

**Government of Montenegro**

**Ministry of European Integration**

## **Questionnaire**

Information requested by the European Commission to the Government of Montenegro for the preparation of the Opinion on the application of Montenegro for membership of the European Union

## **II Human rights**

**Minister: Gordana Djurovic**

**Podgorica, December 2009**



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## **POLITICAL CRITERIA**

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### Horizontal issues

**73. Please provide succinct information on your constitutional order, your legislation or other rules governing the area of fundamental rights, and their compatibility with the relevant international conventions.**

The legal system of Montenegro ensures high level of protection of human rights and fundamental freedoms. Main provisions of the Montenegrin Constitution provide legal base for the promotion, strengthening and improvement of the protection of human rights and freedoms and reaffirms the commitment of Montenegro for the respect of international standards in that context. Almost half of articles (68 out of 158) from the Constitution are related to human rights and freedoms, which normatively confirm its significance. Main provisions of the Constitution contain three provisions, which are essential for exercise of human rights and freedoms:

- Article 6 guarantees and protects human rights and freedoms, as inviolable categories;
- Article 7 stipulates the prohibition of hatred infliction or intolerance on any grounds;
- Article 8 stipulates the prohibition of direct and indirect discrimination on any grounds whatsoever, as a general precondition for the exercise of overall human rights and freedoms.

In addition, the second part of the Constitution (articles 17-82) regulates the basic principles from the field of human rights and freedoms, civil and political, economic, social and cultural rights, as well as rights of minorities. Besides national legislative, that guarantee the protection of fundamental rights and freedoms, and rights of minorities as well, the Article 9 of the Constitution stipulates that the ratified and published international agreements and generally accepted rules of international law make an integral part of the internal legal order, and have the supremacy over the national legislation and are directly applicable when they regulate the relations differently from the national legislation.

The Constitution of Montenegro (Articles 8 and 17) and ratified international agreements guarantee equality before the law and prohibits any form of discrimination, both direct and indirect, on the basis on any particularity or personal characteristic.

The Constitution guarantees gender equality, i.e. in the Article 18 the State guarantees equality of women and men and develops the policy of equal opportunity. Manner for achieving and establishing of rights based on gender equality and creation of equal opportunities for the participation of women and men in all areas of social life, is assured also by the Law on Gender Equality (Official Gazette of Montenegro 46/07) and is implemented through the Action Plan for the Achievement of Gender Equality, which was adopted by the Government of Montenegro in July 2008.

The Constitution stipulates as common rights the following: equal protection of rights and freedoms, right to legal remedy and legal aid, right to local self-government and right to healthy environment.

In addition, the Constitution defines limitations of human rights and freedoms and temporary limitation of rights and freedoms.

The section on Personal Rights and Freedoms of the Constitution prohibits death penalty, guarantees dignity and inviolability of a person, stipulates the ways of deprivation of freedom and detention, guarantees the right to fair and public trial in within reasonable time, right to defence, right to compensation of damage for illegal action, guarantees freedom of movement and residence, right to privacy and inviolability of home, guarantees the confidentiality of correspondence, telephone conversations and other communication means, guarantees the protection of personal data, right to asylum etc.

From the field of Political rights and freedoms, the Constitution of Montenegro stipulates the electoral right, guarantees freedom of thought, conscience and religion, right to freedom of expression and press, censorship is prohibited, right to free access to information held by state bodies and organisations exercising public authority, guarantees freedom of peaceful assembly and freedom of association, right to recourse to national and international organisation, right to objection of conscience and defines the right to operation and establishment of political and other organisations.

With regard to economic, social and cultural rights and freedoms, the Constitution guarantees the rights of property, entrepreneurship, succession, right to work, prohibition of forced labour, stipulates basic rights of employed, right to strike, obligation of social insurance, right to health protection, guarantees special rights of the persons with disabilities, stipulates the protection of consumers, regulates the possibilities for marriage, protection of family, protection of mother and child, guarantees the rights of the child, right to education under same conditions, right to freedom of creation with the obligation of the state to encourages and supports the development of education, science, culture, art, sports, physical and technical culture, regulates the obligation of protection of natural and cultural heritage as well.

Aimed at protection of overall national identity, the Constitution guarantees the range of additional rights and freedoms to the minorities and other minority national communities, and explicitly prohibits forceful assimilation and stipulates the obligation of the State to protect the members of minorities and other minority national communities from all forms of forceful assimilation.

Constitutional provisions related to fundamental human rights and freedoms are being elaborated and incorporated in great number of laws and secondary legislation from the field of protection of human rights and freedoms.

