

MONTENEGRO

Distinguished Chairpersons,
Dear Excellencies,
Ladies and Gentlemen!

It is a special honour and pleasure for me to greet the distinguished members of the United Nations Committee against Torture on behalf of the Government of Montenegro, on behalf of the Montenegrin delegation, and on my own behalf, and also to express my great respect for all Committee members.

The 41st Session of the United Nations Committee against Torture is very important for Montenegro, and especially for the Montenegrin institutions the work of which is closely related to the subject matter of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

This importance is reflected in the very fact that we have the opportunity to hear the assessment of the level of implementation of standards defined under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Committee members, as highly competent and recognized experts. In this connection, we bear in mind that this Convention is one of the basic instruments of the United Nations in the field of protection and promotion of human rights and fundamental freedoms, i.e. the document the importance of which is sufficiently evidenced by the very nature of human rights protected by this Convention. Its importance is further evidenced by the more than two-decade-long tradition of the Convention, as well the number of states which ratified it until now.

In connection with this, first of all I would like to stress our full commitment and readiness to give our maximum contribution to achieve constructive dialogue with the Committee through the consideration of the Initial Report of Montenegro on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with the aim of the best possible understanding of the actual

situation in Montenegro regarding the issues the Convention relates to. An additional reason for this is that the admittance into the Organization of the United Nations placed confidence in Montenegro, as a serious partner, and this enabled a more direct cooperation with such an important international organization, all this with the aim of consistent compliance with international standards and implementation of these standards in domestic legislation.

Distinguished Chairpersons,

After regaining state independence and assuming full international legal personality, the Republic of Montenegro continued to build itself as a civil state based, *inter alia*, on the principle of respect for and protection of human rights and freedoms, accepting the principles established in the instruments of the United Nations, the Council of Europe, the Organization for Security and Co-operation in Europe and other international organizations.

This concept of continuation of building and development of the Republic of Montenegro has been improved by adoption of new Constitution, at the session of the Constituent Assembly of the Republic of Montenegro on 19 October 2007. New Constitution of Montenegro, as a general legal framework, improves the protection from torture and other cruel, inhuman or degrading treatment or punishment, where the commitment to the respect for human rights and freedoms is one of the fundamental bases of the system of the state and one of the fundamental values in Montenegro.

Therefore, one of the basic principles of the Constitution of Montenegro relates to human rights and freedoms, conceived in terms of guaranteeing, protection and inviolability of rights and freedoms, and the obligation to respect rights and freedoms of others. I would like to stress that the constitutional conception of guaranteeing and protection of human rights and freedoms in Montenegro has been elaborated in a whole set of provisions, where the provisions on personal rights and freedoms comprise a separate segment, guaranteeing: dignity of a human being with regard to the application of biology and medicine, dignity and security of a human being, inviolability of his physical and mental integrity, his privacy and individual rights, the respect for human personality and dignity in the

criminal or other procedure in case of deprivation or limitation of liberty and during the enforcement of sentence, stipulating: that no one can be subjected to torture or inhuman or degrading treatment, that no one can be kept in slavery or servile position, that any form of violence, inhuman or degrading behaviour against a person deprived of liberty or whose liberty has been limited, and any extortion of confession and statements shall be prohibited and punishable. I would also like to stress that the right to life, the right to legal aid and the right to dignity of and respect for a person have been classified in the Constitution of Montenegro within the group of human rights which may not be limited even during the proclaimed state of war or emergency.

Distinguished Chairpersons,

In the improvement of the state system which is based on the concept of respect for and protection of human rights and freedoms, we endeavoured to reform legal framework treating also the issues important for the prevention of and protection from torture and other cruel, inhuman or degrading punishment or treatment.

To this effect, in 2003, the criminal legislation of Montenegro was codified, i.e. Montenegro adopted the Criminal Code in which abuse and torture were treated as a separate criminal offence within the group of criminal offences against human and citizen's freedoms and rights.

