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Summary record of the 3108th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 14 October 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Initial report of Montenegro (CCPR/C/MNE/1; CCPR/C/MNE/Q/1 and Add. 1)

1. *At the invitation of the Chairperson, the delegation of Montenegro took places at the Committee table.*
2. **Ms. Rabrenović** (Montenegro), introducing her country's initial report (CCPR/C/MNE/1), said that, on 29 June 2012, Montenegro had started formal membership negotiations with the European Union, and on 1 January 2013, had become a Member State of the Human Rights Council. Both events were signs of the progress that the Government had made in protecting human rights and fundamental freedoms. All the rights enshrined in the Covenant were contained in the Constitution and national regulations, and Montenegro had ratified several multilateral human rights treaties.
3. Significant steps had been taken to rationalize the judiciary and render it more transparent, to reduce the backlog of court cases and to ensure the right to trial within a reasonable time, with most proceedings brought before basic courts being completed within three months. In order to strengthen public trust in the judiciary, the presidents of basic courts held regular press conferences, and open days were organized to allow resident ambassadors and law students to obtain information on the work and results of national courts. In 2013, suggestion boxes had been placed in all courts to encourage comments, questions and complaints, which had fallen sharply since 2008.
4. In 2014, amendments had been made to the Law on the Prohibition of Discrimination and the Law on the Protector of Human Rights and Freedoms of Montenegro to grant further protection to minority groups. Moreover, the process of drafting the Law on the Prohibition of Discrimination against Persons with Disabilities, which would be in line with the Convention on the Rights of Persons with Disabilities and its Optional Protocol, was in its final stages. Each year, anti-discrimination seminars and workshops were held for civil servants, judges, prosecutors and employees of other independent bodies. The Supreme Court had signed a memorandum of cooperation with an association representing members of the lesbian, gay, bisexual, and transgender community, leading to the organization of a joint workshop in 2014.
5. With regard to gender equality, the Ministry for Human and Minority Rights had signed memorandums of understanding with 15 municipalities in Montenegro, 10 of which had since set up gender equality councils, and 5 of which had already adopted local action plans. Several educational and media activities had also been carried out with a view to achieving de facto gender equality.
6. In accordance with international standards and principles, the Government had attempted to address the situation of refugees and internally displaced persons through the Law on Foreigners, the Law on Citizenship and the adoption of strategic documents. A strategy to find durable solutions to the issue had been developed for the period 2011–2015. Information sessions had been conducted in all municipalities in Montenegro to raise awareness of the procedure for acquiring resident foreigner status, drawing the participation of over 700 displaced and internally displaced persons. Under the Regional Housing Programme, there were plans to fund the housing of 6,063 people from 1,177 households. Information on the progress achieved would be published on the website of the Ministry of Labour and Social Welfare.
7. A national policy to combat trafficking in persons had been included in the government strategy for the period 2012–2018. On 18 October 2013, a cooperation

agreement had been signed by nine state authorities and six non-governmental organizations. Moreover, article 445 of the Criminal Code, on trafficking in children for adoption, had been amended to cover adolescents between the ages of 14 and 18, and the Criminal Code had been amended further in 2013 to criminalize trafficking in human body parts and any advertising thereof.

8. A probation service had been established within the Directorate for Execution of Criminal Sanctions to reduce the prison population through the promotion of community-based alternatives to incarceration, and the prison system had been placed under the aegis of the Ministry of Justice. Lastly, the Ministry of Internal Affairs, in cooperation with the Supreme State Prosecution Office, had visited detention centres and police stations to monitor respect for detainees' rights.

9. **Mr. Rodríguez-Rescia**, noting that the Committee had received relatively little information from civil society organizations, asked what steps the State party was taking to disseminate the Covenant widely. He said that, although the Government of Montenegro had made considerable efforts to bring domestic legislation into line with international standards, article 8 of the Constitution, which dealt with the issue of discrimination, was too general and should be amended to prohibit such action on any grounds.

10. Turning to paragraph 1 of the State party's replies to the list of issues (CCPR/C/MNE/Q/1/Add.1), he sought clarification on why judges had invoked the Covenant directly in just 20 cases since 2012, and why there appeared to be a downward trend in the practice, with only 3 verdicts in 2014. He would appreciate additional information on the application of the Covenant by courts other than the Basic Court in Podgorica, including the Administrative Court and the Constitutional Court.

