

24 Annex - Justice, freedom and security

177. LAW ON ASYLUM

Pursuant to Article 88 item 2 of the Constitution of the Republic of Montenegro, I hereby issue the

Decree Promulgating the Law on Asylum

I hereby promulgate the Law on Asylum passed by the Parliament of the Republic of Montenegro at the seventh sitting of the first ordinary session in 2006 on 10 July 2006.

No 01-993/2

Podgorica, 11 July 2006

President of the Republic of Montenegro

Filip Vujanovic

LAW ON ASYLUM

I. GENERAL PROVISIONS

Scope

Article 1

This Law shall regulate the principles, conditions and procedures for granting asylum, recognising refugee status and according subsidiary and temporary protection, the authorities responsible for decision-making, the rights and obligations of asylum seekers, persons who have been recognised as refugees and persons who have been accorded subsidiary or temporary protection, as well as the reasons for the cessation and revocation of refugee status and subsidiary protection and the cessation of temporary protection in the Republic of Montenegro (hereinafter referred to as "Montenegro").

Granting asylum

Article 2

An alien shall be guaranteed the right to file an application for asylum in Montenegro.

Asylum shall be given to aliens in need of international protection in accordance with the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, and other ratified international agreements and universally accepted rules of international law, pursuant to this Law.

Refugee status shall be recognised with respect to an alien if, based on his or her asylum application, it has been established that he or she has a well-founded fear of being persecuted for reasons of race, religion, citizenship, membership of a particular social group, or political opinion, in his or her country of origin, and because of this fear he or she is unable or unwilling to avail himself or herself of the protection of the country of origin.

Subsidiary protection, as supplemental protection of refugees in accordance with human rights instruments, shall be accorded to an alien who has not met the requirements for the recognition of

refugee status but who would be subjected to torture or inhuman or degrading treatment or punishment, or whose life, safety or freedom would be threatened on account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom, in case he or she is returned to his or her country of origin or another state.

Temporary protection is an urgent and exceptional measure by which aliens shall be provided protection in the case of a mass, sudden or expected influx from a state where their life, safety or freedom is threatened on account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom, where because of the mass influx there is no possibility to conduct individual procedures for refugee status determination.

Applicability of other laws

Article 3

The provisions of the Law on General Administrative Procedure shall apply to asylum procedures except as otherwise provided for in this Law.

The provisions of the law governing the residence of aliens may not be applied, once an asylum application has been submitted, until a final judgment has been issued.

An alien who submits an asylum application shall be considered to have abandoned any application he or she has submitted for residence authorisation under the provisions of the law referred to in paragraph 2 of this Article.

Definitions

Article 4

The terms used in this Law shall have the following meanings:

- 1) asylum is the right to residence and protection given to an alien who, on the basis of a decision of the authority charged with adjudicating asylum claims, has been recognised as a refugee or accorded another form of protection pursuant to this Law;
- 2) an alien is a person who is not a Montenegrin citizen, irrespective of whether he or she is a citizen of another state or stateless;
- 3) an asylum application is a submission through which an alien seeks asylum;
- 4) an asylum seeker is an alien who submits an asylum application in the territory of Montenegro, from the day of the submission of the application until the issuance of the final judgment;
- 5) a refugee is an alien who, owing to a well-founded fear of being persecuted for reasons of race, religion, citizenship, membership of a particular social group or political opinion, is outside of his or her country of origin and is unable or, owing to such fear, unwilling to avail himself or herself of the protection of that state, or an alien without citizenship who is outside of the country of his or her last habitual residence and unwilling, or owing to such fear, unwilling to return to the country of origin;
- 6) a recognised refugee is an alien who is in the territory of Montenegro and who has been found by the competent authority to have a well-founded fear of persecution in his or her country of origin on account of race, religion, citizenship, membership of a particular social

- group or political opinion, to be unable or unwilling, owing to such fear, to avail himself or herself of the protection of his or her country of origin;
- 7) an unaccompanied minor is an alien younger than 18 years of age who has been left without the attendance of either parent or guardian either before or after his or her arrival in Montenegro, until he or she has been placed under guardianship;
 - 8) an adult without legal capacity is an alien who is over 18 years of age, fully or partially deprived of legal capacity by virtue of a court decision;
 - 9) a person accorded subsidiary protection is an alien who has not met the requirements to be recognised as a refugee, and who is granted residence and protection because in his or her country of origin or another country he or she would be subjected to torture or inhuman or degrading treatment or punishment, or his or her life, safety or freedom would be threatened on account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom;
 - 10) persons accorded temporary protection are aliens to whom protection is provided on an exceptional basis in the case of a mass, sudden or expected influx from a state where their life, safety or freedom is threatened on account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom, where because of the mass influx there is no possibility to conduct individual procedures for refugee status determination;
 - 11) country of origin is the state or states of which an alien is a citizen or in which a stateless person had a place of habitual residence;
 - 12) community connotes the citizens of Montenegro within a specific area.

II BASIC PRINCIPLES

Subsidiary protection

Article 5

If an authority, after conducting the procedure to adjudicate an asylum application, determines that the conditions for refugee status recognition have not been fulfilled, it shall be obligated to determine whether the conditions for according another form of protection have been fulfilled as provided for by this Law.

Non-refoulement

Article 6

A person who has been granted asylum or whose asylum has ceased or been revoked, shall not be returned or expelled to the border of a state where:

- 1) his or her life or freedom would be threatened on account of race, religion, citizenship, membership of a particular social group or political opinion;
- 2) he or she could be subjected to torture, inhuman or degrading treatment or punishment;

- 3) his or her life, safety or freedom would be threatened on account of generalised violence, foreign aggression, internal conflict, massive violations of human rights or other circumstances which seriously threaten life, safety or freedom.

The rights referred to in paragraph 1 of this Article may not be invoked by a person if there are serious reasons to believe that he or she is a threat to the security of Montenegro, or if he or she, after being convicted through a final court judgment of a serious criminal offence, constitutes a danger to the community, except in the case referred to in paragraph 1, item 2 of this Article.