**Law on Minority Rights and Freedoms** (Official Gazette of the Republic of Montenegro 31/06, 51/06 and 38/07) which regulates the range of minority rights and its protection mechanisms. Above mentioned law provides for the preservation of national identity of minorities, i.e. defence from the assimilation of minorities, as well as providing efficient participation of minorities in public life. The Law is in compliance with the following:

- Universal Declaration of Human Rights;
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities;
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Framework Convention for the Protection of National Minorities;
- European Charter on Regional or Minority Languages;
- Recommendations from Hague, Oslo and Lund (OSCE);
- Guidelines to assist national minority participation in the electoral process (OSCE).

**Law on Gender Equality** (Official Gazette of the Republic of Montenegro 46/07) – is the one in the group of anti-discriminatory laws, that in more detailed manner regulates the ways of exercising of rights guaranteed by the Constitution to equal rights and obligations of all citizens, regardless of any particularity or personal characteristic, including sex as well. The Law has been adopted by the Parliament of Montenegro on 24 July 2007 and is in compliance with the following:

- Amsterdam Treaty, of 10 November 1997 - articles 2,3, 13, 136, 137, 141,251- fully complied;
- **Council Directive 75/117/EEC** of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women - fully complied;
- **Council Directive 75/117/EEC** of 9 February 1976 on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion, and working conditions - fully complied;
- **Council Resolution of 27 March 1995** on balanced participation of women and men in decision making - fully complied;

- **Directive 2002/73/EC of the European Parliament and of the Council** of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

**Law on Social and Child Welfare** (Official Gazette of the Republic of Montenegro 78/05) in details regulates rights from social and child welfare and carrying out social and child welfare activities. The aim of social and child welfare is providing the care for family, an individual, children who are at risk, and persons with social needs, or socially excluded. The Law is in compliance with the following:

- Universal Declaration of Human Rights;
- Charter on Fundamental Social Rights EU - Strasbourg;
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Convention on the Rights of the Child;
- UN Convention on the Rights of Persons with Disabilities with Optional Protocol.

**Law on Pension and Disability Insurance** (Official Gazette of the Republic of Montenegro 54/03, 39/04, 79/04, 81/04 and 47/07 and Official Gazette of Montenegro 79/08) is in compliance with the Regulation 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, Employment Injury Benefits Convention 121 of 1964 and Convention 102 on Social Protection (minimum standards) of 1952.

Montenegro coordinates the system of social insurance with 24 countries, out of which majority of them are EU Member States, through the implementation of previous conventions on social insurance and newly signed agreements, which are in compliance with the Regulation 31971R1408, of 14 June 1971 which represents the main regulation of European Social Legislative, the Regulation 31972R0574, of 21 March 1972 containing provisions for the implementation of the Regulation 31971R1408 and Regulation 32003R0859, of 14 March 2003, widening the implementation of mentioned regulations. Entering into force of the Regulation 32004R0883 on coordination social security system, of 1 May 2010, the Regulation 31971R1408 has expired as well as regulations for its implementation.

**Law on Voluntary Pension Funds** (Official Gazette of the Republic of Montenegro 78/06 and 14/07) is in line with the Council Directive 31998L049 of 29 June 1998 on protection of rights to supplementary pension fund for employed and unemployed persons within the Community.

**Labour Law** is in compliance with the following conventions and recommendations of the International Labour Organisation which are of fundamental importance:

Convention on Freedom of Association and Protection of the Right to Organise 87; Convention on the Right to Organise and Collective Bargaining 98; Convention on Forced Labour 29; Convention on Abolition of Forced Labour 105; Convention on Minimum Age for Employment 138; Recommendation on Minimum Age for Employment 146; Convention on Worst Forms of Child Labour 182; Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value 100; Convention on Minimum Wage Fixing 131; Recommendation on Minimum Wage Fixing 136; Convention on Discrimination with regard to Employment and Occupation 111 and Recommendation 111 on Discrimination with regard to Employment and Occupation; Convention on Employment of Women before and after giving birth 3; Convention on Employment of Women in mine work of all categories 4; Convention on Maternity Protection (revised) 103; Recommendation on Maternity Protection 95; Convention on Protection and Facilities to be Afforded to Workers Representatives in the Undertaking 135; Recommendation on Workers Representatives 143; Convention with Holidays with Pay (revised) 132; Convention on Paid Educational Leave 140; Recommendation on Paid Educational Leave 148; Convention on Tripartite Consultations (international labour standards from 1976) 144; Recommendation on Tripartite Consultations (ILO activities from 1976) 152; Recommendation on Negotiation (at the level of economy and national level from 1960) 133; Convention on Occupational Safety and Health 155; Convention on Termination of Employment at the Initiative of Employer 158; Convention on Night Work 171; Recommendation concerning night work 178; Convention on Protection of Workers Claims in the event of Insolvency of the Employer 173.



