

Country File

MONTENEGRO



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Region	Europe
Legal system	Civil Law
UNCAT Ratification/ Accession (a)/ Succession (d)	23 October 2006 (d)
Relevant Laws	<ul style="list-style-type: none"> • Constitution of 19 October 2007 • Criminal Code of 2003 (Official Gazette No. 70/2003, 23 December 2003, and Correction No. 13/2004) • Criminal Procedural Code of 2003 (Official Gazette No. 79/2003 and Correction no. 7/2004)
Relevant Articles	<ul style="list-style-type: none"> • Prohibition of Torture: Article 28 of the Constitution • Definition of Torture: • Penalties: <ol style="list-style-type: none"> 1. Article 166 and 167 of the Criminal Code 2. Article 427 to 430 of the Criminal Code • Others: <ol style="list-style-type: none"> 1. Extradition: Article 44 of the Constitution 2. Exclusion of Evidence: Article 12 and Article 98 of the Criminal Procedural Code 3. Participation in torture: Articles 427 to 431 of the Criminal Code
Languages Available	<ul style="list-style-type: none"> • Montenegrin (official language) • English
Other Relevant Information	Refer to http://www.analytica.me/index.html and http://www.legislationline.org/documents/section/criminal-codes for full texts of the legislations.

Relevant Articles – MONTENEGRO

MONTENEGRIN

Ustav Crne Gore, 19 October 2007

Clan 28 Dostojanstvo i nepovredivost licnosti

Jemci se dostojanstvo i sigurnost covjeka.

Jemci se nepovredivost fizickog i psihickog integriteta covjeka, njegove privatnosti i licnih prava.

Niko ne smije biti podvrgnut mucenju ili necovjecnom ili ponižavajućem postupanju.

Niko se ne smije držati u ropstvu ili ropskom položaju

Clan 44 Pravo azila

Stranac koji osnovano strahuje od progona zbog svoje rase, jezika, vjere ili ripadnosti nekoj naciji ili grupi ili zbog olitickih uvjerenja može da traži azil u rnoj Gori.

Stranac se ne može protjerati iz rne Gore tamo gdje mu, zbog rase, jere, jezika ili nacionalne pripadnosti, rijeti osuda na smrtnu kaznu, mucenje, eljudsko ponižavanje, progon ili ozbiljno kršenje prava koja jemci ovaj stav.

Stranac se može protjerati iz Crne Gore samo na osnovu odluke nadležnog organa i u zakonom propisanom postupku.

Krivični Zakonik, 23 December 2003

Clan 166 Iznudivanje iskaza

- (1) Službeno lice koje u vršenju službe upotrijebi silu ili prijetnju ili drugo nedopušteno sredstvo ili nedopušten način u namjeri da iznudi iskaz ili neku drugu izjavu od okrivljenog, svjedoka, vještaka ili drugog lica, kaznice se zatvorom od tri mjeseca do pet godina.
- (2) Ako je iznudivanje iskaza ili izjave praceno teškim nasiljem ili ako su usljed iznudenog iskaza nastupile narocito teške posljedice za okrivljenog u krivicnom postupku, ucinilac ce se kazniti zatvorom od dvije do deset godina.

Clan 167 Mucenje i Zlostavljanje

- (1) Ko primjenom sile, prijetnje ili na drugi nedozvoljeni način, drugome nanese eliki bol ili teške patnje s ciljem da od njega ili treceg lica dobije priznanje, iskaz ili drugo obavještenje ili da se on ili neko trece lice zastraši ili nezakonito kazni, ili to ucini iz druge pobude zasnovane na

bilo kakvom obliku diskriminacije, kaznice se zatvorom od šest mjeseci do pet godina

- (2) Ko drugome nanese velike patnje s ciljem da se od njega ili od treceg lica dobije obavještenje ili priznanje ili da se on ili neko trece lice zastraši ili da se na njih izvrši pritisak ili to ucini iz druge pobude zasnovane na bilo kakvom obliku diskriminacije, kaznice se zatvorom do tri godine.
- (3) Ako djelo iz st. 1 i 2 ovog clana ucini službeno lice u vršenju službe kaznice se za djelo iz stava 1 zatvorom od jedne do osam godina, a za djelo iz stava 2 zatvorom od tri mjeseca do tri godine.