After it is established that a person meets the conditions described in paragraph 1, item 2 of this Article, the person shall be given authorisation for residence in accordance with the law governing the residence of aliens.

Non-discrimination

Article 7

Discrimination in the asylum procedure shall be prohibited on any basis, and in particular on the basis of race, colour, sex, citizenship, social origin or birth, religion, political or other opinions, country of origin, economic status, culture, language, age, or mental or physical disability.

Confidentiality and data protection

Article 8

All personal data contained in individual asylum applications, as well as all statements, explanations and data from documents that become known or are used in the course of the procedure, shall be confidential and constitute official secrets.

The authorities conducting the procedure, other authorities and persons involved in the procedure shall store the personal data they collect or learn in the course of the procedure in accordance with ratified international agreements, regulations on personal data protection and the provisions of this Law.

The authorities and persons referred to in paragraph 2 of this Article shall be obligated to ensure that the statements, explanations and data from the documents referred to in paragraph 1 of this Article do not become available to the authorities of the asylum seeker's country of origin.

The Office of the United Nations High Commissioner for Refugees (hereinafter referred to as "UNHCR") shall be given unhindered access to asylum seekers, their files, information and statistical data.

Family unity

Article 9

With the consent of the asylum seeker, measures shall be taken in the asylum procedure for safeguarding family unity.

Non-punishment for unlawful entry or residence

Article 10

An asylum seeker who has come directly from a state where his or her life or freedom was threatened within the meaning of Article 2 of this Law shall not be punished for unlawful entry or residence, provided that he or she files an asylum application without delay and cites reasons, recognised as valid, for his or her unlawful entry or residence.

A person referred to in paragraph 1 of this Article shall not be deprived of liberty except when stipulated by law.

Protection of persons with special needs

Article 11

In the asylum procedure, care shall be taken of the special needs of minors, persons completely or partially deprived of legal capacity, unaccompanied minors, persons with mental or physical disabilities, elderly persons, pregnant women, single parents with minor children, persons subjected to torture, rape or other serious forms of mental, physical or sexual violence and other vulnerable persons.

Provisions relating to gender

Article 12

Asylum seekers shall be treated in a gender-sensitive manner at all the stages of the asylum procedure.

An asylum seeker shall have the right to communicate with an official and interpreter of the same gender.

Females who are accompanied by males shall be informed of their right to file their own personal asylum applications.

Respect for legal order

Article 13

An asylum seeker or person granted asylum shall be obligated to abide by the Constitution, laws, other regulations and ratified international agreements, and to act according to the measures of the competent authorities.

Restriction of political activity

Article 14

An asylum seeker or person granted asylum shall be prohibited from founding, taking part in or assisting political and other organisations that, through their activities, threaten Montenegro's security and public order, or that have goals contrary to the principles of international law.

Voluntary return

Article 15

The competent authorities may provide assistance to recognised refugees or persons accorded another form of protection who voluntarily return to their country of origin or a third country.

Upon the cessation or revocation of refugee status and subsidiary protection, or the cessation of temporary protection, the Office referred to in Article 19, paragraph 2 of this Law may organise, in cooperation with UNHCR, voluntary return to the country of origin or a third country.

Cessation of protection

Article 16

A decision on the cessation or revocation of refugee status and subsidiary protection may be issued only after conducting a procedure and establishing one of the reasons for cessation or revocation of protection stipulated by this Law.

Legal protection

Article 17

An appeal may be lodged against any decision of the first-instance body conducting the procedure.

The appeal must be lodged within 15 days from the day on which the first-instance decision is served, unless a shorter period is provided in this Law.

An administrative dispute may not be lodged against a decision of the second-instance body.

Cooperation with UNHCR

Article 18

The first-instance and second-instance bodies referred to in Article 17 of this Law shall cooperate with UNHCR at all the stages of the asylum procedure and share information and statistical data on asylum seekers, or persons who have been granted asylum, and on the implementation of the Convention Relating to the Status of Refugees and other international instruments concerning refugees, as well as laws and other regulations that are in force or that will be promulgated in the future.

III AUTHORITIES CHARGED WITH ADJUDICATION AND CARE

Asylum Office

Article 19

The state administration body charged with interior affairs (hereinafter referred to as “Ministry”) shall conduct the procedure in the first instance, receive applications and take decisions on applications, conduct the procedure and take decisions on the cessation and revocation of asylum and perform other tasks in accordance with this Law.

The activities referred to in paragraph 1 of this Article shall be carried out by a separate organisational unit of the Ministry – the Asylum Office (hereinafter referred to as “Office”).

The decision on an asylum application shall be made within three months from the day of the application’s submission, unless a shorter period is provided in this Law.

State Commission

Article 20

The State Asylum Appeals Commission (hereinafter referred to as “State Commission”) shall adjudicate appeals lodged against decisions of the first-instance body.

The State Commission shall take a decision on each appeal by a majority of votes of the total number of members, within two months from the day on which the appeal was lodged, unless a shorter period is provided by this Law.

The State Commission shall be composed of a president and four members.

The president of the State Commission shall have a deputy appointed from among the members.

Person who is employed in judicial bodies, the state administration bodies or the public service, and who is Bachelor of Law, and who has five years of work experience may be appointed as president or member of the State Commission.

The president and deputy president of the State Commission shall be appointed from among the judiciary.

The president, deputy president and members of the State Commission shall be appointed by the Government of the Republic of Montenegro (hereinafter referred to as “Government”) for a four-year term.

The State Commission shall adopt rules of procedure.

Technical and administrative tasks for the needs of the State Commission shall be performed by a service or body designated by the Government.

Body responsible for care

Article 21

Activities relating to the care of asylum seekers, and persons recognised as refugees or accorded subsidiary or temporary protection shall be performed by the administrative body charged with the care of refugees (hereinafter referred to as “competent body”).

The care of persons referred to in paragraph 1 of this Article shall encompass assistance in exercising the rights to: accommodation, education, health care, social welfare, labour, legal assistance, religious freedom, access to humanitarian and non-governmental organisations, humanitarian assistance, family reunification, social inclusion and other rights stipulated by this Law.