I would like to mention that already in 2005, as a result of continuous monitoring of international standards in the field of protection of human rights and the assessment that it is necessary to incorporate these standards into domestic legislation, the elements of the criminal offence of torture were modified to a certain extent, in the sense that the actions and consequences of that criminal offence were expanded and specified. Furthermore, the length of the punishment prescribed for the criminal offence of torture has also been changed, so that this criminal offence is now punishable by imprisonment ranging from six months to five years (*previously it was imprisonment for a term of up to three years*), and if torture was committed by a person acting in an official capacity while carrying out his duty, this offence is punishable by imprisonment ranging from **one** to **eight** years (*previously it was for a term of up to three years*), while abuse is punishable by imprisonment ranging from three months to three years.

However, apart from the fact that torture and abuse are defined as a separate criminal offence, the Criminal Code also prescribes the prohibition and punishability of these forms of behaviour through certain criminal offences from the group of criminal offences against humanity and other rights protected by international law.

The codification of the criminal legislation of Montenegro included also the adoption of the Criminal Procedure Code, by which the Criminal Procedure Law from the period of former Federal Republic of Yugoslavia ceased to be valid. Now, the criminal procedure in Montenegro is based, *inter alia*, on the principles of prohibition and punishability of use of force against a person deprived of liberty, prohibition of extortion of a confession or any other statement from the defendant or any other person participating in the proceedings, while no judicial decision shall be based on the confession or any other statement obtained through extortion, torture or inhuman treatment , i.e. judicial decisions may not be founded on evidence which is either inherently or by the manner in which it was obtained in contradiction with the provisions of the Code, other law, the Constitution or international law. The Criminal Procedure Code prescribes also the prohibition to offend the personal integrity and dignity of the person held in detention.

Therefore, the criminal procedural legislation of Montenegro incorporates provisions which created procedural preconditions for the prevention of torture and which ensure that the evidence obtained through torture is deprived of legal effect, i.e. that as such it cannot be a valid legal basis for a judicial decision.

I am using this opportunity to mention also that final activities regarding the drafting of the proposal for the new Criminal Procedure Code are underway at the moment in Montenegro and that this new Code is also based on the principles of prohibition and punishability of torture and legal invalidity of evidence obtained through torture. The substance of novelties we want to introduce with this new Code is to give the prosecutor a new role in terms of entrusting the investigation to this institution. We believe that such legal solution will considerably improve the conduct of investigation, which surely also concerns the cases of processing of the criminal offences of torture and abuse.

The reform of the legal framework certainly covered those areas where the issue of torture is extremely sensitive, i.e. the areas towards

which Montenegro, as every other democratic country, has an absolutely responsible approach. This includes the prevention of and protection from torture of those citizens who are deprived of liberty based on decisions made by the competent state authorities, more specifically the citizens who are deprived of liberty based on decisions of police authorities and based on orders of the judicial authorities on detention, on the enforcement of imprisonment sentence and on forced hospitalization.

I would like to point out that in the reform of the legal framework in the above-mentioned areas, emphasis was also placed on development and improvement of supervisory mechanisms the functioning of which should preclude potential occurrences of torture and other forms of inhuman treatment or punishment. All this is a result of full awareness that a successful fight against torture and other inhuman treatment or punishment requires not only repressive but also adequate preventive actions.

Along these lines, a set of laws was passed in the period from 2003 to 2005, namely, the Law Amending and Supplementing the Law on Enforcement of Criminal Sanctions, the Law on the Protector of Human Rights and Freedoms (Ombudsman), the Law on Protection and Realization of Rights of Mentally Ill Persons, and the Law on Police.

These laws are also imbued with the following principles: prohibition and punishability of the acts of torture, abuse and degrading treatment or punishment, protection of human rights and freedoms guaranteed by the Constitution, law, ratified international agreements on human rights and generally accepted rules of international law, as well as the compliance with the international standards and rules protecting the personal dignity, freedoms and rights of citizens. Certain control mechanisms have also been defined to carry out the function of supervision and control over the treatment of persons who have been deprived of liberty by the competent state authorities.

Since the issue of perception, i.e. of proper comprehension of human rights and freedoms and the obligation to respect them, is especially important for those segments of the social system which concern the persons deprived of liberty, I would like to stress that this issue was also attributed great importance in Montenegro, in a way that the education, i.e. the professional training of civil servants was raised to the level of legal obligation under the Law on Civil Servants and State Employees from 2005.

