

REPUBLIC OF MONTENEGRO¹

Follow-up - State Reporting Action by Treaty Bodies

CAT, A/64/44 (2009)

IV. FOLLOW UP ON CONCLUDING OBSERVATIONS ON STATES PARTIES REPORTS

53. In this chapter, the Committee updates its findings and activities that follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on follow-up to concluding observations. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated through 15 May 2009, following the Committee's forty-second session.

54. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2009.

55. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2009 on the results of the procedure.

56. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and ill-treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

57. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within

1/ [Ed. Note: On June 3, 2006, the Republic of Montenegro declared independence from Serbia and Montenegro, which is now the Republic of Serbia. The Republic of Montenegro

was admitted to membership in the United Nations on June 28, 2006.]

one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

58. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-second session in May 2009, the Committee has reviewed 81 States for which it has identified follow up recommendations. Of the 67 States parties that were due to have submitted their follow up reports to the Committee by 15 May 2009, 44 had completed this requirement. As of 15 May 2009, 23 States had not yet supplied follow up information that had fallen due. The Rapporteur sends reminders requesting the outstanding information to each of the States whose follow up information was due, but had not yet been submitted, and who had not previously been sent a reminder. The status of the follow-up to concluding observations may be found in the web pages of the Committee (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

59. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report. However, only 4 (Algeria, Estonia, Portugal and Uzbekistan) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. One State party (Montenegro) had already submitted information which was due only in November 2009. While comparatively few States had replied precisely on time, 34 of the 44 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

60. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

61. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she requests the outstanding information.

62. At its thirty eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the

Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow up and also place them on its website (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

63. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

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65. The chart below details, as of 15 May 2009, the end of the Committee's forty-second session, the state of the replies with respect to follow up.

Follow-up procedure to conclusions and recommendations from May 2003 to May 2009

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Forty-first session (November 2008)

State party	Information due in	Information received	Action taken
...			
Montenegro	November 2009	6 April 2009 CAT/C/MNE/CO/1/Add.1	Response under review
...			

...

Chapter IV. Follow-up to concluding observations on States parties' reports

65. In this chapter, the Committee updates its findings and activities that constitute follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the procedure established on follow-up to concluding observations. The follow-up responses by States parties, and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including the Rapporteur's views on the results of this procedure, are presented below. This information is updated through 14 May 2010, the end of the Committee's forty-fourth session.

66. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. In that report and each year thereafter, the Committee has presented information on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003.

67. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. In November 2009 and May 2010, the Rapporteur presented a progress report to the Committee on the results of the procedure.

68. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention.

69. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. In the concluding observations on each State party report, the recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of the concluding observations.

70. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-fourth session in May 2010, the Committee has reviewed 95 reports from States parties for which it has identified follow-up recommendations. It must be noted that periodic reports of Chile, Latvia, Lithuania and New Zealand have been examined twice by the Committee since the establishment of the follow-up procedure. Of the 81 States parties that were due to have submitted their follow-up reports to the Committee by 14 May 2010, 57 had completed this

requirement. As of 14 May 2010, 24 States had not yet supplied follow-up information that had fallen due: Republic of Moldova, Cambodia, Cameroon, Bulgaria, Uganda, Democratic Republic of the Congo, Peru, Togo, Burundi, South Africa, Tajikistan, Luxembourg, Benin, Costa Rica, Indonesia, Zambia, Lithuania (to the 2009 concluding observations), Chad, Chile, Honduras, Israel, New Zealand, Nicaragua and the Philippines.

71. The Rapporteur sends reminders requesting the outstanding information to each of the States for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations may be found in the web pages of the Committee at each of the respective sessions. As of 2010, the Committee has established a separate web page for follow-up (<http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm>).

72. Of the 24 States parties that did not submit any information under the follow-up procedure as of 14 May 2010, non-respondents came from all world regions. While about one-third had reported for the first time, two-thirds were reporting for a second, third or even fourth time.

73. The Rapporteur expresses appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

74. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties which are posted on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website.

75. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

76. Among the Rapporteur's activities in the past year, have been the following: attending the inter-committee meetings in Geneva where follow-up procedures were discussed with members from other treaty bodies, and it was decided to establish a working group on follow-up; addressing the Committee on the Elimination of Discrimination against Women at its August 2009 meeting in New York concerning aspects of the follow-up procedure; assessing responses

from States parties and preparing follow-up letters to countries as warranted and updating the information collected from the follow-up procedure.