Access to data

Article 22

The Office and the State Commission may collect and request from various sources, including UNHCR, information and data regarding the situation in the country of origin of an asylum seeker or a person who has been granted asylum, or regarding a third country.

IV GRANTING OF ASYLUM

1. Reception of asylum seekers

Assistance to asylum seekers

Article 23

An asylum seeker shall be provided with necessary assistance, given information on the conditions and procedures for granting asylum, on rights and obligations, and on establishing communication with persons providing legal aid, UNHCR and other organisations engaged in protecting the rights of refugees, as a rule, in writing and in a language he or she can be reasonably expected to understand.

An asylum seeker shall have the right, at all the stages of the procedure, to communicate with the persons and bodies referred to in paragraph 1 of this Article, for the purpose of obtaining assistance.

A representative of UNHCR shall be enabled, at all the stages of the procedure, to communicate with an asylum seeker and collect information on the course of the procedure.

Submission of asylum applications

Article 24

An alien may declare, at a border crossing, his or her intention to submit an asylum application, after which he or she shall be permitted to enter Montenegro and provided accommodation.

An asylum seeker shall be enabled, as soon as possible, to submit his or her asylum application and to receive confirmation of the submitted application.

An asylum application shall be submitted to the Office, in the written form or orally on the record, in a language that is in official use in Montenegro. If the asylum seeker does not speak the language in official use, he or she may submit the application in the language of his or her country of origin, or in a language with which he or she is familiar.

A state administration body, a body of local self-government, or another non-competent body before which an alien seeks asylum shall be obligated to record the claim and inform the Office about it without delay.

The Ministry shall prescribe the form of the asylum application as well as the form for the records referred to in paragraph 3 of this Article.

Accommodation of asylum seekers

Article 25

The competent body shall provide accommodation for asylum seekers in the Centre for Accommodation of Asylum Seekers (hereinafter referred to as "Centre") or in another of the competent body's facilities for collective accommodation.

Persons with special needs shall be given special accommodation and care.

A person who has his or her own financial means, or who is in a position to secure accommodation and maintenance in another way, may be accommodated outside the Centre or other facility for collective accommodation, but is not entitled to social welfare.

The UNHCR, the Montenegrin Red Cross and other organisations dealing with the protection of refugees may organise pedagogical, educational or other programs in the Centre and may provide legal or other assistance, upon the consent of the competent body.

Data collection

Article 26

After being accommodated at the Centre, an asylum seeker shall be photographed and fingerprinted, his or her signature taken, and if necessary other data collected for the purpose of verification or establishment of identity.

An asylum seeker shall be obligated to get photographed and to provide the data referred to in paragraph 1 of this Article.

The Ministry shall prescribe the procedure and manner of collecting the data referred to in paragraph 1 of this Article.

Temporary seizure of documents

Article 27

Documents that can serve as proof for establishing facts in the procedure – in particular, travel documents, visas and residence permits; identity cards or other identification documents; certificates, extracts and other documents from the registries of births, marriages and citizenship,

travel tickets, as well as other documents – may be temporarily seized from an asylum seeker if they have not been attached to the application.

A certificate shall be issued confirming the temporary seizure of documents.

Temporarily seized travel and personal documents shall be returned to the person at his or her request, except in the case of abuse or forgery.

Minors and persons of age without legal capacity

Article 28

After establishing identity and the fact that a minor is unaccompanied, or that a person of age is without legal capacity, such persons shall be provided with guardians in accordance with the law.

Asylum applications by the persons referred to in paragraph 1 of this Article shall be resolved on a priority basis and decisions shall be taken within 30 days from the day of the application's submission.

During the procedure, care shall be taken regarding the accommodation, psycho-physical condition and best interest of a minor and measures shall be undertaken for the tracing of his or her family members.

A person of age without legal capacity shall be entitled to necessary care and protection, in accordance with the law.

2. Rights and obligations of asylum seekers

Rights of asylum seekers

Article 29

An asylum seeker shall be entitled to:

- 1) residence and freedom of movement;
- 2) an identification document proving his or her identity, legal status, residence right and other rights stipulated by this Law;
- 3) an aliens' travel document for the purpose of travelling abroad, pursuant to the regulations on the residence of aliens;
- 4) free primary and secondary education in public schools;
- 5) provision of accommodation if necessary, and appropriate living standards;
- 6) health care, in accordance with separate regulations;
- 7) family unity;
- 8) legal aid;
- 9) work within the Centre or other facility for collective accommodation;
- 10) social welfare;
- 11) freedom of religion;
- 12) access to UNHCR and non-governmental organisations for the purpose of obtaining legal aid in the asylum procedure;
- 13) humanitarian assistance.

Obligations of asylum seekers

Article 30

An asylum seeker shall be obligated:

- 1) to reside in the Centre or other facility for collective accommodation if the accommodation and maintenance have not been provided in another manner;
- 2) to cooperate with the bodies charged with the implementation of this Law, submit identity documents and all documents in his or her possession, facilitate searches of his or her person, luggage and vehicle, provide data on property and income and other data that may be used as evidence in the procedure;
- 3) to remain available and reply to requests by the Office and the competent body;
- 4) to report to the competent body any changes in finances and property that could affect eligibility for social welfare, accommodation, maintenance, health care and other rights;
- 5) to report to the Office any changes of residence and address within three days from the day of the change, if the asylum seeker has himself or herself provided the accommodation;
- 6) not to leave Montenegro without permission, during the pendency of the asylum procedure;
- 7) to submit to a medical examination and other measures aimed at preventing the spread of infectious diseases, in accordance with health regulations;
- 8) to respect the house rules of the Centre or other facility for collective accommodation;
- 9) to abide by any decision on the temporary restriction of movement.

Temporary restriction of movement

Article 31

An asylum seeker may, on an exceptional basis and through a decision of the competent body, be restricted in movements outside of the Centre or other facility for collective accommodation, or outside of a designated area, for up to 15 days if:

- 1) his or her identity needs to be established;
- 2) he or she has destroyed his or her travel or personal documents or possesses false documents with the intention of misleading the competent authorities;
- 3) it is necessary to do so in order to protect the safety of the community.

