

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary Detention

REFERENCE:
AL MNE 2/2020

20 August 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Working Group on Arbitrary Detention, pursuant to Human Rights Council resolutions 34/19 and 42/22.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning [REDACTED] [REDACTED] subjected to alleged arbitrary arrest, ill-treatment and forced to make false confessions regarding their complicity in an alleged bombing attack on the "Grand" bar and house of a state official in 2015 in Podgorica.

According to the information received:

In 2015, there was a reported bombing in Podgorica of the "Grand" bar and house of a former State Security Agency officer and current adviser with the Police Authority. The police alleged that [REDACTED] was driving the car, [REDACTED] planted explosives, and [REDACTED], currently outside of Montenegro, organized it. While [REDACTED] was treated as the key witness in the case.

Case of [REDACTED]

On 25 May 2020, [REDACTED] was arrested at his place of employment, [REDACTED]. He was informed that it was a routine operation and was asked to go to the station with the police for further questioning. While at the station, [REDACTED] was informed that the police received a request from the Police Headquarters in Podgorica for him to provide more information, and that he would be transported to Lapcici, a village above Budva, where he will be picked up by police and transferred to the Police Headquarters. When they arrived at the transfer point, a black car with tinted windows arrived and four officers emerged wearing bullet proof vests branded with "criminalistic police", carrying short weapons, and balaclavas on their heads, so they only had eye slits. They cuffed [REDACTED] hands at the back and put a black sack over his head, pushed him inside the car, cursed at him and told him to put his head down and not to speak. After sometime, one of the officers opened the car window and fired 4 to 5 rounds in the air towards to the hills. Another officer cocked a gun and pointed it at [REDACTED] head, one officer asked what

was his last music wish, speaking to each other, one officer told the driver to, “*turn somewhere out of the way*” to kill him.

Upon arrival in Podgorica, the officers brought him into a room and told him to sit facing the wall. ██████ asked the officers if he could call a lawyer, and one of the officers replied, “*Get the lawyer out of your head, you have no rights. We have all the powers, we can do what we want, we are your lawyers, prosecutor and judge, there is no other lawyer here*”. He was then left in the room alone and he attempted to call his father on his cell phone unsuccessfully before the officers re-entered the room. His father sent a follow up text message saying he did not hear him and the officers told him that, “*you are now considered as disappeared*”. The officers brought large speakers into the room on which they played music at the highest volume to drown out the noise, two of the officers wearing boxing gloves started punching him on his head. He was asked to lay on his back and straighten his legs, officers sat on his knees and subjected him to electro-shocks.

The officers then took him into another room where there were two police inspectors, and where he was questioned about the 2015 events. However ██████ informed that he was in prison in Germany and that he did not know anything about it. The four other officers re-entered the room and took him to another part of the police headquarters, where they continued to physically assault him, punching and slapping him. Furthermore, they subjected ██████ to ill-treatment including through ██████ and repeated choking and suffocation with a plastic bag over his head. During this time the officer told him that if he did not confirm that both ██████ and ██████ had set up an explosive device in Podgorica, they would throw him into the sea to drown and that he was neither the first nor the last one. One officer threatened to urinate on him if he did not confirm the information he was asked. Another wrote a goodbye letter on his behalf to his family, which the police told him they would send to his family after his death. He was asked to repeatedly read and memorize a written statement given to him and was then forced to sign the statement before being taken to the prosecutor. He was told he would have to repeat everything before the prosecutor and threaten that if he did not, he would be subjected to further ill-treatment and that his girlfriend would also suffer the same fate at Čemovsko polje. As a result, ██████ made the same false statement to the prosecutor the following day on 26 May 2020 ██████. The police officers threatened ██████ before he was released, not to report them because they would come to Tivat and kill him.

Case of ██████

██████ is a 37 years old man with “inorganic psychosis” residing at the mental hospital in Kotor since 26 November 2019. From 2012, he has been hospitalized 11 times in the same hospital due to his mental health condition.