77. Additionally, the Rapporteur initiated a study of the Committee's follow-up procedure, beginning with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some preliminary findings, in November 2009 and later in May 2010, and specifically presented charts showing that the number of topics designated for follow-up has substantially increased since the thirty-fifth session. Of the 87 countries examined as of the forty-third session (November 2009), one to three paragraphs were designated for follow-up for 14 States parties, four or five such topics were designated for 38 States parties, and six or more paragraphs were designated for 35 States parties. The Rapporteur drew this trend to the attention of the members of the Committee and it was agreed in May 2010 that, whenever possible, efforts would henceforth be made to limit the number of follow-up items to a maximum of five paragraphs.

78. The Rapporteur also found that certain topics were more commonly raised as a part of the follow up procedure than others. Specifically, for all State parties reviewed since the follow-up procedure began, the following topics were most frequently designated:

Ensure prompt, impartial and effective investigation(s)	76 per cent
Prosecute and sanction persons responsible for abuses	61 per cent
Guarantee legal safeguards	57 per cent
Enable right to complain and have cases examined	43 per cent
Conduct training, awareness-raising	43 per cent
Ensure interrogation techniques in line with the Convention	39 per cent
Provide redress and rehabilitation	38 per cent
End gender-based violence, ensure protection of women	34 per cent
Ensure monitoring of detention facilities/visit by independent body	32 per cent
Carry out data collection on torture and ill-treatment	30 per cent
Improve condition of detention, including overcrowding	28 per cent

79. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies and her concerns (illustrative, not comprehensive) have been included in prior annual reports. To summarize them, she finds there is considerable value in having more precise information being provided, e.g. lists of prisoners, details on deaths in detention and forensic investigations.

80. As a result of numerous exchanges with States parties, the Rapporteur has observed that there is need for more vigorous fact-finding and monitoring in many States parties. In addition, there is often inadequate gathering and analysing of police and criminal justice statistics. When the Committee requests such information, States parties frequently do not provide it. The Rapporteur further considers that conducting prompt, thorough and impartial investigations into allegations of abuse is of great protective value. This is often best undertaken through unannounced inspections by independent bodies. The Committee has received documents, information and complaints about the absence of such monitoring bodies, the failure of such bodies to exercise independence in carrying out their work or to implement recommendations for

improvement.

81. The Rapporteur has also pointed to the importance of States parties providing clear-cut instructions on the absolute prohibition of torture as part of the training of law-enforcement and other relevant personnel. States parties need to provide information on the results of medical examinations and autopsies, and to document signs of torture, especially including sexual violence. States parties also need to instruct personnel on the need to secure and preserve evidence. The Rapporteur has found many lacunae in national statistics, including on penal and disciplinary action against law-enforcement personnel. Accurate record keeping, covering the registration of all procedural steps of detained persons, is essential and requires greater attention. All such measures contribute to safeguard the individual against torture or other forms of ill-treatment, as set forth in the Convention.

82. The chart below details, as of 14 May 2010, the end of the Committee's forty-fourth session, the replies with respect to follow-up. This chart also includes States parties' comments to concluding observations, if any.

Follow-up procedure to concluding observations from May 2003 to May 2010

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Forty-first session (November 2008)

State party	Information due in	Information received	Action taken
...			
Montenegro	November 2009	6 April 2009 CAT/C/MNE/CO/1/Add.1	Information under review
...			

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Follow-up - State Reporting
(ii) Action by State Party

CAT, CAT/C/MNE/CO/1/Add.1 (2009)

Follow-up responses by the Government of Montenegro to the conclusions and recommendations of the Committee against Torture (CAT/C/MNE/CO/1)

[6 April 2009]

1. On its session held on 15 January 2009 the Government of Montenegro reviewed the information on activities conducted in relation to the obligations deriving from the status of contracting party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, on that occasion, it adopted a number of conclusions. Among these conclusions, the Government adopted a decision according to which the Ministry of Justice has been obliged to, in cooperation with the Ministry of Foreign Affairs, prepare and submit to the Government information on activities conducted in the final quarter of 2008.
2. Having in mind paragraph 28 of the concluding observations of the Committee (CAT/C/MNE/CO/1) the focus was primarily on the activities which correspond to the Committee's recommendations contained in paragraph 12.
3. It should be noted that in paragraph 28 mentioned above, the Committee had requested from the Government of Montenegro to provide, within one year, information on the measures undertaken to implement recommendations laid down in paragraphs 6, 11, 12 and 17 of the concluding observations. Having in mind that developments in the court proceedings for war crimes are very dynamic and positive it has been decided that information on these issues will be submitted to the Committee in the first quarter of 2009. The intention was also to include data concerning ratification of the Optional Protocol to the Convention and other activities aimed at strengthening the prevention against torture (Committee's concluding observations, para. 24).
4. In the context of the ongoing dialog between the Committee and Montenegro additional comprehensive information on all activities conducted with the aim to implement recommendations contained in paragraph 28 will be submitted to the Committee in the indicated time limit.
5. Regarding the aforementioned and in connection to the following statements, we would like to draw your attention to the activities conducted in the context of concluding observations of the Committee in relation to the initial report of Montenegro on the implementation of the Convention that was under review on 11 and 12 November 2008.
6. It should be noted that during October 2008 the Ministry of Justice has initiated activities required for the ratification of the Optional Protocol with the aim to establish a national mechanism for the prevention of torture, according to the provisions of the Optional Protocol. All these actions were conducted in the framework of a project previously launched by the