Clan 427 Zlocin protiv covjecnosti

Ko kršeci pravila medunarodnog prava, u okviru šireg ili sistematskog napada uperenog protiv civilnog stanovništva, naredi: vršenje ubistava; stavljanje stanovništva ili jednog njegovog dijela u takve životne uslove koji vode njihovom potpunom ili djelimicnom istrebljenju; porobljavanje; prinudno preseljavanje; mucenje; silovanje; prinudavanje na prostituciju; prisiljavanje na trudnocu ili sterilisanje radi promjene etnickog sastava stanovništva; proganjanje ili protjerivanje na politickoj, vjerskoj, rasnoj, nacionalnoj, etnickoj, kulturnoj, polnoj ili kakvoj drugoj osnovi; zatvaranje ili otmicu lica bez davanja informacija o tome kako bi im se uskratila pravna zaštita; ugnjetavanje rasne grupe ili uspostavljanje dominacije jedne takve grupe nad drugom; ili druge slicne nehumane postupke kojima se namjerno prouzrokuju teške patnje ili ozbiljno ugrožava zdravlje ili ko izvrši neko od navedenih djela, kaznice se zatvorom najmanje pet godina ili kaznom zatvora od trideset godina.

Clan 428 Ratni zlocin protiv civilnog stanovništva

- (1) Ko kršeci pravila medunarodnog prava za vrijeme rata, oružanog sukoba ili okupacije naredi da se izvrši napad na civilno stanovništvo, naselje, pojedina civilna lica, lica onesposobljena za borbu ili na pripadnike ili objekte humanitarnih organizacija ili mirovnih misija; napad bez izbora cilja kojima se pogada civilno stanovništvo ili civilni objekti koji su pod posebnom zaštitom medunarodnog prava; napad na vojne ciljeve za koji se znalo da ce prouzrokovati stradanje civilnog stanovništva ili nanošenje štete civilnim objektima koje je u ociglednoj nesrazmjeri sa očekivanim vojnim ucinkom; da se prema civilnom stanovništvu vrše tjelesne povrede, mucenja, necovjecnja postupanja, biološki, medicinski ili drugi naucni eksperimenti, uzimanje tkiva ili organa radi transplatacije ili da se vrše druge radnje kojima se narušava zdravlje ili nanose velike patnje ili naredi raseljavanje ili preseljavanje ili prisilno odnarodnjavanje ili prevodenje u drugu vjeru; prisiljavanje na prostituciju ili silovanje; primjenjivanje mjera zastrašivanja i terora, uzimanje talaca, kolektivnokažnjavanje, protivpravna lišavanja slobode i zatvaranja; lišavanje prava napravnino i nepristrasno sudenje; proglašenje prava i radnji državljananeprijateljske strane zabranjenim, suspendovanim ili nedopuštenim u sudskom postupku; prisiljavanje na službu u oružanim snagama neprijateljske sile ili u njenoj obavještajnoj

službi ili administraciji; prisiljavanje na službu u oružanim snagama lica mladeg od sedamnaest godina; prisiljavanje na prinudni rad; izgladnjavanje stanovništva; protivpravno oduzimanje, prisvajanje ili uništavanje imovine stranovništva u velikim razmjerama koje nije opravdano vojnim potrebama; uzimanje protivpravne i nesrazmjerno velike kontribucije i rekvizicije; smanjenje vrijednosti domaceg novca ili protivpravno izdavanje novca ili ko izvrši neko od navedenih djela, kaznice se zatvorom najmanje pet godina.

- (2) Kaznom iz stava 1 ovog clana kaznice se i ko, kršeci pravila medunarodnog prava za vrijeme rata, oružanog sukoba ili okupacije, naredi: da se izvrši napad na objekte posebno zašticene medunarodnim pravom i objekte i postrojenja sa opasnom snagom kao što su brane, nasipi i nuklearne elektrane; da se gadaju civilni objekti koji su pod posebnom zaštitom medunarodnog prava, nebranjena mjesta i demilitarizovane zone; dugotrajno i velikih razmjera oštećenje životne sredine koje može da šteti zdravlju ili opstanku stanovništva ili ko izvrši neko od navedenih djela.
- (3) Ko za vrijeme rata, oružanog sukoba ili okupacije naredi da se prema civilnom stanovništvu vrše ubistva ili ko takvo djelo izvrši, kaznice se zatvorom najmanje deset godina ili kaznom zatvora od cetrdeset godina.
- (4) Ko, kršeci pravila medunarodnog prava za vrijeme rata, oružanog sukoba ili okupacije, kao okupator, naredi ili izvrši preseljenje djelova svog civilnog stanovništva na okupiranu teritoriju, kaznice se zatvorom najmanje pet godina.
- (5) Ko prijeti izvršenjem jednog ili više djela iz st. 1 i 2 ovog clana, kaznice se zatvorom od šest mjeseci do pet godina.