The person referred to in paragraph 1 of this Article shall have the right to communicate with UNHCR.

The movement of persons under 16 years of age, who are unaccompanied, shall not be restricted unless that is the only possibility.

An appeal against the decision referred to in paragraph 1 of this Article may be lodged within eight days from the day of the receipt of the decision. The appeal shall not have suspensive effect.

3. Asylum procedure

Objective of the procedure

Article 32

In the course of the asylum procedures, it shall be established whether the conditions for granting asylum have been fulfilled in accordance with this Law.

An asylum seeker shall be given sufficient time to prepare his or her statement and to obtain legal aid.

Use of language and script in the procedure

Article 33

If an asylum seeker does not understand the language in official use in Montenegro, he or she shall follow the course of the procedure and participate in it in his or her own language, or in a language that he or she has indicated he or she understands, through an interpreter provided by the Office.

An asylum seeker may engage his or her own interpreter.

Evidence accompanying an asylum application written in a language and script which is not in official use must be translated if relevant to reaching a decision on the application.

Exclusion of the public

Article 34

The public shall be excluded from the asylum procedure.

A legal representative, a person with power of attorney, a guardian of a minor or person of age without legal capacity, a UNHCR representative, and an interpreter may be in attendance when the asylum seeker gives testimony.

The persons referred to in paragraph 2 of this Article shall be informed in writing of the date, time, and venue of the asylum seeker's testimony.

Testimony

Article 35

An asylum seeker shall be enabled, as soon as possible after the submission of the asylum application, to present the facts and circumstances of relevance to the decision-making. If necessary, the person may give testimony multiple times.

The official conducting the procedure shall be obligated to enable the asylum seeker to extensively describe, explain and prove, in his or her testimony, all of the circumstances and facts that may be

of relevance to the granting of asylum, on which the asylum seeker shall be informed in the summons referred to in Article 34, paragraph 3 of this Law, as well as to ensure that lack of knowledge and experience does not undermine the rights of the asylum seeker.

The asylum seeker shall be obligated to cooperate, throughout the procedure, with the official conducting the procedure, to enable access to all evidence in his or her possession, and to submit all documents and papers and present and explain all facts and circumstances of relevance to the decision-making.

During the testimony referred to in paragraph 1 of this Article, minutes shall be taken and signed by the persons who took part in the procedure.

The testimony may be audio recorded, provided that the asylum seeker is informed of this.

Reasons for exclusion

Article 36

Refugee status shall not be recognised in the case of an alien with respect to whom there are reasonable grounds to believe:

- 1) that he or she has committed a crime against peace, a war crime or a crime against humanity, within the meaning of the international instruments that contain provision on such crimes;
- 2) that he or she has committed a serious crime under international law, outside Montenegro and prior to arrival in Montenegro;
- 3) that he or she is guilty of acts contrary to the objectives and principles of the United Nations.

Refugee status shall not be recognised in the case of an alien who enjoys the protection or assistance of a body or agency of the United Nations, other than UNHCR.

The provision of paragraph 2 of this Article shall not apply when protection or assistance has ceased, for any reason whatsoever, prior to the final settlement of the status of the alien, if the asylum procedure has not been completed.

Refugee status shall not be recognised in the case of an alien who has been recognised by the authorities in Montenegro as having the rights and obligations arising from the possession of Montenegrin citizenship.

Service of documents

Article 37

Documents in the asylum procedure shall be served on an asylum seeker in person, or on his or her legal representative or on a person to whom the asylum seeker has given power of attorney. A document shall be considered served when it has been received, in a legally defined manner, by one of the mentioned persons.

The summons and other documents shall be served on the asylum seeker in a language and script that the asylum seeker has indicated he or she understands.

4. Decisions on asylum applications

Types of decisions

Article 38

On the basis of the taken evidence and established facts, a decision shall be reached to terminate the procedure, grant the application and recognise refugee status, accord subsidiary protection, or reject the application.

The decisions referred to in paragraph 1 of this Article shall be delivered in writing.

Termination of the procedure

Article 39

A decision may be taken to terminate the procedure if the asylum seeker:

- 1) abandons his or her asylum claim, orally on the record or in writing;
- 2) fails to respond to the Office's summons as well as to the resent summons, without previously giving a valid reason;
- 3) fails to inform the Office of a change in place of residence or address, or otherwise prevents service of the summons, without a valid reason;
- 4) refuses to cooperate in establishing his or her identity;
- 5) deliberately avoids providing information on the facts or circumstances, or submitting evidence in his or her possession, essential for establishing the merits of the application;
- 6) leaves the Centre or other facility for collective accommodation without prior notice and fails to return within three days of his or her arbitrary departure, as established on the basis of official records;
- 7) leaves Montenegro during the procedure, without authorisation.

An appeal against the decision referred to in paragraph 1 of this Article may be filed within eight days from the day of its service.

The State Commission shall issue a decision on the appeal referred to in paragraph 2 of this Article within 30 days from the day on which the appeal is lodged.

Rejection of asylum applications

Article 40

A decision shall be taken to reject the asylum application if it has been established that:

- 1) there is no well-founded fear of persecution or real risk referred to in Article 2, paragraphs 3 and 4 of this Law;
- 2) there is a reason for exclusion referred to in Article 36 of this Law;

- 3) the application is manifestly unfounded, based on the reasons referred to in Article 41 of this Law;
- 4) the asylum seeker holds the citizenship of a third country and has not sought its protection, unless he or she cites compelling reasons for not being able to avail himself or herself of the protection of that state;
- 5) the persecution referred to in Article 2 of this Law is limited to a part of the state of which he or she is a citizen, or in which a stateless person has habitual residence, unless, based on all the circumstances, it cannot be expected that the person will receive protection in another part of that state.

The State Commission shall issue a decision within 15 days of the lodging of an appeal against the decision rejecting an asylum application of an unaccompanied minor or a person of age without legal capacity.