11. The delegation should indicate what measures could be taken to ensure that the Police Academy and the Judicial Training Centre offered ongoing courses on the enforcement of the human rights enshrined in the Covenant, and whether there were plans to increase the budget of the Centre, which was under-resourced and largely reliant on international donors.

12. **Mr. Vardzelashvili** said that he wished to know whether the Office of the Protector of Human Rights and Freedoms satisfied the basic requirements for accreditation by the International Coordinating Committee of National Human Rights Institutions and, if not, whether the Government intended to strengthen its capacity further. The delegation should indicate the size of the Office's workforce, whether the planned recruitment of 11 employees by the end of 2016 would be enough to enable the Office to perform its functions effectively, and whether there had been cases in which State officials had been fined or disciplined for failing to implement the Office's recommendations.

13. He would welcome information on whether the Protector had initiated the adoption of any laws or regulations for the purpose of harmonization with international human rights standards, or appealed to the Constitutional Court to request an evaluation of the compatibility of national or international laws with the Constitution. He wished to know how the status of the Protector had changed following the adoption of amendments to the Law on the Protector of Human Rights and Freedoms of Montenegro, and whether it was correct to assume that the minister in charge of budget affairs approved the appointment of employees other than advisers and determined their salary scales. He asked whether the minister had similar decision-making powers in other administrative bodies and, if not, why the Office of the Protector had been singled out, particularly as the Government had recently announced long-term plans to enhance the Office's independence in financial and other matters. He invited the delegation to clarify what was meant by "adverse consequences" in paragraph 9 of the replies to the list of issues, and asked what remedies

were available in the event that the actions or inaction of employees of the Office violated the rights of other parties.

14. He requested additional information on steps taken to make legal aid more accessible to victims of torture and ill-treatment and address the lack of mechanisms to monitor the quality of the aid provided. Noting the importance of establishing a system to guarantee the effective application of legal aid, he asked whether decisions on eligibility fell to the presidents of basic courts and, if so, how long such decisions took. Given that, according to some sources, persons deprived of their liberty were not always afforded all legal safeguards from the very outset of their detention, he wished to know whether detainees were informed of their right to free legal aid, when persons eligible for legal aid could actually access the service, and how persons could provide proof of their eligibility when in custody.

15. It would be useful to receive further details on the impact of campaigns and programmes to increase the provision of legal aid to vulnerable groups, in particular statistics indicating the number of members of such groups who had accessed the service. He wished to know whether users of the service whose financial situation had subsequently improved enough to render them ineligible were required to reimburse any sum received, and, if so, what time limit had been established for follow-up means tests. Noting that, in paragraph 181 of the State party report, it was mentioned that free legal aid was provided when “so required by the interests of fairness”, he asked how that assessment was made, and whether, when there was no requirement of fairness, proof of eligibility could be deemed insufficient.

16. He asked whether the measures taken to reduce the backlog in cases before courts had been applied equally to civil and criminal cases. He asked the delegation to comment on reports of judges resigning under pressure from government officials. Noting concerns over the executive and legislative branches using the national budget procedure as a tool to influence the judiciary, he wished to know more about that procedure. He requested further information about the regional misdemeanour bodies, including the scope of their jurisdiction and the method by which their members were appointed. Lastly, he asked what obstacles were hindering reform of those bodies.

17. **Ms. Waterval** urged the State party to continue its efforts to implement the legislative measures to increase the representation of women in decision-making positions. While the Government had taken numerous protective measures for victims of sexual and domestic violence, there seemed to be a lack of preventive measures in that regard. She asked whether there were any State policies on treating perpetrators of such violence. She also wished to know the total number of shelters for victims of domestic violence and how many of those were run by the State.

18. She asked how many residential care facilities for children were operating in the country, and she requested further information about the individual care plans established for children in those facilities. She wondered whether families of persons with disabilities were aware that they needed to register their family members with disabilities in order for them to receive social services, and she wished to know how those not registered were dealt with. She requested further information about how the staff of social welfare centres conducted the visits they made to those families' homes.

19. While several positive steps had been taken regarding legislation on violence against children, there was as yet no law explicitly prohibiting corporal punishment in all settings. She wished to know whether a bill to that effect had already been drafted. Lastly, she requested information on the impact of the project to prevent violence in schools.