This Law is in compliance with the following EU legislation:

Stabilisation and Association Agreement between EU and Montenegro; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; European Social Charter (revised); European Convention on the Protection of Human Rights and Fundamental Freedoms (Protocol no 12); General Convention on Human Rights; Council Directive 2000/78/EC establishing general framework for equal treatment in employment and occupation; Council Directive 2001/23/EC on the approximation of the laws of the member States relating to safeguarding of employee's rights in the event of transfers of undertakings, businesses or parts of undertakings; Council Directive 98/59/EC on the approximation of laws relating to collective redundancies; Council Directive 2003/88/EC concerning certain aspects of working time; Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer with amendments contained in the Directive 2002/74/EC; Council Directive 76/207/EEC on the Implementation of Principle of Equal Treatment for men and women concerning access to employment professional training, promotion and working conditions with amendments from 2002; Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective on racial or ethnic origin.

### **Law on Professional and Social Rehabilitation and Employment of Persons with Disabilities**

(Official Gazette of Montenegro 49/08) is in compliance with the regulations of International Labour Organisation and international agreements on social insurance and employment: UN Convention on the Rights of Persons with Disabilities; International Covenant on Economic, Social and Cultural Rights; EC Social Charter; Council of Europe Resolution (1999/C186/02); Council Resolution on promoting the employment and social integration of persons with disabilities (2003/C175/01); Council Directive on establishment of framework for equal treatment in the field of employment and occupation selection (2000/78/EC); Convention 159 on professional rehabilitation and employment of persons with disabilities, Convention 99 on professional training and re-training of persons with disabilities, and with other documents on protection of persons with disabilities, Recommendation 99 on professional training and re-training of persons with disabilities, and with other documents for protection of persons with disabilities, that were ratified by our country.

**Law on Employment and Work of Foreigners** (Official Gazette of Montenegro 22/08) – This Law provides for the implementation of international conventions, recommendations and other documents from employment and labour field, which represent important instruments for equalising conditions for employment and protection at work, and these are the following:

- European Community Social Charter;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Regulation (EEC) 1408/71 on the application of social security schemes for employed persons and their families moving within the Community;
- Council Regulation (EEC) 2434/92 amending II Part of the Regulation (EEC) 1612/68 on free movement of workers within the Community;
- Council Regulation (ECC) 1612/68 on free movement of workers within the Community;
- Council Regulation (ECC) 31968R1612 on free movement of workers within the Community;
- Council Regulation (ECC) 31992R2434(1) on free movement of workers within the Community;
- European Parliament and Council Directive 32004L038;
- Convention 2 on Unemployment;
- Convention 97 on Migration for Employment;
- Convention 111 on Discrimination concerning Employment and occupation and Recommendation 111 concerning discrimination (employment and occupation);
- Convention 122 on Employment Policy;
- This Law will be in compliance with the EU regulations:

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- Stabilisation and Association Agreement between EU and Montenegro;
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- General Declaration of Human Rights.

**74. Provide a list of human rights instruments and related protocols ratified by Montenegro along with the date of signature and ratification. Include details of any reservations which have been made to those treaties and any declarations recognising the right of individuals to petition committees established by the conventions. In addition, please specify what national legislation and provisions have been adopted to ensure compliance with the obligations flowing from these conventions. How are these implemented and monitored? Given the recent accession of Montenegro to the Conventions for the Protection of Human Rights and Fundamental Freedoms, is there a retro-active applicability of human rights protection to events which precede Montenegro's accession to the Convention as a new independent state (status of the cases during the State Union of Serbia and Montenegro)?**

### Convention and Protocols of United Nations

Title	Action	Enters into force
<p>International Covenant on Civil and Political Rights, New York, 16 December 1966</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 7/71</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	03 June 2006
<p>International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 7/71</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	03 June 2006
<p>Optional Protocol to the International Covenant on Civil and Political Rights, New York, 16 December 1966</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 7/1971 and Official Gazette of the Federal Republic of Yugoslavia – International Treaties 04/01</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	03 June 2006
<p>Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, New York, 15 December 1989</p> <p><b>Published:</b> Official Gazette of the Federal Republic of Yugoslavia – International Treaties 04/01</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	03 June 2006
<p>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia - International</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	03 June 2006