Distinguished Chairpersons,

In an effort to ensure continuity in development and improvement of the Montenegrin state system, we started strategic planning of the reform of its individual segments, which resulted in strategic documents which have already been adopted by the Government of Montenegro and the implementation of which is underway.

This includes the Strategy for the Reform of the Judiciary for the period from 2007 to 2012 within which the prison system was treated as a separate segment and the improvement of which is linked to specific objectives relating to: the creation of conditions for supervision over the enforcement of suspended sentence, conditional release and community service, the creation of conditions for separating certain categories of convicts, providing adequate accommodation facilities, improvement of the security systems, in-service training, professional training and testing of knowledge of prison staff, as well as the improvement of treatment of convicts.

As I already mentioned, strategic planning is present in the other segments of the social system of Montenegro as well, and it covers the areas such as the protection of mental health, social and children protection, as well as the protection of disabled persons.

It is known that in 2004, i.e. at the time when Montenegro was still a part of the State Union of Serbia and Montenegro, the Council of Europe's Committee for the Prevention of Torture visited Montenegro according to its mandate, which was followed by making of the Report the publication of which was approved by Montenegro.

Intending then, the same as now, to fulfil responsibly the obligations assumed by membership and to implement the recommendations of the Council of Europe, and with the commitment to continue the activities aimed at efficient protection and promotion of human rights, Montenegro started undertaking concrete activities in order to comply with the recommendations of the Council of Europe's Committee.

Our understanding of the recommendations given and serious approach to their fulfilment have already been acknowledged in the Statement of the First Vice-President of the Council of Europe's Committee

for the Prevention of Torture, Ms. **Renate Kicker**, following the first periodic visit to Montenegro, now an independent country, made in the period from 15 to 22 September 2008.

However, certain recommendations were given this time as well, and the fulfilment of these recommendations is expected by the Committee within deadlines defined in the above-mentioned Statement. With regard to these recommendations, the Government of Montenegro, as well as the competent state authorities, adopted a very responsible approach, which resulted in forming of an interdepartmental working group which was entrusted with the task to give comments and information regarding the mentioned Statement, to draw up planned activities of the competent state authorities, as well as the Action Plan for the Prevention of Torture, within defined deadlines. All this has been done to maintain and to continue responsible fulfilment of recommendations given by also very competent members of the Council of Europe's Committee.

Aware of its obligation defined by this Convention, that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction, in the meantime, Montenegro made another additional step so as to fulfil this obligation and thereby strengthen the protection of persons deprived of liberty from torture and other cruel, inhuman or degrading treatment or punishment.

Namely, the project which began in the coordination of the OSCE Mission to Montenegro and the Agency for the Enforcement of Criminal Sanctions of Montenegro, with the aim of early implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, had as an outcome the approval of the proposal for the Law ratifying this Optional Protocol by the Government of Montenegro.

The adoption of this Law by the Parliament of Montenegro will create an important precondition for the establishment of the national mechanism for the prevention of torture, in which process there is an orientation in Montenegro that the Protector of Human Rights and Freedoms may perform the function of the national mechanism, which certainly involves adequate adjustment of legal and institutional framework of this Institution, according to the requirements of the Optional Protocol.

I would like to say that the drafting of this proposal for the Law was accompanied, primarily, by the constitutional commitment that the respect for human rights and freedoms is one of the fundamental values in Montenegro, namely the effort to contribute to the fulfilment of the obligations assumed by the Stabilisation and Association Agreement, i.e. the obligation to endeavour to ensure gradual harmonization of the existing laws and future legislation in Montenegro, which corresponds to the basic provisions of the Constitution on Montenegrin legal order which, *inter alia*, prescribe that ratified and published international agreements are an integral part of the internal legal order.

This presentation will be supplemented with the affirmation of the activities that followed the Initial Report.

Distinguished Chairpersons,

I assure you that Montenegro will continue to contribute to the prevention of and strengthening of protection from torture and other cruel, inhuman or degrading treatment or punishment, with the aim of successful and efficient fight against such forms of behaviour and the affirmation of fundamental principles of respect for human rights.