

RESPONSE OF NGO HUMAN RIGHTS ACTION (HRA) TO THE REACTION OF THE GOVERNMENT OF MONTENEGRO ON HRA PRESS RELEASE ON PUBLICATION OF THE REPORT OF THE COUNCIL OF EUROPE COMMITTEE - CPT

In the response of the Government of Montenegro Public Relations Bureau, published 20 September 2010, **it is incorrectly stated** that Human Rights Action in its press release stated that the Government published the translation of the report of the Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (CPT) *following the judgment* of the Administrative Court on HRA claims. In order to fully inform the public, we are yet again submitting integral press release posted on HRA website as well, www.hraction.org, making it obvious we did not state that.

Instead, we informed about all the steps we have taken, including *filing a claim* to the Administrative Court in order to obtain the translation of the report, which existed for at least six months before its publication in May, when the Government claims it has been published on its web site. On our website you can find scanned copies of all the documents we have submitted so as to try to obtain the report.

Government's belief that HRA, as well as "part of the public", misinterprets the nature of CPT mission and perceives the report of the Committee as criticism of Montenegrin state authorities, which, in fact, it is not, we re-encourage citizens to read the translation of the report and decide for themselves whether it is a praise or criticism:

<http://www.gov.me/biblioteka?query=CPT&sortDirection=desc>.

The essence of the matter is the question, to which public has not yet received a response, whether any Governmental official, officer or employee bore any responsibility for the conditions specified in the report, which pointed to numerous irregularities and inadequate supervision by the competent ministries, and whether the Supreme State Prosecutor initiated proceedings to investigate responsibility of the relevant civil servants and employees regarding the findings of the Committee.

We are using this opportunity to remind the public of several findings in the report:

Paragraph 13, which exists in the original report in English,¹ and is missing from the translated report published on the Government website:²

"13. It should be noted that, as in 2004, the delegation found at several police stations visited (in Bar, Budva, Kotor and Podgorica), in offices used for police

¹ http://www.cpt.coe.int/documents/mne/2010-03-inf-eng.htm#_Toc255372638

² This is the only paragraph that we noticed is missing in the translation of the report in summary review of most important findings.

interviews, various non-standard and unlabelled items (such as baseball bats, a strip of thick plastic-covered electric cable, and a length of hard hollow plastic pipe). Further, at Budva Police Station, the delegation saw a bullet-proof vest lying on a chair in the hallway leading to the cells in the basement, which seemed an unusual place to keep it."

Part of the report relating to the police establishments, page 11 of the Report (p. 11-13): „...the allegations (of abuse during interrogation in order to obtain a confession or provide information), were received from both men and women, and consisted for the main part of slaps, punches, kicks and blows with truncheons, gun butts or other hard objects. A few detained persons alleged that they had been beaten while handcuffed and their head covered with a bag. In two cases, it was alleged that police officers at Bar Police Station had put a bullet-proof vest on the person concerned and hit him with a baseball bat. Two allegations were also heard of a gun being placed in the detained person's mouth. The ill-treatment alleged was on occasion of such severity that it could be considered to amount to torture. Further, several persons gave accounts of verbal abuse and threats to use physical force in order to make them confess to a crime or provide information." Further: "In several cases, the delegation observed physical marks or found medical evidence in the documentation consulted at the prison establishments visited consistent with the allegations made of ill-treatment by the police."

The Committee warned the Government about inappropriate "repeated" and "persistent" attempts of civil servants to mislead delegation of the Committee: "Attempts to mislead a CPT delegation are not in conformity with the principle of co-operation laid down in Article 3 of the Convention and inevitably leave a poor impression when they are discovered. **The CPT requests the Montenegrin authorities to ensure that such situations are not encountered during future visits.**" (Page 7).

Regarding most outstanding, to date unprocessed cases of abuse in the state institutions (cases "Eagles' flight", Spuz Prison 1 September 2005, and Komanski most):

" 22. The CPT's delegation examined in detail the investigative and other procedural actions in response to information indicative of ill-treatment during two large-scale police operations in recent years: the police intervention performed on 1 September 2005 at the Remand Prison in Podgorica, and the "anti-terrorist" raid carried out on 9 September 2006 in the suburbs of Podgorica against a group of people of Albanian origin suspected of preparing an illegal obstruction of the parliamentary elections (known as the "Eagles' Flight" operation)...

23. The police intervention in the Remand Prison was carried out in the context of a search requested by the Prosecutor's Office and authorised by the Higher Court of Podgorica, within the framework of the investigation into the murder of a high-ranking police officer. The warrant specified that the organisation of the search had been entrusted to the Head of Podgorica Police Directorate (Security Centre) and specified that it should be executed with due respect for the rights of

inmates. According to the documentation, on 1 September 2005 at 4.20 a.m., some 80-100 police officers entered 9 cells of the establishment. Despite a decision taken at an earlier meeting between the Deputy Minister of the Interior and the penitentiary authorities, the operation was carried out without prison staff being allowed to monitor the actions of the police. After the intervention, 31 prisoners alleged that they had been subjected to physical force (i.e. beaten inside and outside their cells by masked police officers wearing black uniforms). There were no reports of resistance from inmates that would justify the use of force by the police officers deployed. On 5 September 2005, a medical commission appointed by the Government confirmed that 18 prisoners had sustained injuries...

... Since the end of 2007, no further investigative activities have been carried out and the case remains pending before the court. It is noteworthy that the investigative activities have omitted to question the penitentiary authorities, staff working at the remand prison and all prisoners (both those who were injured and those who had witnessed the intervention). Neither have the necessary steps been taken to seize the internal orders related to the organization of the intervention and to question senior officials from the Ministry of the Interior who had been involved in its planning, as well as the police officers who drew up the minutes of the search and subsequent reconstruction of events. As a result, the investigation has failed to identify the officials responsible for the organization and execution of the operation.