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<p>Treaties 9/91-3</p> <p><b>DECLARATION:</b></p> <p>By the notification of succession the Government of Montenegro confirmed the declarations made by the Government of Yugoslavia under articles 21 and 22. The declaration reads as follows:</p> <p>“Yugoslavia recognizes, in compliance with Article 21, paragraph 1 of the Convention, the competence of the Committee against Torture to receive and consider communications in which one State Party to the Convention claims that another State Party does not fulfil the obligations pursuant to the Convention.</p> <p>Yugoslavia recognizes, in conformity with Article 22, paragraph 1 of the Convention, the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.”</p>		
<p>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 18 December 2002</p> <p>Federal Republic of Yugoslavia signed the Optional Protocol on 25 September 2003</p> <p>After restoration of Independence the Parliament of Montenegro ratified the Protocol on 17 December 2006</p> <p><b>Published:</b></p> <p>Official Gazette of Serbia and Montenegro – International Treaties 16/2005-28 and 2/2006-60</p> <p><b>DECLARATION:</b></p> <p>“The Government of Montenegro makes the following Declaration in relation to article 24 of the Optional Protocol:</p> <p>In accordance with the article 24 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Montenegro postpones the implementation of its obligations under part IV of the present Optional Protocol for two years after the date of the entrance into force of the Optional Protocol.”</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p> <p>Instrument of ratification is deposited in the depository on 6 March 2009</p>	<p>Succession to signature takes effect on 03 June 2006</p> <p>Optional Protocol enters into force with regard to Montenegro on 5 April 2009</p>
<p>International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 31/67-889 and 6/67-747</p> <p><b>DECLARATION</b></p> <p>By the notification of succession the Government of Montenegro confirmed the declaration made by the Government of Yugoslavia under article 14 of the Convention. The declaration reads as follows:</p> <p>“By affirming its commitment to establish the principles of the rule of law and promote and protect human rights, the Government of the Federal Republic of Yugoslavia recognizes the competence of the Committee on the Elimination of Racial Discrimination to receive and consider complaints submitted by individuals and groups alleging violations of rights guaranteed under the International Convention on the Elimination of All Forms of Racial Discrimination.</p> <p>The Government of the Federal Republic of Yugoslavia determines the competence of the Federal Constitutional Court to accept and consider, within its domestic legal system, the complaints submitted by individuals and groups under the State jurisdiction, alleging to have been victims of rights violations under the Convention, and who have exhausted all available legal means provided for by the national legislation.”</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>

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<p>Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 11/81-613</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>Optional Protocol to the Convention on the Elimination of Discrimination against Women, New York, 6 October 1999</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal Republic of Yugoslavia - International Treaties 13/2002-46</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>Convention on the Rights of the Child, New York, 20 November 1989</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 15/90-8 and 4/96-68</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>Amendment to Article 43 (2) of the Convention on the Rights of the Child, New York, 12 December 1995</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal Republic of Yugoslavia - International Treaties 2/97-70</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal Republic of Yugoslavia - International Treaties 7/2002-64</p> <p><b>DECLARATION:</b></p> <p>“The Republic of Montenegro hereby declares that in accordance with article 3, paragraph 2, the Government of the Republic of Montenegro does not impose mandatory military service. The minimum age at which Montenegro will permit voluntary recruitment into its national armed forces shall be 18 years. This provision is already prescribed in the Bill on Defence and Bill on the Army of the Republic of Montenegro, which are currently in the procedure in the Montenegrin Government.”</p>	<p>Notification of succession by the declaration is deposited in the depository on 02 May 2007</p>	<p>03 June 2006</p>
<p>Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, New York, 25 May 2000</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal Republic of Yugoslavia - International Treaties 7/2002-64</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, New York, 18 December 1990</p>	<p>Notification of succession to signature is deposited in the depository on 23 October 2006</p>	<p>Succession to signature takes effect on 3 June 2006</p>
<p>International Convention for the Protection of All Persons from Enforced Disappearance, New York, 20 December 2006</p>	<p>Signature on 06 February 2007</p>	
<p>Convention on the Rights of Persons with Disabilities, New York, 13 December 2006</p>	<p>Signature on 27 September 2007</p>	
<p>Optional Protocol to the Convention on the Rights of Persons with Disabilities, New York, 13 December 2006</p>	<p>Signature on 27 September 2007</p>	
<p>Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9 December 1948.</p>	<p>Notification of succession is deposited in the depository on 23</p>	<p>03 June 2006</p>