Manifestly unfounded asylum applications

Article 41

An asylum application shall be deemed manifestly unfounded if the person has no valid grounds for the application due to fear of persecution in the country of origin, or if the application is based on deliberate fraud or abuse of the asylum procedure.

An asylum seeker shall be considered to have no valid grounds for the application due to fear of persecution if:

- 1) the application is based on economic reasons or better living conditions;
- 2) the application is entirely lacking in information that the asylum seeker would be exposed to fear of persecution in the country of origin, or the asylum seeker's statement does not contain any circumstances or details of personal persecution;
- 3) the claim obviously lacks credibility, and the person's statement is inconsistent, contradictory or realistically impossible;
- 4) it may be generally considered that no fear of persecution can exist due to the overall political circumstances, legal situation or enforcement of laws in the country of origin or third country, unless the asylum seeker can prove that this state is not safe for him or her;
- 5) the person was earlier banned from entering Montenegro, in accordance with the law, and the reasons for which the ban was imposed have not changed.

An asylum seeker's application shall be deemed to be based on deliberate fraud or abuse of the procedure if:

- 1) the application is based on a false identity or falsified documents, unless the asylum seeker provides valid reasons for this;
- 2) the asylum seeker, after the submission of the asylum application, deliberately gives untrue statements, orally or in writing, which are essential for refugee status recognition;
- 3) the asylum seeker deliberately destroys, damages, or hides documents or evidence essential to the application, or has used another travel document, instrument or ticket with the intention of creating a false identity or complicating the examination of the application;
- 4) the asylum seeker deliberately conceals that he or she has already submitted an asylum application in another state, particularly if he or she has used a false identity;
- 5) he or she files the application with the intent to avoid expulsion from Montenegro, even though there were sufficient opportunities to file the asylum application earlier;

- 6) the asylum seeker has manifestly failed to comply with essential obligations related to the asylum procedure prescribed by this Law;
- 7) the asylum seeker has concealed that his or her application for asylum in Montenegro or another state, after examination in a procedure that incorporated adequate procedural guarantees set out in international instruments, was rejected, and the circumstances on which the application was based have not changed;
- 8) the asylum seeker was granted asylum in another state and continues to enjoy the protection of that state.

In the cases referred to in paragraphs 2 and 3 of this Article, the decision shall be issued within 15 days from the day of the submission of the application.

An appeal may be lodged against the decision referred to in paragraph 4 of this Article within eight days from the day of the receipt of the decision.

The State Commission shall issue a decision on an appeal referred to in paragraph 5 of this Article within 15 days from the day of the lodging of the appeal.

Decision

Article 42

The decision through which an application is accepted and refugee status recognised or subsidiary protection accorded shall contain the rights stipulated by this Law.

The decision through which an asylum application is rejected shall contain the reasons for which the asylum application was not accepted, instructions on the right to appeal and the deadline within which the person is obligated to leave Montenegro.

The deadline referred to in paragraph 2 of this Article may not be shorter than 15 days, or three days from the day on which the decision becomes final, if the decision has been issued for the reasons referred to in Article 41 of this Law.

Return and expulsion

Article 43

A person with respect to whose asylum application the procedure is terminated shall be obligated to leave Montenegro within 15 days from the day on which the decision becomes final, while a person whose asylum application is rejected shall be obligated to leave within the deadline stipulated in the decision rejecting the application.

If a person with respect to whose application the procedure is terminated, or whose asylum application is rejected, fails to depart Montenegro within the deadline specified in paragraph 1 of this Article, or within the deadline stipulated in the decision, his or her return or expulsion shall be carried out in accordance with the law governing the residence of aliens.

V PERSONS RECOGNISED AS REFUGEES

1. Rights of persons recognised as refugees

Article 44

A person recognised as a refugee shall be entitled to:

- 1) residence;
- 2) a travel document and an identity card confirming his or her identity, the right to residence and other rights stipulated by this Law;
- 3) freedom of movement and choice of place of residence;
- 4) unimpeded access to courts and legal aid;
- 5) freedom of religion;
- 6) free primary and secondary education in public schools, and post-secondary and higher education in public institutions founded by the state, under the conditions stipulated for aliens;
- 7) work;
- 8) social welfare;
- 9) family reunification;
- 10) accommodation, if necessary, but longer than for six months from the day on which refugee status was recognised;
- 11) health care, pending the acquisition of the status of an insured person, in accordance with a separate regulation;
- 12) acquisition of movable and immovable property, under the conditions stipulated by law, with exemption from reciprocity after three years' residence in Montenegro;
- 13) assistance with inclusion in society.

Social welfare

Article 45

A person recognised as a refugee shall exercise the right to social welfare in accordance with separate regulations on social welfare, but not longer than for one year from the day on which the decision granting refugee status becomes final.

If a person recognised as a refugee refuses to accept an offer of employment, his or her right to social welfare shall cease.

Right to work

Article 46

A person recognised as a refugee shall exercise the right to work under the same conditions as those stipulated for aliens with authorised habitual residence.

A measure restricting the employment of aliens shall not apply to a person recognised as a refugee, provided that he or she fulfils one of the following conditions:

- 1) he or she resides for a minimum of three years in Montenegro;

- 2) he or she is married to a Montenegrin citizen;
- 3) one of his or her children has Montenegrin citizenship.

A person recognised as a refugee shall exercise the rights to disability insurance, health care, pension insurance and other rights arising from employment relations in the same manner as a Montenegrin citizen.

Family reunification

Article 47

A person recognised as a refugee shall have the right to reunification with family members.

A family member, within the meaning of paragraph 1 of this Article, shall be considered a spouse, if the legal marriage was entered into prior to their arrival in Montenegro, a minor child, and the guardian of a minor child.

At their request, refugee status shall be recognised to the family members referred to in paragraph 2 of this Article.

Notwithstanding paragraph 3 of this Article, the right to family reunification shall not be granted if there are reasons for exclusion of the family member referred to in Article 36 of this Law.