24. The “anti-terrorist” operation known as “Eagles’ Flight” involved 93 police officers of different subdivisions of the Ministry of the Interior, including special forces and Podgorica Police Directorate (Security Centre). During the operation, several houses in the suburbs of Tuzi and Malesija of Podgorica were searched and 14 persons were apprehended.³ The persons concerned alleged that during the operation, they and members of their families had been hit with truncheons and subjected to verbal abuse with xenophobic connotations. Allegations of physical ill-treatment, with the aim of extracting confessions, were also made concerning the period of police custody at Podgorica Police Directorate and other police stations (e.g. Cetinje) to which the persons concerned were subsequently transferred. Further, it was alleged that detained persons had been slapped, punched and kept in a painful position at the holding facilities of the Higher Court of Podgorica and while being transported for investigative activities on 14/15 September 2006...

26. The delegation’s examination of the two above-mentioned cases suggests that they have failed to meet the requirements of an “effective” investigation as described in paragraph 21. Firstly, the investigations do not comply with the criteria of thoroughness and comprehensiveness, as is clear from the failure to carry out an identification of those implicated, to question all victims of alleged ill-treatment and witnesses, and to give due weight to medical findings consistent with allegations of ill-treatment. Secondly, the investigations were not

³ Although some documents examined by the delegation referred to 14 apprehended suspects, other sources suggested a different number (17), and the Special Prosecutor for Organized Crime mentioned 18 suspects and 10 defendants.

initiated promptly and lacked expeditiousness. Thirdly, current arrangements for investigation at the behest of the Prosecutor's Office of possible ill-treatment by the police do not always ensure an adequate level of independence (both institutional and practical).⁴ Fourthly, the level of engagement of the alleged victims and their lawyers raise concerns as regards meeting the requirement of public scrutiny over investigations and procedural actions.

In the light of the above, **the CPT recommends that immediate steps be taken to ensure that all investigations into cases involving allegations of ill-treatment fully meet the criteria of an "effective" investigation as established by the European Court of Human Rights. The Committee would also like to be informed of the outcome of the two cases referred to in paragraphs 23 and 24.**

Further, the Committee invites the Montenegrin authorities to take steps to provide information to the public on the outcome of investigations into complaints of ill-treatment by the police, with a view to avoiding any perception of impunity.

HUMAN RIGHTS ACTION:

In the Government's published responses to the Committee of 11 March 2010 there is no response "on the outcome of two cases referred to in paragraph 23 and 24". HRA is familiar with the fact that persons who have pressed charges for abuse in the action "Eagles' flight" in the meantime also submitted applications to the European Court of Human Rights. Regarding the investigation of the beating of a detainee in ZIKS Spuz 1 September 2005, we know that the investigation was conducted against only one person for criminal offence "Negligence at work". We have no information yet on how the investigation was ended and if anyone in any way has been punished for that case.

And once more on inhumane treatment of residents in Komanski most, never to be forgotten or repeated:

"At the time of the visit, residents' living conditions were appalling. Ward B was accommodating 67 residents distributed into 12 dormitories. In the totally bare and malodorous rooms, residents (some of whom were physically handicapped or blind as well as mentally disabled) were seen to lie alone, occasionally with their heads covered with a blanket, some naked, with flies crawling on them. In a locked "baby room", the delegation saw 5 bedridden residents, aged between 3 and 19, lying in cots. There was also a locked dayroom where about 25 residents (men, women and children together) were left wandering alone. Further, in an unstaffed and locked part of the ward where residents appeared to be left alone, the delegation found a dayroom in which 7 residents were fixated to furniture."

"The level of hygiene, particularly on Ward B, holding the more vulnerable and challenging residents, did not befit a care institution. In some of the dormitories,

⁴ Pursuant to Section 230 of the CCP, the collection of information and evidence in the course of the initial investigation is entrusted to the police.

there was urine and faeces on the floor, walls and bedding. Furthermore, the establishment was infested with mice.”

127. The low staffing levels, combined with a lack of alternative strategies and material and regime provision, resulted in a considerable reliance on the use of physical restraint. On Ward B, the delegation found, in an unstaffed and locked area, patients fixated to beds or other furniture, mostly with torn strips of cloth but also by chains and padlocks; one of them was sitting on a bench completely naked. **The CPT must stress that chaining residents is totally unacceptable and could well be considered as amounting to inhuman and degrading treatment, in addition to being potentially physically harmful...** The delegation also found, behind the sanitary facilities on Ward B, in a room whose door had been tied using a strip of cloth, a woman lying on a bed under a blanket. The staff present told the delegation that the resident had been placed in isolation conditions because she had attempted to abscond. The room was entirely unsuited for use as a seclusion room and there was no supervision of the resident. **The CPT recommends that steps be taken to ensure that this room is never again used for such a purpose. Moreover, the Committee wishes to stress that seclusion should never be used as a punishment vis-à-vis mentally disabled persons...**”

Tea Gorjanc Prelevic, LL.M., Executive Director of NGO Human Rights Action

HRA press release on publication of CPT Report:

<http://www.hraction.org/?p=398>

Reaction of the Government of Montenegro Public Relations Bureau:

<http://www.gov.me/vijesti/99297/Reagovanje-Biroa-za-odnose-s-javnoscu-Vlade-CG-na-tvdnje-Akcije-za-ljudska-prava.html>