Clan 429 Ratni zlocin protiv ranjenika i bolesnika

- (1) Ko, kršeci pravila medunarodnog prava za vrijeme rata ili oružanog sukoba, naredi da se prema ranjenicima, bolesnicima, brodolomnicima ili sanitetskom ili vjerskom osoblju vrše tjelesne povrede, mucenja, necovjecna postupanja, biološki, medicinski ili drugi naucni eksperimenti, uzimanje tkiva ili organa radi transplatacije ili druge radnje kojima se narušava zdravlje ili nanose velike patnje ili naredi protivzakonito uništavanje ili prisvajanje u velikim razmjerama materijala, sredstava sanitetskog transporta i zaliha sanitetskih ustanova ili jedinica koje nije opravdano vojnim potrebama ili ko izvrši neko od navedenih djela, kaznice se zatvorom najmanje pet godina.
- (2) Ko za vrijeme rata, oružanog sukoba ili okupacije naredi da se prema civilnom stanovništvu vrše ubistva ili ko takvo djelo izvrši, kaznice se zatvorom najmanje deset godina ili kaznom zatvora od cetrdeset godina.

Clan 430 Ratni zlocin protiv ratnih zarobljenika

- (1) Ko, kršeci pravila medunarodnog prava, naredi da se prema ratnim zarobljenicima vrše tjelesne povrede, mucenja, necovjecna postupanja, biološki, medicinski ili drugi naucni eksperimenti, uzimanje tkiva ili organa radi transplatacije ili da se vrše druge radnje kojima se narušava

zdravlje ili nanose velike patnje ili naredi prisiljavanje na vršenje službe u oružanim snagama neprijatelja ili lišavanje prava na pravilno i nepristrasno sudenje; ili ko izvrši neko od navedenih djela, kaznice se zatvorom najmanje pet godina.

- (2) Ko za vrijeme rata, oružanog sukoba ili okupacije naredi da se prema civilnom stanovništvu vrše ubistva ili ko takvo djelo izvrši, kaznice se zatvorom najmanje deset godina ili kaznom zatvora od cetrdeset godina.

Clan 431 Organizovanje i podsticanje na izvršenje genocida i ratnih zlocina

- (1) Ko se sa drugim dogovori da izvrši neko od krivичnih djela iz cl. 426 do 430 ovog zakonika, kaznice se zatvorom od tri mjeseca do tri godine.
- (2) Ko organizuje grupu radi vršenja krivичnih djela iz stava 1 ovog clana, kaznice se zatvorom od pet do petnaest godina.
- (3) Ko postane pripadnik grupe iz stava 1 ovog clana, kaznice se zatvorom od jedne do osam godina.
- (4) Ucinilac djela iz st. 1 i 3 ovog clana koji otkrije dogovor ili grupu prije nego što je u njenom sastavu ili za nju ucinio krivično djelo, odnosno ucinilac djela iz stava 2 ovog clana, koji spriječi izvršenje djela iz stava 1 ovog clana može se blaže kazniti.
- (5) Ko poziva ili podstiče na izvršenje krivičnih djela iz cl. 426 do 430 ovog zakonika, kaznice se zatvorom od jedne do deset godina.

Zakoniko Krivicnom Postupku

Clan 12 Zabrana primjene nasilja i iznudivanja priznanja

- (1) Zabranjeno je i kažnjivo nasilje nad licem lišenim slobode i licem kojem je sloboda ograničena, kao i iznudivanje priznanja ili kakve druge izjave od okrivljenog ili drugog lica koje ucestvuje u postupku.
- (2) Na priznanju ili kakvoj drugoj izjavi pribavljenoj iznudivanjem, torturom ili neco-vjecnim postupanjem ne može se zasnovati sudska odluka.

Clan 98 Svjedenja na kojima ne može biti zasnovana sudska odluka

Ako je kao svjedok saslušano lice koje se ne može saslušati kao svjedok (clan 96) ili lice koje ne mora svjedočiti (clan 97), a nije na to upozoreno ili se nije izricito odreklo tog prava, ili ako upozorenje i odricanje nije ubilježeno u zapisnik, ili ako je saslušan maloljetnik koji ne može shvatiti znacaj prava da ne mora svjedočiti, ili ako je iskaz svjedoka dobijen mucenjem ili drugim nacinom zlostavljanja (clan 134 stav 4), na takvom iskazu svjedoka ne može se zasnivati sudska odluka.