The family reunification request may be submitted to a diplomatic-consular mission, to be decided upon by the body referred to in Article 19 of this Law.

In justifiable cases, reunification with other family members may also be granted.

Inclusion in society

Article 48

Depending on economic and other capabilities, conditions shall be created for the inclusion of persons recognised as refugees in social, economic and cultural life, through organisation of language courses and provision of information on organisation of the state, history and culture, as well as through organisation of seminars and other forms of training.

Integration and naturalisation

Article 49

Within the framework of economic and other possibilities of Montenegro, efforts shall be made to the greatest possible extent to:

- 1) enable the integration and naturalisation of refugees;
- 2) set fees and other costs in procedure for the exercise of rights and for naturalisation at a level that does not constitute an obstacle to the submission of applications and exercise of rights.

2. Obligations of persons recognised as refugees

Article 50

A person recognised as a refugee shall be obligated to:

- 1) accept offered accommodation;
- 2) report any change of the place of residence and apartment address to the Office within eight days from the day on which the change occurred;
- 3) inform the Office about all the changes relevant to the exercise of the rights referred to in Article 44 of this Law.

If a person referred to in paragraph 1, item 1 of this Article refuses offered accommodation, his or her right to accommodation shall cease.

3. Cessation and revocation of refugee status

Cessation of refugee status

Article 51

A person's refugee status shall cease if:

- 1) he or she voluntarily re-avails himself or herself of the protection of the country of citizenship;
- 2) after having lost his or her citizenship, he or she voluntarily re-acquires that citizenship;
- 3) he or she acquires a new citizenship, and enjoys the protection of the new country of citizenship;
- 4) he or she has voluntarily re-established residence in the state that he or she had abandoned or outside of which he or she had remained owing to fear of persecution;
- 5) he or she can no longer refuse to avail himself or herself of the protection of the country of his or her citizenship, because the circumstances due to which he or she was recognised as a refugee have ceased to exist;
- 6) being a stateless person, he or she is able to return to the state in which he or she had a place of habitual residence, because the circumstances due to which he or she was recognised as a refugee have ceased to exist.

The provisions of paragraph 1, items 5 and 6 of this Article shall not apply to a person who is able to cite compelling reasons arising from previous persecution in order to refuse to avail himself or herself of the protection of the country of his or her citizenship and return to the country where he or she had permanent residence.

Revocation of refugee status

Article 52

A person's refugee status shall be revoked if:

- 1) the person should have been excluded or reasons have emerged for exclusion referred to in Article 36 of this Law;
- 2) the person's misrepresentation of facts or circumstances, including the use of forged documents, was decisive in the recognition of refugee status;
- 3) the person has another effective citizenship;
- 4) the person has emigrated from Montenegro, providing a written statement to this effect, or resides for a period longer than 60 days in another state that he or she has chosen as his or her place of habitual residence, without informing the Office of this.

VI SUBSIDIARY PROTECTION

1. Authorisation and duration of subsidiary protection

Authorisation of subsidiary protection

Article 53

Subsidiary protection shall be accorded to a person to whom refugee status was not recognised, but with respect to whom there are serious reasons to believe that he or she would be exposed to genuine risks referred to in Article 2, paragraph 4 of this Law upon return to his or her country of origin or another state.

Subsidiary protection shall not be accorded to a person if:

- 1) the serious reasons referred to in paragraph 1 of this Article do not exist;
- 2) there are reasons for exclusion referred to in Article 36 of this Law;
- 3) there are serious reasons to believe that his or her residence constitutes a threat to the community or to the security of Montenegro;
- 4) before arriving in Montenegro, he or she committed, apart from the cases referred to in Article 36, paragraph 1 of this Law, one or more criminal offences, for which a prison sentence would have been envisaged had they been committed in Montenegro, and he or she has left the country of origin solely with the intention of avoiding punishment for the above criminal offences.

Duration of subsidiary protection

Article 54

Subsidiary protection shall last one year.

The duration of subsidiary protection may be extended for six-month periods as long as the reasons referred to in Article 53, paragraph 1 of this Law exist.

2. Rights and obligations of persons accorded subsidiary protection

Article 55

A person accorded subsidiary protection shall be entitled to:

- 1) residence;
- 2) freedom of movement and choice of place of residence;
- 3) an identification document confirming his or her identity, legal status, right to residence and other rights stipulated by this Law;
- 4) an alien's travel document, in accordance with the regulations on the residence of aliens, for the purpose of travelling abroad;

- 5) unimpeded access to courts and legal aid;
- 6) freedom of religion;
- 7) free primary and secondary education in public schools;
- 8) work pursuant to Article 46 of this Law;
- 9) social protection pursuant to Article 45 of this Law;
- 10) basic accommodation, if required, until means of subsistence have been secured, and not longer than six months from the day when the decision on the authorisation of subsidiary protection becomes final;
- 11) free emergency medical treatment;
- 12) assistance with inclusion in society;
- 13) family reunification.

A person accorded subsidiary protection shall have other rights and obligations as those accorded to an alien granted residence in Montenegro for a specified period of time.

3. Cessation and revocation of subsidiary protection

Article 56

Subsidiary protection shall cease when the circumstances referred to in Article 2, paragraph 4 of this Law have ceased to exist or have changed to such an extent that protection is no longer needed.

Subsidiary protection shall be revoked, or its duration shall not be extended if:

- 1) the person should have been excluded or reasons have emerged for exclusion referred to in Article 36 of this Law;
- 2) the person's misrepresentation of facts or circumstances, including the use of forged documents, was decisive in the recognition of refugee status;
- 3) the person has permanently left Montenegro;
- 4) protection has been accorded on the basis of another law or international agreement;
- 5) the person enjoys international protection or has lawful residence in a third country;
- 6) the person has acquired the citizenship of another state.

VII TEMPORARY PROTECTION

Authorisation of temporary protection

Article 57

Temporary protection shall be accorded to persons in need of protection pursuant to Article 2, paragraph 5 of this Law, provided that they had:

- 1) habitual residence in the country of origin and directly entered Montenegro;
- 2) legal residence in Montenegro and, upon the expiry of such residence, are temporarily prevented from returning to the country of origin.