On 26 May 2020 at 6 am, four police officers came and took him away without giving notice to the medical staff or informing the family. He was told that he was going to give a statement and that he would be returned to the hospital. The hospitals release papers allegedly falsely state 29 May 2020 as the date of discharge. His family called to check on 26 May 2020, the same day he was taken by the police and a nurse informed that the hospital director ordered them to surrender ██████████ to the officers. The day prior, officers went to his home where his mother lived, to inquire about ██████████ whereabouts. One of the officers showed his badge but no other documents were presented upon entry.

His father reported to the Podgorica Security Centre to see his son, ██████████, extremely worried about his health and to inquire about the arrest. An officer told him that ██████████ was comfortable and safe but refused to permit him to see him. His father asked for his attorney to see him, but the officer stated that he does not need a lawyer because he was providing a statement as a citizen not as a suspect of any crime. At around 1pm, after talking to the head of the “criminalistic police”, he was informed that the police have some indications that ██████████ had committed a criminal offence. During this conversation, his father warned that ██████████ was overdue to take his medication which he needs to function and that the validity of the statement or any polygraph test would not be reliable if he is not in the right mental state. Another officer present at this meeting told him that his son was not naïve and that he had previously been involved in a stabbing in Marsej. The officer insisted that ██████████ did not need a lawyer and that the officers attending to him would be appropriate and professional. Later that afternoon the lawyer was granted power of attorney of ██████████ but the police denied him access stating that ██████████ refused to see the lawyer. Consequently, ██████████ was prevented from having any contact with his attorney throughout his stay at the Podgorica Security Centre.

It is reported that ██████████ was subjected to ill-treatment: a protective vest was tied to his torso and then beaten with a baseball bat, he was struck on his foot soles, ██████████ he was insulted and threatened by the officers saying that, “*we will heal you*”, a cocked gun was placed to his head, he was forced to walk around the room for four hours, an officer took photos on his phone and threatened to, “*send to everyone so they can see what a slob you are*”. ██████████ was made to sign statements which the officers gave to him of two crimes, one of which is alleged to be fictitious.

The officers threatened him not to ask for a lawyer or report the ill-treatment. That evening ██████████ was permitted to call his mother at around 7pm and informed that he was being taken to the prosecutor and that he would be returned to Podgorica Security Centre, all the while during the call there were audible voices in the background telling him not to accept a lawyer’s visit. He was then given a sandwich and redbull before seeing the prosecutor, where he repeated the false statement.

██████████ family filed a complaint to the state prosecutor alleging his torture and reporting the false confession he was forced to make under duress.

██████████ was charged with four criminal offenses involving planting explosives at two establishments (“Unlawful Handling of Explosive and Flammable Substances” under Article 355 in conjunction with “Causing General Danger” under Article 327 of Montenegrin Criminal Code, on two occasions).

On 24 June 2020, the state prosecutor gave an order for his medical documentation to be examined by an expert witness. However, ██████████ was not examined in person only his medical records were considered. The family is unaware if ██████████ is receiving treatment in prison where he is being held. On 21 July 2020, the state prosecutors office denied that ██████████ made any complaints alleging torture.

Case of ██████████

██████████ from Podgorica was the original suspect that both ██████████ and ██████████ were forced to testify against.

On 28 May 2020, ██████████ was arrested and detained at the Podgorica Police Headquarters. He was also subjected to ill-treatment by the police while in custody before being taken to the state prosecutor for questioning later on that day ██████████

When ██████████ appeared in court to be charged, the judge found that he was in prison at the time of both incidents and dismissed him. As such, the State Prosecutor reported that all criminal charges against him had been dropped. He was then released from detention.

While we do not wish to prejudge the accuracy of these allegations, we express grave concerns at the alleged arbitrary arrest and detention, violation of their rights to liberty and security, use of coercive methods of questioning and interrogation with intimidation, coercion and mistreatment which may amount to cruel, inhuman or degrading treatment or punishment of the above mentioned persons while in custody. Should these allegations be confirmed, they would constitute violations of articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR), as well as articles 2, 15 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). We remind your Excellency’s Government of Montenegro’s obligations to uphold the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment under all circumstance codified in both the ICCPR and CAT, since their ratification on 23 October 2006.