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<p><b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia 2/50</p> <p><b>RESERVATION:</b> The succession was submitted with confirmation of the reservation made by Serbia and Montenegro upon accession: "[Montenegro] does not consider itself bound by Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide and, therefore, before any dispute to which [Montenegro] is a party may be validly submitted to the jurisdiction of the International Court of Justice under this Article, the specific and explicit consent of the FRY is required in each case."</p>	October 2006	
<p>Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, New York, 26 November 1968.</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties and other agreements 50/70</p>	Notification of succession is deposited in the depository on 23 October 2006	03 June 2006
<p>International Convention on the Suppression and Punishment of the Crime of Apartheid, New York, 30 November 1973</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties and other agreements 14/75-340</p>	Notification of succession is deposited in the depository on 23 October 2006	03 June 2006
<p>International Convention Against Apartheid in Sports, New York, 10 December 1985</p> <p><b>Published:</b> Text is not published but the Socialist Federal Republic of Yugoslavia ratified the Convention on 4 October 1989 (instrument on ratification is deposited in the depository on 22 December 1989)</p>	Notification of succession is deposited in the depository on 23 October 2006	03 June 2006

### Other United Nations Conventions related to the protection of human rights

Title	Action	Enters into force
<p>Convention relating to the Status of Refugees, Geneva, 28 July 1951</p> <p><b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties and other agreements 7/60</p> <p><b>DECLARATION:</b> "The Republic of Montenegro considers itself bound by alternative (b) of Article 1B (1) that is to say "events occurring in Europe or elsewhere before 1 January 1951".</p>	Notification of succession is deposited in the depository on 10 October 2006	03 June 2006
<p>Protocol relating to the Status of Refugees, New York, 31 January 1967</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties and other agreements 15/67</p>	Notification of succession is deposited in the depository on 10 October 2006	03 June 2006
<p>Convention relating to the Status of Stateless Persons, New York, 28 September 1954</p> <p><b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties and other agreements 9/59</p>	Notification of succession is deposited in the depository on 10 October 2006	03 June 2006
<p>International Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921, as Amended by the Protocol signed at Lake Success, New York, on 12 November 1947</p> <p><b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia 41/50-774</p>	Notification of succession is deposited in the depository on 10 October 2006	03 June 2006

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<p>International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, amended by the Protocol signed at Lake Success, New York, 4 May 1949</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal People's Republic of Yugoslavia – Annex 2/51</p>	<p>Notification of succession is deposited in the depository on 10 October 2006</p>	<p>03 June 2006</p>
<p>Convention for the Suppression of the Traffic in Persons and of the exploitation of the Prostitution of Others, Lake Success, New York, 21 March 1950</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal People's Republic of Yugoslavia 2/1951</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>Slavery Convention, signed at Geneva on 25 September 1926 and amended by the Protocol, New York, 7 December 1953</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties and other agreements 4/1956</p> <p>Slavery Convention signed at Geneva on 25 September 1926</p> <p><b>Published:</b></p> <p>Collection of treaties of the Kingdom of Yugoslavia 1929, page 607</p> <p>Protocol amending the Slavery Convention signed at Geneva on 25 September 1926, was adopted in New York on 7 December 1953</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties and other agreements 6/1955</p> <p style="text-align: center;">* * *</p> <p>Taking into consideration the attitude of the UN legal office that Montenegro can not make succession in relation to international agreements of the People's League, notification of succession is accepted only with the Slavery Convention amended by the Protocol of 7 December 1953, which represents the special international legal instrument of United Nations</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Geneva, 7 September 1956</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties and other agreements 7/1958</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>Rome Statute of the International Criminal Court, Rome, 17 July 1998</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal Republic of Yugoslavia - International Treaties 5/2001-3</p> <p><b>NOTIFICATION :</b></p> <p>Notification of succession included the confirmation of the notification by Serbia and Montenegro upon accession which reads as follows:</p> <p>“... in accordance with article 87 paragraphs 1 (a) and 2 of the Rome Statute Serbia and Montenegro has designated Diplomatic Channel of communication as its channel of communication with the International Criminal Court and Serbian and English language as the languages of communication.”</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>Convention on the Political Rights of Women, New York, 31 March 1953</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties and other agreements 7/1954</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>Convention on the Nationality of Married Women, New York, 20 February 1957</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties and other agreements 7/1958</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	<p>03 June 2006</p>
<p>Convention on Consent to Marriage, Minimum Age for Marriage and Registration of</p>	<p>Notification of</p>	<p>03 June 2006</p>

