded and Sick, War Crime against the Prisoners of War, Terrorism, etc.

Criminal Code also includes criminal offences against human health (Article 287-302 CC), such as: Unconscientious Provision of Medical Assistance, Unlawful Doing of Medical Experiments and Testing of Medicines and etc. Incrimination of these offences against human health protects the right to life in a broader context.

**The Criminal Procedure Code** seeks to provide a complete protection human rights and fundamental freedoms, guaranteed by the Constitution and international documents, establishing a balance between the conditions of any procedure, efficiency of criminal proceedings, on one side, and better protection human rights and freedom, on the other side. One of the fundamental rules set out in the Criminal Procedure Code is prohibition of threat to and violence against suspects, the accused and other persons participating in proceedings, including extortion of confession and other statements from these persons, while no court judgment may be based on the confession or other statement obtained by extortion, torture or inhuman or degrading treatment (Article 11). The Code also stipulates that judgments may not be based on the evidence that have been obtained by violation of human rights and fundamental freedoms guaranteed under the Constitution or ratified international treaties, or on the evidence obtained by violation of the provisions of criminal procedure as well as on other evidence obtained therefrom, nor may such evidence be used in proceedings (Article 17). Under Article 154, any medical intervention on suspects, the accused or witnesses or giving them any such medication that may influence their consciousness and will in giving their statement is prohibited.

Personality and dignity of detainees must not be offended in the course of criminal proceedings and the only restrictions that may be imposed against them are the ones needed to prevent their escape, incitement of third persons to destroy, conceal, alter and fabricate evidence or traces of the criminal offence or to prevent any direct or

indirect contacts of detainees for the purpose of influencing witnesses, accomplices and accessories.

Rules of conduct in the execution of the imprisonment sentence are defined in the **Law on the Execution of Criminal Sanctions** and in secondary legislation. In the course of execution of the criminal sanction, perpetrators may be deprived of or denied certain rights only to the extent in which that corresponds to the nature and substance of such sanction and in the manner which guarantees respect for personality of perpetrators and their human dignity. Any actions of subjecting convicted persons to any form of torture, ill-treatment and degrading treatment and medical and scientific experiments are prohibited and punishable, while prohibited actions predominantly include those actions that are disproportionate to preserving order and discipline in a penitentiary organizational unit or that are unlawful and might therefore result in sufferance and inappropriate limitation on fundamental rights of convicted persons. In serving the imprisonment sentence, convicted persons may not be mutually disadvantaged on grounds of their race, colour of the skin, sex, religion, political or other belief, ethnic or social backgrounds, property, birth, education, social standing or other features. Coercive measures may be used against convicted persons only under the conditions and in a manner stipulated by the law and regulations adopted thereon. Means of coercion (physical force, physical restraints, isolation, rubber baton, water hoses, specially trained dogs, chemical agents and firearms) may be used only when necessary to prevent escape, physical assault on persons in official capacity or convicted persons, infliction of injuries on other persons, self-injury or physical damage, and also when it is necessary to suppress resistance to the lawful order given by persons in official capacity.

#### **Compensation of damage for illegal action**

The right to compensation of damage for illegal action is guaranteed by the Constitution of the Montenegro, prescribing that person deprived of liberty in an illegal or ungrounded manner or convicted without grounds shall have the right to the compensation of damage from the state (Article 38). The Criminal Procedure Code prescribes that the person deprived of liberty in an illegal or ungrounded manner or convicted without grounds shall have the right to the rehabilitation, right to the compensation of damage from the state, and the other rights prescribed by the law.