OSCE in cooperation with competent authorities. This project has had as its result the finalization of the Draft law on the ratification of the Optional Protocol that was adopted by the Government on 13 November 2008, and enacted by the Parliament of Montenegro at the end of 2008 (*Official Gazette of Montenegro – International treaties No. 9/2008*).

7. In this way the first condition for the establishment of the National mechanism for the prevention of torture was fulfilled having in mind that, at the beginning, it was necessary to make the Optional Protocol an integral part of the internal legal system. This has made possible further enactment of required legal measures and actions, all with the aim of enabling the Protector of Human Rights to adequately respond to the requirements envisaged by the Optional Protocol and having in mind the decision that this institution has the ability to perform functions of the National mechanism for the prevention of the torture.

8. While drafting the Law on the ratification, and by the provision contained in article 3 of the latter (making a declaration in relation to the article 24 of the Optional Protocol), the possibility of the postponement of the obligations contained in Part IV of the Optional Protocol was exercised (National mechanism for the prevention of torture). The postponement would be effective for two years after the date of Optional Protocol's entering into force. This decision was made in line with the fact that the time framework of "at the latest year after the ratification" (art. 17 of the Optional Protocol) was not sufficient to provide all legal and institutional requirements prescribed by the Optional Protocol for the establishment of the national mechanism for the prevention of torture.

9. With the goal of preserving the continuity of activities on establishing the National mechanism for the prevention of torture certain measures, i.e. actions of legal nature, have been defined through previously adopted Plan for Action for the Prevention of Torture (implementation is planned for the 2009). These actions were formulated with the intention to contribute to full implementation of all requirements envisaged in the Optional Protocol, including those prescribed by the Convention (each state is obliged to perform legal, administrative, judicial and other effective measures in order to prevent acts of torture on the territory under its jurisdiction). The Plan of Action envisages measures related to amending and supplementing the Law on the Protector of Human Rights and Freedoms, enactment of appropriate bylaws for the implementation of the amendments and supplements of the Law on the Protector of Human Rights and Freedoms, and amending Act on internal organization and systematization of job positions of the Protector of Human Rights and Freedoms.

10. The intention behind this is to further strengthen the institution of the Protector of Human Rights and Freedoms, independence and autonomy of which is guaranteed by the Constitution of Montenegro. At the same time this represents an act in response to an observation made by the Committee concerning the necessity to undertake appropriate legal measures to ensure the full independence of the Ombudsman and provide adequate human and financial resources). In favor of this is the fact that at the end of December 2008 the Protector of Human Rights and Freedoms (as well as the Director of the Police Directorate and representatives of NGO) has visited all the renovated premises for detention in organizational units of the Police Directorate.

11. Regarding the issue of investigations on war crimes, the Ministry of Justice requested

information in possession of the Supreme State Prosecutor regarding the stage at which the following cases are: *Kalu_erski laz*, *Morinj*, *Deportacija muslimana* and *Bukovica*. The Ministry received from the latter the following information:

(a) In the proceeding known to the public as *Kalu_erski laz*, the Supreme State Prosecutor of Montenegro - Department for suppressing organized crime, corruption, terrorism and war crimes had, on 30 July 2007, raised charges before the Higher Court in Bijelo Polje against eight persons for the criminal offence of war crime against the civilian population (art. 142, para. 1 of the Criminal Law of the Federal Republic of Yugoslavia) with the request for detention (Cis.no.6/08). Following the mentioned indictment and request, the Higher Court in Bijelo Polje has made a decision to place under custody all accused. According to this decision seven of the accused are in detention while the eighth has fled. Trial is scheduled for 19 March 2009.

(b) In the proceeding known to the public as *Morinj*, the Supreme State Prosecutor of Montenegro - Department for suppressing organized crime, corruption, terrorism and war crimes had, on 15 August 2008, raised charges before the Higher Court in Podgorica against six persons for the criminal offences of war crime against the civilian population (art. 142, para. 1, of the Criminal Law of the Federal Republic of Yugoslavia) and war crime against prisoners of war (art. 144, para. 1 of the Criminal Law of the Federal Republic of Yugoslavia) with the request for detention (Cis.no.7/08). Following the mentioned indictment and request, the Higher Court in Podgorica has made a decision to place under custody all accused. According to this decision five of the accused are in detention while the sixth has fled. Upon the motion of the Prosecutor, Criminal chamber of the Higher Court in Podgorica rendered a ruling to hold the trial in the absence of the accused who escaped after which the trial was scheduled for 26 January 2008. The trial is postponed without defined deadline until the competent court reaches decision acting on the petition of defense attorney for the exemption of the judge in this case.