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<p>Marriages, New York, 10 December 1962</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties and other agreements 13/1964</p>	<p>succession is deposited in the depository on 23 October 2006</p>	
<p>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000</p> <p><b>Published:</b> Official Gazette of the Federal Republic of Yugoslavia - International Treaties 6/2001 – 3</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	03 June 2006
<p>Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000</p> <p><b>Published:</b> Official Gazette of the Federal Republic of Yugoslavia - International Treaties 6/2001 - 3</p>	<p>Notification of succession is deposited in the depository on 23 October 2006</p>	03 June 2006

### **Conventions and Protocols of Hague Convention on International Private Law (HCCH)**

Title	Action	Enters into force
<p>Convention of 25 October 1980 on the Civil Aspects of International Child Abduction</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 7/91-19</p>	<p>Notification of succession is deposited in the depository on 10 April 2007</p>	<p>Legal continuity, on the basis of succession, of 01 December 1991</p>

### **International Labour Organisation Conventions (ILO)**

Title	Succession	Enters into force
Unemployment Convention, Co 2	Notification of succession is deposited in the depository 25 May 2007	03 June 2006
Maternity Protection Convention, Co 3	Succession 25 May 2007	03 June 2006
Unemployment Indemnity (Shipwreck) Convention, Co 8	Succession 25 May 2007	03 June 2006
Placing of Seamen Convention, Co 9	Succession 25 May 2007	03 June 2006
Right of Association (Agriculture) Convention, Co 11	Succession 25 May 2007	03 June 2006
Workmen's Compensation (Agriculture) Convention, Co 12	Succession 25 May 2007	03 June 2006
White Lead (Painting) Convention, Co 13	Succession 25 May 2007	03 June 2006
Weekly Rest (Industry) Convention, Co 14	Succession 25 May 2007	03 June 2006
Medical Examination of Young Persons (Sea) Convention, Co 16	Succession 25 May 2007	03 June 2006
Workmen's Compensation (Accidents) Convention, Co 17	Succession 25 May 2007	03 June 2006
Workmen's Compensation (Occupational Diseases) Convention, Co 18	Succession 25 May 2007	03 June 2006
Equality of Treatment (Accident Compensation) Convention, Co 19	Succession 25 May 2007	03 June 2006

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Seamen's Articles of Agreement Convention, Co 22	Succession 25 May 2007	03 June 2006
Repatriation of Seamen Convention, Co 23	Succession 25 May 2007	03 June 2006
Sickness Insurance (Industry) Convention, Co 24	Succession 25 May 2007	03 June 2006
Sickness Insurance (Agriculture) Convention, Co 25	Succession 25 May 2007	03 June 2006
Marking of Weight (Packages Transported by Vessels) Convention, Co 27	Succession 25 May 2007	03 June 2006
Forced Labour Convention, Co 29	Succession 25 May 2007	03 June 2006
Protection against Accidents (Dockers) Convention (Revised), Co 32	Succession 25 May 2007	03 June 2006
Underground Work (Women) Convention, Co 45	Succession 25 May 2007	03 June 2006
Maintenance of Migrants' Pension Rights Convention, Co 48	Succession 25 May 2007	03 June 2006
Officers' Competency Certificates Convention, Co 53 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties 9 /61-26	Succession 25 May 2007	03 June 2006
Sickness Insurance (Sea) Convention, Co 56 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – Annex 12 /58-1	Succession 25 May 2007	03 June 2006
Certification of Ships' Cooks Convention, Co 69 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – Annex 7 /61-10	Succession 25 May 2007	03 June 2006
Medical Examination (Seafarers) Convention, Co 73	Succession 25 May 2007	03 June 2006
Certification of Able Seamen Convention, Co 74 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties 3 /62-41	Succession 25 May 2007	03 June 2006
Final Articles Revision Convention, Co 80	Succession 25 May 2007	03 June 2006
Labour Inspection Convention, Co 81	Succession 25 May 2007	03 June 2006
1Freedom of Association and Protection of the Right to Organise Convention, Co 87 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – Annex 8/58-1	Succession 25 May 2007	03 June 2006
Employment Service Convention, Co 88	Succession 25 May 2007	03 June 2006
Night Work (Women) Convention (Revised), Co 89	Succession 25 May 2007	03 June 2006
Night Work of Young Persons (Industry) Convention (R Revised), Co 90	Succession 25 May 2007	03 June 2006
Paid Vacations (Seafarers) Convention (Revised), Co 91 <b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia -	Succession 25 May 2007	03 June 2006