20. **Mr. Fathalla** said that it would be in the State party's interests for more NGOs to submit information to the Committee. He asked whether any further investigations had been

opened into alleged war crimes, apart from the four proceedings mentioned in the State party's written replies to the list of issues (CCPR/C/MNE/Q/1/Add.1). According to information before the Committee, the victims had been denied access to justice in three of those four cases. He wished to know why enforced disappearance was not criminalized in Montenegrin law and why there had been no investigation into the shelling of Dubrovnik from Montenegro in December 1991. He asked why there were such lengthy delays in court proceedings. It seemed that the majority of war victims were not eligible for reparation or compensation under national legislation, and he requested clarification in that regard.

21. He requested further information on steps taken to address cases of torture and ill-treatment by law enforcement personnel, in particular with regard to Roma. He wished to know more about the complaint and protection mechanisms available to prisoners in cases of abuse of authority by prison staff.

The meeting was suspended at 4.15 p.m. and resumed at 4.40 p.m.

22. **Mr. Kojović** (Montenegro) said that Montenegro had made great efforts to incorporate into national law the provisions of the international instruments it ratified, which helped explain why the courts did not directly invoke the provisions of the Covenant more often. Nevertheless, the basic courts and the Constitutional Court did regularly apply its provisions. The Judicial Training Centre provided initial and ongoing training to judges and prosecutors, which usually included courses taught by international experts and financed by the State or by assistance from donors. The Action plan for Chapter 23 of negotiations with the European Union provided for the strengthening of the Judicial Training Centre. Human rights training was part of the Centre's regular annual training plan.

23. All basic courts provided free legal aid, and his delegation would submit to the Committee in writing additional statistics on requests for such aid. The State had made significant progress in reducing the backlog of cases before the courts. Only a few, quite complex cases had been returned to the courts multiple times. In the case of war crimes, due to the international nature of the cases, the gathering of evidence from other States could be time consuming. Final court decisions had been handed down in the "Morinj", "Deportation of the Muslims" and "Bukovica" cases, among others. In the "Kaluderski laz" case, the court of first instance had issued a judgement, but the appeal process was ongoing. Compensation — typically in amounts of tens or hundreds of thousands of euros — had been awarded to civilian victims of war crimes in a number of cases involving kidnapping, deportation and the hijacking of trains. Final court decisions awarding compensation had been issued in 11 cases; settlements involving compensation had been reached in 42 cases; 13 requests for compensation had been deemed invalid and 14 requests had been withdrawn. All victims and family members of deceased victims were guaranteed compensation, reparation and access to justice under the Law on Obligations.

24. Regarding the budget procedure, the courts submitted to the Judicial Council their projected budgetary needs. Based on those projections, the Council put forward a budget proposal for the judiciary as a whole to the Ministry of Finance; the proposal was submitted to the executive branch, which then submitted it to parliament for adoption. The judicial reforms set out in the Action plan for Chapter 23 of negotiations with the European Union included the adoption of a new law on courts that would define the organizational structure and competencies of regional misdemeanour bodies. Those bodies could impose sentences in the form of fines and prison sentences of up to 2 months, and those sentences could be appealed. The draft law on courts was currently being reviewed by experts from the Council of Europe; once those experts had given their opinion it would be submitted to the Government and to parliament for adoption.

25. **Ms. Pešić** (Montenegro) said that decisions to accept or reject requests for free legal aid were taken by the presidents of basic courts, who must decide within 15 days from the

date the request was submitted. There were guidelines in place setting out the criteria that must be met for a claim to be successful. The proposed judicial reforms included measures to strengthen the free legal aid system and to prioritize victims of trafficking and victims of domestic violence when granting such aid.

26. **Ms. Samaradžić** (Montenegro) said that prosecutors and other legal staff were given training on international human rights standards, including cases involving children caught up in domestic violence and cases involving young offenders. With regard to the shelling of Dubrovnik, the Public Prosecution Service was not dealing with the matter, but the case had been taken up by the International Criminal Tribunal for the Former Yugoslavia. As for cooperation with other countries, agreements had been signed with Bosnia and Herzegovina and with Croatia on the prompt exchange of information and the implementation of legal procedures. With regard to time limits on detention, the responsibility for deciding how long to detain a person lay with the Supreme State Prosecution Office, which was not required to inform detainees whether they were entitled to free legal aid, although in practice it usually did so. Victims of trafficking in persons, who were also witnesses, were informed of all their rights.