(c) In the proceeding known to the public as *Deportacija muslimana* the Supreme State Prosecutor of Montenegro - Department for suppressing organized crime, corruption, terrorism and war crimes had, on 19 January 2009, raised charges before the Higher Court in Podgorica against nine persons for the criminal offences of war crime against civilian population (art. 142, para. 1 of the Criminal Law of the Federal Republic of Yugoslavia) with the request for detention (Cis.no.17/08). Following the mentioned indictment and request, the Higher Court in Podgorica has made a decision to place under custody all accused. According to this decision four of the accused are in detention while the rest have fled. At the moment court is examining objections to the indictment submitted by defense attorneys.

(d) In the proceeding known to the public as *Bukovica*, the Higher State Prosecutor in Bijelo Polje, on 11 December 2007, submitted to the Higher Court in Bijelo Polje a request for investigation (Ci.no.107/08) against seven persons on the grounds of reasonable suspicion that they have committed the criminal offence of war crime against humanity (article 427 of the Criminal Code of Montenegro in connection with article 7, paragraph 2 of the European Convention on Human Rights and Fundamental Freedoms). The case is in the investigation stage in accordance with the request for supplement submitted by the Department for suppressing organized crime, corruption, terrorism and war crimes.

12. Having in mind the intention of the Government of Montenegro to, by common understanding, settle court proceedings (by conclusion of settlements of action) on charges raised by victims of unlawful deprivation of liberty and extradition to Bosnia and Herzegovina in 1992 and their families, and also in the context of continuous improvement of bilateral relations between Montenegro and Bosnia and Herzegovina, with good communication among the Montenegro's high-level governmental officials and relevant stakeholders in Bosnia and Herzegovina, a framework for conclusion of settlements in mentioned proceedings has been established. This framework was based on respect of degree of consanguinity as the basic criteria for establishing the compensation for damages. After this the Minister of Justice and his team were authorized to conduct negotiations with attorneys of injured parties in these highly sensitive cases.

13. Consequently in the period from 9 to 23 December 2008 five meetings have been held between representatives of the Ministry of Justice and attorneys of injured parties with the aim of defining conditions for conclusion of settlements and on those occasions it was noted that 202 plaintiffs have initiated litigations against Montenegro for material and non-pecuniary damages. These litigations were related to cases of extradition of 44 persons, out of which nine have survived the event, and as plaintiffs, along with these nine survivors were also their relatives as well as relatives of those who perished on the territory of Bosnia and Herzegovina.

14. During these negotiations an agreement was reached according to which guidelines for establishing the amount of damages should be the provisions of the Law on Obligations which refer to a range of persons entitled to claim damages. Also an understanding was reached that the amount of damages should depend on the degree of consanguinity with the victims, that the amount awarded to the survivors should be established according to the time spent in captivity for each plaintiff separately and that already adopted positions of courts should be followed, although, having in mind the sensitivity of these cases and the modality for its settlement, damages awarded should be in certain amount higher.

15. Proceeding from the agreed points, mutual consent was reached that damages awarded to relatives of the victims should be determined in the following way:

- (a) For children _ 30,000 each;
- (b) For spouses and parents _ 25,000 each;
- (c) For brothers and sisters _ 10,000 each.

16. For the plaintiffs-survivors damages were determined according to the time spent in captivity and they vary from _ 10,000 to 170,000, and for their closest relatives (children, spouses and parents) damages in the amount of _ 10,000 were awarded. By this way preconditions for 42 litigations to be concluded by settlement were fulfilled and the Government had gave its approval to the Supreme State Prosecutor, as the legal representative of the State in property disputes, for the finalization of the settlements in action in accordance to the agreed conditions. The overall amount of damages awarded to all plaintiffs and on all grounds is _

4,135,000.

17. Attorneys of injured parties have obliged themselves to drop claims for six brothers and sisters of the survivors since they are not entitled to damages according to Law on Obligations. In one case, attorneys informed that the injured parties had not given their approval for the settlement. In that case plaintiffs are three persons - spouse and children of the victim, and the proceeding will be continued.

18. At the end it was agreed by both sides that the reached settlements represent a just treatment of plaintiffs and also represent an expression of responsible and human comprehension of pain and suffering of plaintiffs.