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International Treaties 7 /67-773		
Accommodation of Crews Convention (Revised), Co 92 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – Annex 3 /67	Succession 25 May 2007	03 June 2006
Migration for Employment Convention (Revised), Co 97 <b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia - International Treaties 5 /68-335	Succession 25 May 2007	03 June 2006
Right to Organise and Collective Bargaining Convention, Co 98 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – Annex 11 /58-4	Succession 25 May 2007	03 June 2006
Equal Remuneration Convention, Co 100	Succession 25 May 2007	03 June 2006
Social Security (Minimum Standards) Convention, Co 102 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – Annex 1 /55-41	Succession 25 May 2007	03 June 2006
Maternity Protection Convention (Revised), Co 103 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – Annex 9/55-9	Succession 25 May 2007	03 June 2006
Abolition of Forced Labour Convention, Co 105 <b>Published:</b> Official Gazette of the Federal Republic of Yugoslavia - International Treaties 13 /2002-29	Succession 25 May 2007	03 June 2006
Weekly Rest (Commerce and Offices) Convention, Co 106 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – Annex 12 /58-18	Succession 25 May 2007	03 June 2006
Discrimination (Employment and Occupation) Convention, Co 111 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties 9 /61-83	Succession 25 May 2007	03 June 2006
Medical Examination (Fishermen) Convention, Co 113 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties 2 /62-23	Succession 25 May 2007	03 June 2006
Fishermen's Articles of Agreement Convention, Co 114 <b>Published:</b> Official Gazette of the Federal People's Republic of Yugoslavia – International Treaties 2 /62-23	Succession 25 May 2007	03 June 2006
Final Articles Revision Convention, Co 116	Succession 25 May 2007	03 June 2006
Guarding of Machinery Convention, Co 119 <b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia –	Succession 25 May 2007	03 June 2006

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Annex 54 /70		
<p>Employment Injury Benefits Convention, Co 121</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia – Annex 27 /70</p>	Succession 25 May 2007	03 June 2006
<p>Employment Policy Convention, Co 122</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia 34 /71-523</p>	Succession 25 May 2007	03 June 2006
<p>Accommodation of Crews (Fishermen) Convention, Co 126</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia 43 /74-676</p>	Succession 25 May 2007	03 June 2006
<p>Labour Inspection (Agriculture) Convention, Co 129</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia 22 /75-725</p>	Succession 25 May 2007	03 June 2006
<p>Minimum Wage Fixing Convention, Co 131</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14 /82-667</p>	Succession 25 May 2007	03 June 2006
<p>Holidays with Pay Convention (Revised), Co 132</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia 52 /73-1579</p>	Succession 25 May 2007	03 June 2006
<p>Workers' Representatives Convention, Co 135</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14 /82-672</p>	Succession 25 May 2007	03 June 2006
<p>Benzene Convention, Co 136</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 16 /76-431</p>	Succession 25 May 2007	03 June 2006
<p>Minimum Age Convention, Co 138</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14 /82-676</p>	Succession 25 May 2007	03 June 2006
<p>Occupational Cancer Convention, Co 139</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 3 /77</p>	Succession 25 May 2007	03 June 2006
<p>Paid Educational Leave Convention, Co 140</p> <p><b>Published:</b> Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14 /82-684</p>	Succession 25 May 2007	03 June 2006
<p>Human Resources Development Convention, Co 142</p> <p><b>Published:</b></p>	Succession 25 May 2007	03 June 2006

## II Human rights

Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14 /82-689		
<p>Migrant Workers (Supplementary Provisions) Convention, Co 143</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 12 /80-725</p>	Succession 25 May 2007	03 June 2006
<p>Tripartite Consultation (International Labour Standards) Convention, Co 144</p> <p><b>Published:</b></p> <p>Official Gazette of Serbia and Montenegro – International Treaties 1 /2005-11</p>	Succession 25 May 2007	03 June 2006
<p>Working Environment (Air Pollution, Noise and Vibration) Convention, Co 148</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14 /82-694</p>	Succession 25 May 2007	03 June 2006
<p>Occupational Safety and Health Convention, Co 155</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 7/87-17</p>	Succession 25 May 2007	03 June 2006
<p>Workers with Family Responsibilities Convention, Co 156</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 7 /87-30</p>	Succession 25 May 2007	03 June 2006
<p>Termination of Employment Convention, Co 158</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 4 /84-139, 7/91-28</p>	Succession 25 May 2007	03 June 2006
<p>Vocational Rehabilitation and Employment (Disabled Persons) Convention, Co 159</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 3 /87-6</p>	Succession 25 May 2007	03 June 2006
<p>Occupational Health Services Convention, Co 161</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 14 /89-8</p>	Succession 25 May 2007	03 June 2006
<p>Asbestos Convention, Co 162</p> <p><b>Published:</b></p> <p>Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties 4 /89-3</p>	Succession 25 May 2007	03 June 2006
<p>Worst Forms of Child Labour Convention, Co 182</p> <p><b>Published:</b></p> <p>Official Gazette of the Federal Republic of Yugoslavia – International Treaties 2 /2003-15</p>	Succession 25 May 2007	03 June 2006