27. **Ms. Radošević-Marović** (Montenegro) said that the Law on the Protector of Human Rights and Freedoms (Ombudsman) had been drafted in line with the Principles relating to the Status of National Institutions (Paris Principles) and other human rights standards. The Ombudsman Plus model had been adopted, with the help of NGO experts, and various new regulations had been introduced. The law would improve the capacities of the Ombudsman's Office. A report had also been adopted on establishing a new national human rights body and the procedure to acquire international accreditation had been initiated. Under the law, the Ombudsman's staff were also given unlimited access to all documents, including secret documents, relating to human rights violations. The financial situation of the Office had been improved, which had enabled the Ombudsman's Office to choose their own staff, without seeking prior approval from the Ministry of Finance. Staff of the Office were given immunity from punishment for presenting their own opinions or recommendations in the line of duty. The Supreme State Prosecution Office had a website in English, which would provide more information. As for the concern about the capacity of the Ombudsman's Office to deal with discrimination issues, she said that the Office had 28 employees, which compared well with her own unit of the Ministry of Human and Minority Rights. Moreover, the Ombudsman's Office was entitled to appoint as many deputies as necessary with responsibility for specific sectors of society.

28. Montenegro had a coherent legal framework for gender equality. Both the public and private sectors were required to apply gender principles, and, in particular, gender balance, on the basis of an action plan adopted for each year. In March 2014, a new provision had been adopted requiring political parties choosing parliamentary candidates to observe a 30 per cent quota for women; and in a list of political candidates one in every four names was reserved for women. Action was also being taken to improve female representation at the local level.

29. Progress on preventing violence against women had been made recently with the adoption of the Law on Protection from Family Violence, which provided for services to help women and to run campaigns to raise awareness. Montenegro had signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and had submitted its initial report to the CEDAW Committee in 2011. The Committee had commended Montenegro on the measures adopted but had made a number of recommendations, which Montenegro had implemented in January 2014. Montenegro was one of the first signatories of the Council of Europe Convention on preventing and combating violence against women and domestic violence. The Law on Protection from Family Violence provided measures of protection against domestic violence, with the

powers to remove the perpetrator from the home, imposing restraining orders and requiring compulsory psychological treatment. At the same time, victims of domestic violence were given support by multidisciplinary teams. The increase in the number of cases reported showed not that domestic violence had increased but that the Act was effective in practice. Training was provided for personnel involved in implementing the law. The Government Office on Gender Equality, acting in cooperation with the United Nations Development Programme (UNDP), trained lawyers, members of the judiciary and representatives of the media to encourage awareness of women's rights under the law.

30. With regard to the question of whether children were aware of the protection and complaint mechanisms available, she said that one of the Ombudsman's deputies was responsible for the protection of children's rights. A network of "golden protectors" — who were older children acting as mentors — had also been introduced. It was planned to hold an annual conference involving the golden protectors and to run a campaign in 2015 to promote children's awareness of their rights.

31. **Mr. Vukčević** (Montenegro) said that the Ministry of the Interior attached great importance to human rights training and to the observation of human rights standards in relation to detainees. The Police Academy held classes on human rights ethics, including the Covenant, and on the prevention of torture and inhuman treatment. The delegation could give the Committee no information about cases of torture involving Roma, because none had occurred. A single complaint in 2008 had been dismissed for lack of evidence. In 2013, 23 police officers had been prosecuted for abuse of their authority under article 216 of the Criminal Code and had been suspended until the verdict was announced. The Ministry also had a disciplinary committee, which could sanction police; and four officers had been convicted of abuse of authority and been heavily fined. Where a police officer was found to have abused his authority, he was dismissed.

32. With regard to the question of how many detainees were aware of their rights, he said that they were informed in Montenegrin or in any of five other languages, including Roma, of their right to a lawyer and their right to inform a family member or friend and, where applicable, a diplomatic representative of their country. The Supreme State Prosecution Office and the NGO Civic Alliance had signed an agreement under which Civic Alliance undertook the monitoring of detainees and he drew the Committee's attention to its website, which contained its report for 2013. He added, in that context, that NGOs were represented on all the country's human rights bodies and actively participated in the drafting of human rights legislation and other documents, including the initial report of Montenegro to the Committee.