The Government shall issue a decision on the need to accord temporary protection and on the number of persons to whom the protection is to be accorded.

Duration of temporary protection

Article 58

Temporary protection shall last one year.

The duration of temporary protection may be extended for six months, but not longer than one year.

The Government shall periodically re-examine the existence of the circumstances referred to in Article 57 of this Law and decide on the extension of temporary protection.

Individual decisions related to temporary protection shall be passed in accordance with the Government's decision and the principles stipulated by this Law, outside the prescribed procedure upon individual asylum applications.

Denial of temporary protection

Article 59

A person shall not be accorded temporary protection if:

- 1) the reasons referred to in Article 57, paragraph 1 of this Law do not exist;
- 2) there are reasons for exclusion referred to in Article 36 of this Law;
- 3) there are serious reasons to believe that his or her residence constitutes a threat to the community or to the security of Montenegro;
- 4) he or she has committed a criminal offence in Montenegro for which a prison sentence of minimum five years has been imposed;
- 5) he or she is a recognised refugee or has been accorded residence under the provisions of the law governing the residence of aliens;
- 6) he or she enjoys international protection or has the citizenship of, or authorised residence in, a third country;
- 7) temporary protection has already been authorised or has ceased at his or her request.

Rights of persons accorded temporary protection

Article 60

A person accorded temporary protection shall be entitled to:

- 1) residence;
- 2) freedom of movement;
- 3) an identification document confirming his or her identity, legal status, right to residence and other rights stipulated by this Law;

- 4) an alien's travel document, in accordance with the regulations on the residence of aliens, for the purpose of travelling abroad;
- 5) basic living conditions in organised accommodation;
- 6) work in the facilities for organised accommodation;
- 7) free emergency medical treatment;
- 8) free primary and secondary education in public schools;
- 9) unimpeded access to courts and legal aid;
- 10) freedom of religion;
- 11) humanitarian assistance.

The residence referred to in paragraph 1, item 1 of this Article shall not be deemed residence within the meaning of the laws governing the residence of aliens and citizenship.

Notwithstanding paragraph 1 of this Article, a person accorded temporary protection may be granted reunification with family members, if this is possible only in the territory of Montenegro.

The right to family reunification referred to in paragraph 3 of this Article shall pertain to minors who have not started their own families and to spouses of persons accorded temporary protection. Family members shall be accorded temporary protection at their request.

Cessation of temporary protection

Article 61

Temporary protection shall cease:

- 1) upon the cessation of the existence of the reasons for which temporary protection referred to in Article 57, paragraph 1 of this Law has been accorded;
- 2) upon the expiry of the period for which it has been accorded;
- 3) if reasons for exclusion referred to in Article 36 of this Law arise;
- 4) when the person has permanently left Montenegro;
- 5) when the person has been accorded another form of protection on the basis of law or an international agreement;
- 6) if international protection or authorised residence is given in a third country;
- 7) if citizenship of another state has been acquired.

Filing of an asylum application

Article 62

A person accorded temporary protection has the right to file an asylum application during or after the period of temporary protection, but may not benefit from the rights referred to in Article 29 of this Law during the period of temporary protection.

If the asylum procedure has not been completed prior to the cessation of temporary protection, it shall be completed after its cessation.

A person accorded temporary protection, whose asylum application has been rejected, shall enjoy temporary protection for the period for which it has been accorded.

VIII EXERCISE OF RIGHTS

Place and time of exercise of rights

Article 63

The rights referred to in Articles 29, 44, 55 and 60 of this Law may be exercised only in the territory of Montenegro and pending a final decision on the asylum application, cessation or revocation of refugee status and subsidiary protection and cessation of temporary protection.

After a final decision on the rejection of an asylum application, cessation or revocation of refugee status and subsidiary protection, and on cessation of temporary protection, and after the termination of the rights referred to in paragraph 1 of this Article, the provisions of the law governing the residence of aliens shall be applied to a person who continues to reside in Montenegro.

Manner of exercise of rights

Article 64

Resources for the exercise of the rights referred to in Articles 29, 44, 55 and 60 of this Law shall be provided in line with existing economic, social and other capabilities.

The Ministries responsible for the affairs of social welfare, education and health shall define, within their competencies, the manner of the exercise of the rights referred to in Articles 29, 44, 55 and 60 of this Law.

IX DOCUMENTS

Issuance of documents

Article 65

The body referred to in Article 19 of this Law shall issue documents for proving identity, legal status and rights, and documents for travelling abroad, as stipulated by this Law.

An application for the issuance of documents for minors and persons of age without legal capacity shall be submitted by a parent or guardian.

The forms for the documents referred to in paragraph 1 of this Article shall carry the coat of arms of Montenegro and shall be printed in the language in official use in Montenegro and in the English language, and shall be filled up in the language in official use.

The Government shall prescribe the outline and contents of the forms and the method for the issuance of the documents referred to in paragraph 1 of this Article.

Obligations of the holder of documents

Article 66

A person shall be obligated to carry the documents for proving identity with himself or herself, and to produce them at the request of an official authorised by law to establish identity.

The documents referred to in Article 65, paragraph 1 of this Law shall be returned to the Office after the completion of the asylum procedure, cessation or revocation of refugee status and subsidiary protection, cessation of temporary protection or in the case of document replacement.

It shall be prohibited to lend documents referred to in Article 65, paragraph 1 of this Law to another person or to use somebody else's documents as one's own.

A person shall be obligated to report the loss or damage of documents within two days from the day of loss or damage.

Identity papers

Article 67

The identity document of an asylum seeker shall be valid until the adoption of a final decision on his or her asylum application.

The identity document of a person accorded subsidiary protection shall be issued with a validity period of one year, and this period may be extended for six months.

The identity document of a person accorded temporary protection shall be issued with a validity period of one year, and may be extended for six-month periods for up to one year.

The identity card of a person recognised as a refugee shall be issued with a validity period of 10 years.