We would like to express our serious concern that ██████████, a person with psychosocial disabilities, was withdrawn from a mental health facility and transferred to

police custody without a medical examination, denied legal counsel and procedural accommodation, subjected to ill-treatment and deprived of his medicines and psychosocial support. These allegations are in violation of the rights of persons with disabilities protected in the Convention on Rights of Persons with Disabilities, ratified by Montenegro on 2 November 2009, in particular articles 12, 13, 14, 15, 17 and 25, requiring States to ensure that when persons with disabilities who are deprived of their liberty through any process, are entitled to guarantees in accordance with international human rights law, including safeguards to prevent abuse, provision of reasonable and procedural accommodation, access to justice, liberty and security, protecting the integrity of the person, the right to health, and the right not be subjected to torture and other ill-treatment, on an equal basis with others.

We wish to remind your Excellency's Government that law enforcement officials are obliged to respect and protect the inherent dignity and physical and mental integrity of all persons under questioning, including suspects, witnesses and victims (Human Rights Council resolution 31/31). Thus serious concerns arise when legal systems place a premium on confessions to establish criminal responsibility. The mistreatment during investigations [REDACTED] and [REDACTED] which illicit confession is a violation of article 15 of the CAT. We wish to reiterate that interrogation rules, instructions, methods and practices should be kept under systematic review with a view to preventing cases of torture and other ill-treatment (CAT, art. 11) and recall that counsel must be present during all interview interrogations, in their entirety (A/68/295, para 44).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the arrest of all the above mentioned individuals and continued detention of [REDACTED].
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to consistent allegations of torture and/or cruel, inhuman or degrading treatment of all the above mentioned individuals in the custody of "Criminalistic" Officers at Podgorica Police Headquarters. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of Montenegro.

4. Please indicate if there are guidelines or training provided to the prison authorities in relation to persons with disabilities and if any safeguards and protection measures against sexual harassment, torture and other cruel, inhuman or degrading treatment or punishment have been put in place especially in places of detention.
5. Please provide detailed information about existing laws and procedures in force in Montenegro aimed at ensuring that statements obtained under torture or other ill-treatment from persons accused of criminal offences are not used in court as evidence against them. In this connection, please provide detailed information about the steps that judges are required to take by law when they hear allegations by defendants that they were tortured? How in practice these laws and procedures are implemented?

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR), which codifies the right to not be subjected to arbitrary arrest or detention and the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as an international norm of *jus cogens*, is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR), as well as articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

According to article 9 of the ICCPR, anyone deprived of liberty shall be immediately informed about the reasons for the arrest, promptly notified about the charges and brought before a judge. Anyone arrested shall have right to challenge the legality of the detention, which requires effective access to meaningful legal assistance. Article 10 requires for all persons under any form of deprivation of liberty to be treated with humanity and with respect for the inherent dignity of the human person. These safeguards against arbitrary detention are reinforced by article 14, which establishes *inter alia* the right to be tried by an independent and impartial tribunal and to be presumed innocent, while prohibits compelling a defendant to testify against himself or to confess guilt.

We would like to draw the attention of your Excellency's Government to article 15 of the CAT, which provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." We also recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment."

We would like your Excellency's Government to take note in respect of allegations of torture, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture" and "(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation.

With regards to the excessive use of force, we recall the right to liberty and security of persons in accordance to article 9 of the ICCPR, which “protects individuals against intentional infliction of bodily or mental injury of whether the victim is detained or not” (CCPR/C/GC/35, para 9). We would like to draw the attention of your Excellency’s Government to Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “(l)aw enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.” Furthermore, Principle 16 provides that, “Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention [...]” (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). We would also like to recall the Special Rapporteur on Torture’s report to the Human Rights Council, in which he stressed that “rape and other serious acts of sexual violence by officials in contexts of detention or control not only amount to torture or ill-treatment, but also constitute a particular egregious form of it, due to the stigmatization they carry” (A/HRC/7/3, para. 69).