ENGLISH (Translation)

Constitution of 19 October 2007

Article 28 Dignity and inviolability of persona

The dignity and security of a man shall be guaranteed.

The inviolability of the physical and mental integrity of a man, and privacy and individual rights thereof shall be guaranteed.

No one can be subjected to torture or inhuman or degrading treatment.

No one can be kept in slavery or servile position.

Article 44 Right to asylum

A foreign national reasonably fearing from persecution on the grounds of his/her race, language, religion or association with a nation or a group or due to own political beliefs may request asylum in Montenegro.

A foreign national shall not be expelled from Montenegro to where due to his race, religion, language or association with a nation he/she is threatened with death sentence, torture, inhuman degradation, persecution or serious violation of rights guaranteed by this Constitution.

A foreign national may be expelled from Montenegro solely on the basis of a court decision and in a procedure provided for by the law.

Criminal Code of 2003 (Official Gazette No. 70/2003, 23 December 2003, and Correction, no. 13/2004)

Article 166 Extortion of confession or statement

- (1) A person acting in an official capacity who, during performance of his/her duties, uses force or threat or other inadmissible means or inadmissible manner with the intention to extort a confession or another statement from an accused, a witness, an expert or other person shall be sentenced to three months to five years of imprisonment.
- (2) Should the extortion of confession or statement be accompanied by heavy violence, or should extremely serious consequences occur for an accused in the criminal procedure due to extorted confession, the perpetrator shall be sentenced to two to ten years of imprisonment.

Article 167 Torture and Maltreatment*

- (1) Anyone who, by using force, threats or causes great pain or heavy suffering to another person in some other illegal way with the aim to extort a confession, statement or other information from them or from a third party, or with the aim to intimidate or illegally punish them or a third party, or who does it with some other motive based on any form of discrimination, shall be sentenced to imprisonment from six months to five years".

- (2) Anyone who maltreats others or treats them in the manner that is humiliating and degrading, shall be sentenced to a fine or imprisonment not exceeding one year.
- (3) Should the act referred to in paragraphs 1 and 2 of this Article be committed by a person acting in official capacity during performance of official duty, that person shall be punished by one to eight years of imprisonment for the act referred to in paragraph 1, and by three months to three years of imprisonment for the act referred to in paragraph 2".

Article 427 Crimes against humanity

Anyone who in breaching of the rules of international law, as a part of a wider or systematic attack against civil population, orders: murder, placing entire population or its part under such living conditions so as to bring about their complete or partial extermination; enslavement; coercive displacement; torture; rape; coercion to prostitution; coercion to pregnancy or sterilization with a view to changing the ethnic composition of population; persecution or expulsion on political, religious, racial, national, ethnic, cultural, sexual or any other grounds; detention or abduction of persons without disclosing information on it so as to deprive them of legal assistance; oppression of a racial group or establishment of domination of one such group over another; or any other similar inhuman acts intended to cause serious suffering or seriously harm health; or who commits one of the crimes listed above, shall be liable to imprisonment for a minimum term of five years or a prison sentence of forty years.

Article 428 War crimes against civil population

- (1) Anyone who in breaching of the rules of international law during a war, armed conflict or occupation orders an attack upon civil population, settlement, individual civilians, persons incapacitated for combat or members or facilities of humanitarian organizations or peace missions; an attack without a specific target which strikes civil population or civil facilities under special protection of international law; an attack upon military targets that was expected to cause suffering of civil population or damage to civil facilities in obvious disproportion to expected military effect; orders action against civil population so as to physically injure, torture, inhuman treatment, use in biological, medical and other research experiments or take tissue or organs for transplantation, or to perform other acts causing harm to health or extensive suffering, or order displacement or movement or forced change of nationality or religion; coercion to prostitution or rape; taking of measures of intimidation and terror, taking of hostages, collective punishment, illegal capture and detention; deprivation of right to a just and impartial trial; proclamation of rights and acts of nationals of the opposite party forbidden, suspended or unallowed in court procedure; compelling to service in armed forces of an enemy force or its intelligence service or administration; forced service in armed forces of persons under the age of seventeen; forced

labour; starving of population; illegal confiscation, usurpation or destruction of property of civilian population to the extent not justified by military needs; taking an unlawful and excessive contribution and requisition; devaluation of local currency or unlawful issuance of currency; or who commits some of the crimes mentioned above, shall be liable to imprisonment for a minimum term of five years.