33. **Ms. Rabrenović** (Montenegro) said, with regard to detention, that the Institute for the Enforcement of Criminal Sanctions housed 321 inmates, but there was also a prison with 762 inmates serving sentences of between 6 months and 20 years. The work of prisons was overseen by the Supreme Court, which submitted a report to the Ministry of Justice twice a year. Letter boxes had been installed in prisons and detainees were entitled to report cases of abuse. Prisons were also monitored by NGOs, which helped both the prisoners and the Ministry by informing the latter of cases in which the law was violated. They also helped with procedures for dealing with conflicts among prisoners. In addition, the Ombudsman could visit a prison at any time, unannounced. It had, moreover, been determined by experts from Germany and the Netherlands that there was no torture in Montenegrin prisons. She said that any further information that the Committee required could be provided later in writing.

34. **Mr. Vardzelashvili** said that he had consulted the Law on the Protection of Human Rights and Freedoms (Ombudsman) online and had found the provision protecting the Ombudsman from liability but with no mention of the Ombudsman's staff. He requested clarification. He also requested statistics on cases successfully initiated by the Ombudsman.

35. **Mr. Rodríguez-Rescia** said that he wished to draw attention to the State party's responsibility to bring its legislation into line with the Covenant, under which the grounds for the prohibition of discrimination included not only such issues as gender and ethnicity but also race, particularly given that Montenegro had ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

36. **The Chairperson** said that, according to his information, the case in which seven men had been charged with inhuman treatment in the Bukovica area had fallen through because the crimes with which the accused had been charged had not been crimes at the time that they had been committed. If that was the case, he asked whether the court's attention had been drawn to article 15 of the Covenant, which reflected general international law. Although paragraph 1 of the article stated that no one should be held guilty of a criminal offence on account of an act that did not constitute a criminal offence at the time when it was committed, paragraph 2 stated that nothing in the article should prejudice the trial and punishment of a person for an act which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations. He wondered how the court had reconciled its conclusions with the State party's obligations under article 15.

37. **Ms. Rabrenović** (Montenegro) said that the delegation had not provided any statistics on the work of the Ombudsman's Office because the Office submitted a monthly report to parliament and its annual report could be found on its website.

38. **Mr. Kojović** (Montenegro) said, with regard to the case referred to by the Chairperson that the defendants had been acquitted by the Bijelo Polje Superior Court because there was no evidence of their having committed the offence with which they had been charged. The Court of Appeal had upheld the decision of the Superior Court, because no specific provision of the Criminal Code had been breached. The Court of Appeal had found that the Court of First Instance had, however, breached the provisions of international law, in the form of article 7, paragraph 2, of the Rome Statute of the International Criminal Court. On the other hand, the Rome Statute did not apply, because it had entered into force many years after the alleged crimes had been committed. The Supreme State Prosecution Office had claimed that the Court of Appeal had breached article 386, paragraph 1, of the Code of Criminal Procedure, but the Supreme Court had found in favour of the Court of Appeal. Speaking from a personal knowledge of the case, and in view of the fact that inhuman treatment had been criminalized only in 2003, he considered that the Supreme Court had come to the correct conclusion.

39. **Ms. Radošević-Marović** (Montenegro) said that there must have been a misunderstanding about the provisions of the Law on the Protection of Human Rights and Freedoms (Ombudsman): all employees of the Ombudsman's Office were granted full protection from sanctions or negative consequences arising out of the expression of their opinion. With regard to Mr. Rodríguez-Rescia's comment, she said that a new law adopted in April 2014 provided for liability and imprisonment for racial discrimination and hate crimes, including xenophobia, anti-semitism, intolerance and issues relating to personal characteristics, minority status or sexual orientation.

40. **Ms. Rabrenović** (Montenegro) said that the delegation would answer in writing a number of questions on which it currently had no information, such as how many women's shelters there were, whether they were financed by the State, how many children's institutions there were in Montenegro, how social work centres operated and what social benefits were available for disabled persons.

The meeting rose at 6 p.m.