For a recognised refugee who is under 18 years of age at the time of issue of the document referred to in paragraph 4 of this Article, the identity card shall be issued with a validity period of five years.

The documents referred to in paragraphs 1 through 5 of this Article shall be issued *ex officio*, after the submission of an asylum application, or the granting of asylum.

Travel document

Article 68

A travel document shall be issued at the request of a recognised refugee who has attained 18 years of age.

A travel document shall be issued with a validity period of two years and may be renewed.

A minor may be entered in his or her parent's or guardian's travel document until attaining 14 years of age.

The issuance of the travel document referred to in paragraph 1 of this Article shall not entitle the holder to protection by diplomatic-consular missions, nor shall entitle those missions to extend protection to the document holder.

The provisions of paragraphs 1 and 4 of this Article shall also apply to the issuance of alien's travel documents.

Rejection of application for issuance of travel document and its withdrawal

Article 69

An application for the issuance of a travel document to a recognised refugee shall be rejected for reasons of security and public order if:

- 1) criminal proceedings are in progress, initiated by a court;
- 2) an effective prison term has been imposed, until the sentence has been served.

If the reasons referred to in paragraph 1 of this Article existed before the issuance of the travel document but are understood of later, or if they arose after the issuance of the document, the travel document shall be withdrawn.

An appeal against the decision referred to in paragraphs 1 and 2 of this Article shall not have suspensive effect.

X RECORDS AND DATA PROTECTION

Records

Article 70

The body referred to in Article 19 of this Law shall collect, keep, update and use records on: asylum seekers, recognised refugees, persons accorded subsidiary or temporary protection, the rights these people are exercising, documents issued in accordance with this Law and temporarily seized documents.

The Government shall define the contents of and method for keeping the records referred to in paragraph 1 of this Article.

The data from the records referred to in paragraph 1 of this Article shall be delivered to government bodies that have the statutory right to use these data.

Data collection

Article 71

The body referred to in Article 19 of this Law may, for the purpose of conducting the procedure, collect data on asylum seekers or persons who have been granted asylum, from state administration bodies and bodies of local self-government, in order to establish identity and the existence of reasons for exclusion, cessation and revocation of status, to the extent necessary for the performance of the tasks stipulated by this Law.

The bodies referred to in paragraph 1 of this Article that are in possession of data on the persons referred to in paragraph 1 of this Article shall be obligated to provide these data to the first instance body upon its request.

The data referred to in paragraphs 1 and 2 of this Article shall be collected and disseminated in accordance with international instruments and the regulation on personal data protection.

Data exchange

Article 72

The body referred to in Article 19 of this Law may, on the basis of international agreements, exchange data on persons to whom this Law applies with the asylum authorities of other states, other than the country of origin, provided that the state concerned guarantees the appropriate protection of data.

Notwithstanding the above, for the purpose of executing a decision on the return or expulsion of a person whose asylum application has been rejected by virtue of a final decision, or whose asylum has ceased or has been revoked by virtue of a final decision, the following data may be exchanged with the competent authorities of other countries: first and last name, date of birth, sex, citizenship, place of habitual residence and address of the apartment, information on family members, data on the documents issued by the country of origin and data on fingerprints and photograph.

XI PENALTY PROVISIONS

Article 73

A fine ranging from 1 to 5 minimum wages in Montenegro shall be imposed on a person who:

- 1) does not carry identification papers with himself or herself (Article 66, paragraph 1);
- 2) at the request of an authorised official and in the cases and under the conditions stipulated by law, refuses to produce a document proving his or her identity (Article 66, paragraph 1);
- 3) fails to return a document upon the completion of the procedure or in the case of its replacement (Article 66, paragraph 2);
- 4) lends his or her document to another person or uses another person's document as his or her own (Article 66, paragraph 3);
- 5) fails to report or to timely report the loss or damage of a document (Article 66, paragraph 4).

XII TRANSITIONAL AND FINAL PROVISIONS

Article 74

Within six months from the date of entry into force of this Law:

- the Government shall appoint the State Commission, define the outline and contents of the document forms, the manner of the issuance of documents, and the contents and manner of keeping records;
- the Ministry shall stipulate a form for asylum applications and a form for recording testimony, and the procedure for and manner of collecting the data referred to in Article 26, paragraph 1 of this Law;
- the ministries competent for issues of social protection, education and health shall stipulated, within their own competencies, the manner of exercising rights under Articles 29, 44, 55 and 60 of this Law.

Article 75

Refugee status recognised on the basis of the Law on the Movement and Residence of Aliens (Official Gazette of the Socialist Federal Republic of Yugoslavia 56/80, 53/83, 26/90, 53/91; Official Gazette of the Federal Republic of Yugoslavia 24/94, 28/96) shall be extended if it is established through procedure that the person is habitually residing in Montenegro on the day of the commencement of this Law's application, and that there are no reasons for cessation or revocation of refugee status as stipulated by this Law.

Refugee status shall be recognised with respect to persons who were recognised as having the status of displaced persons pursuant to the Decree on the Care of Displaced Persons (Official Gazette of the Republic of Montenegro 37/92) if it is established through procedure that the displaced person is habitually residing in Montenegro on the day of the commencement of this Law's application, and that there are no reasons for cessation or revocation of refugee status as stipulated by this Law.

Procedures initiated under the provisions of the Law on the Movement and Residence of Aliens and the Decree on the Care for Displaced Persons shall be completed pursuant to the provisions of this Law.

Article 76

On the day of the commencement of this Law's application, the provisions of Articles 44 through 60 of the Law on the Movement and Residence of Aliens (Official Gazette of the Socialist Federal Republic of Yugoslavia 56/80, 53/83, 26/90, 53/91; Official Gazette of the Federal Republic of Yugoslavia 24/94, 28/96) shall be repealed, as shall those provisions of the Decree on the Care of Displaced Persons (Official Gazette of the Republic of Montenegro 37/92) that are contrary to this Law.

Article 77

This Law shall enter into force on the eighth day from the day of its publication in the Official Gazette of the Republic of Montenegro and it shall apply after the expiry of a six-month period from the day of its entry into force.