- (2) Punishment referred to in Paragraph 1 of this Article shall also be imposed on a person who in violation of international law during a war, armed conflict or occupation orders: an attack upon facilities under special protection of international law or facilities and installations of dangerous power such as dams, embankments, and nuclear power plants; strikes at civil facilities under special protection of international law, places without defence and demilitarised zones; long term and extensive damage to environment that can cause harm to health of population or its survival; or who commits some of the crimes mentioned above.
- (3) Anyone who during a war, armed conflict or occupation orders murder against civil population or who commits such a crime, shall be liable to imprisonment for a minimum term of ten years or a prison sentence of forty years.
- (4) Anyone who in violation of international law during a war, armed conflict or occupation, as an occupying force, orders or commits displacement of part of its own civil population to the occupied territory, shall be liable to imprisonment for a minimum term of five years.
- (5) Anyone who threatens to commit one or more crimes referred to in Paragraphs 1 and 2 of this Article, shall be liable to imprisonment for a term of six months to five years.

Article 429 War crimes against the wounded and sick

- (1) Anyone who in breaching the rules of international law during a war or armed conflict orders against the wounded, sick, shipwrecked or sanitary or religious service staff, infliction of bodily injuries, torture, inhuman treatment, biological, medical or other research experiment, taking of tissue or body organs for transplantation or other acts causing harm to health or serious suffering inflicts or order unlawful destruction or usurpation of large quantities of material, means of transport for medical purpose and stocks of medical institutions or units that is not justified by military needs or who commits some of the above stated crimes, shall be liable to imprisonment for a minimum term of five years.
- (2) Anyone who during a war, armed conflict or occupation orders murder against civil population or commits such a crime, shall be punished by imprisonment for a minimum term of ten years or a prison sentence of forty years.

Article 430 War crimes against prisoners of war

- (1) Anyone who breaches the rules of international law orders against prisoners of war the infliction of bodily injuries, torture, inhuman treatment, biological, medical or other research experiments, taking of tissues or body organs for transplanted, or commission of other acts so as to harm health and cause serious suffering or orders coercion to service in armed forces of the enemy, deprivation of right to a just and impartial trial or who commits some of the crimes stated above, shall be punished by imprisonment for a minimum term of five years.
- (2) Anyone who during a war, armed conflict, or occupation orders murder against civil population or commits such a crime, shall be liable to imprisonment for a minimum term of ten years or to imprisonment of forty years.

Article 431 Organization and instigation to genocide and war crimes

- (1) Anyone who conspires with another to commit a criminal offence referred to in Articles 426 to 430 of the present Code, shall be punished by imprisonment for a term of three months to three years.
- (2) Anyone who organizes a group so as to commit criminal offences referred to in Paragraph 1 of this Article, shall be punished by imprisonment for a term of five to fifteen years.
- (3) Anyone who becomes a member of the group referred to in Paragraph 1 of this Article, shall be punished by imprisonment for a term of one to eight years.
- (4) The person committing crimes referred to in Paragraphs 1 and 3 of this Article who discloses the conspiracy or group before as its member or for the group he has committed a crime, or a person committing the crime referred to in Paragraph 2 of this Article who prevents the commission of crimes referred to in Paragraph 1 may be liable to a reduced punishment.
- (5) Anyone who calls to or instigates to the commission of criminal offences referred to in Articles 426 to 430 of the present Code, shall be liable to imprisonment for a term of one to ten years.

Criminal Procedural Code of 2003 (Official Gazette No. 79/2003 and Correction no. 7/2004)

Article 12 Prohibition of use of force and extortion of a confession

- (1) The use of force against a person who has been detained or whose freedom has been limited and extortion of a confession or statement from the defendant or any other person participating in the proceedings shall be forbidden and punishable.
- (2) No Court decision shall be based on any confession or other statement obtained by extortion, torture, humiliating and degrading treatment.

Article 98 Testimonies on which the Court decision cannot be based

If a person who may not testify as a witness (Article 96) has testified or if a person who is exempted from the duty of testifying as a witness (Article 97) has testified and was not cautioned thereof or has not expressly waived this right, or if the caution and the waiver were not entered into the records or if a minor with no capacity to understand the meaning of the right to be exempted from testifying has testified or if a witness's testimony was obtained by torture or other means of maltreatment (Article 134, Paragraph 4), the Court decision may not be based on such testimony.