### **Council of Europe Conventions**

#### **Family Right – Rights of the Child (legal cooperation in civil matters)**

## II Human rights

Title	Action	Enters into force
<p>European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children</p> <p><b>Official Gazette of the Federal Republic of Yugoslavia – International Treaties 1/2001-38</b></p>	Notification succession of	06 June 2006

### Human Rights

Title	Action	Enters into force
<p>Convention for the Protection of Human Rights and Fundamental Freedoms</p> <p><b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b></p>	Notification succession of	06 June 2006
<p>Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms</p> <p><b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b></p>	Notification succession of	06 June 2006
<p>Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions</p> <p><b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b></p>	Notification succession of	06 June 2006
<p>Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention</p> <p><b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b></p>	Notification succession of	06 June 2006
<p>Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto</p> <p><b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b></p>	Notification succession of	06 June 2006
<p>Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention</p> <p><b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b></p>	Notification succession of	06 June 2006
<p>Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty</p> <p><b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b></p>	Notification succession of	06 June 2006
<p>Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms</p> <p><b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b></p>	Notification succession of	06 June 2006
<p>Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms</p> <p><b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b></p>	Notification succession of	06 June 2006
<p>European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</p> <p><b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b></p>	Notification succession of	06 June 2006

## II Human rights

European Charter for Regional or Minority Languages <b>Official Gazette of Serbia and Montenegro – International Treaties 18/2005-3</b>	Notification succession	of	06 June 2006
Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment <b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-7</b>	Notification succession	of	06 June 2006
Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment <b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b>	Notification succession	of	06 June 2006
Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby <b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b>	Notification succession	of	06 June 2006
Framework Convention for the Protection of National Minorities <b>Official Gazette of the Federal Republic of Yugoslavia – International Treaties 6/98-3</b>	Notification succession	of	06 June 2006
Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms <b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b>	Notification succession	of	06 June 2006
Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances <b>Official Gazette of Serbia and Montenegro – International Treaties 9/2003-16 and 5/2005-31</b>	Notification succession	of	06 June 2006
Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention <b>Official Gazette of Serbia and Montenegro – International Treaties 5/2005-25 and 7/2005-47</b>	Notification succession	of	06 June 2006
Council of Europe Convention on Action against Trafficking in Human Beings <b>Official Gazette of Montenegro 4/2008-38</b>	Instrument of ratification deposited in the depository on 30 July 2008	of	01 November 2006

### Compliance of national legislation

Compliance of national legislation with obligations arising from the ratified and published international treaties, i.e. their status with relation to the national jurisdiction is regulated by Article 9 of the Constitution (see answer to the question 75).

### Implementation and monitoring of implementation

In cases when the international treaty is not possible to be implemented directly, relevant administration bodies initiate the procedure for the adoption of laws and secondary legislation which provide conditions for direct implementation of treaties. As a consequence of such an approach, the achievement and protection of certain right is regulated by series of regulations. As an entry point, main provisions of the Constitution represent fundamental and general guarantee for the protection and exercise of human rights and freedoms, stipulates prohibition of infliction of hatred and intolerance on any ground, as well as the prohibition of discrimination, as a general precondition for enjoyment of all human rights and freedoms. Constitutional provisions on human rights and freedoms are, beside common provisions and provisions on ombudsman, divided into four groups: personal rights and freedoms; political rights and freedoms; economic, social and cultural rights and freedoms, and special minority rights.

The following institutions participate in different segments of achievement of protection and promotion of human rights and freedoms, in line with their competences stipulated by the Decree on organisation and work of administration bodies: Ministry of Human and Minority Rights, Ministry of Justice, Ministry of Interior and Public Administration, Ministry of Education and Science, Ministry of Culture, Sports and Media, Ministry of Health, Ministry of Labour and Social Welfare, Ministry of Tourism, Ministry for Spatial Planning and Environmental Protection, Ministry of Finance, Ministry of Foreign Affairs, Office for Cooperation with NGOs, Ombudsman Office, Office for Sustainable Development, Office for Anti-Trafficking, Refugee Care and Support Office, Police Directorate etc.

The most important role in the achievement of protection of human rights and freedoms is performed by courts, i.e. the Constitutional Court and the Ombudsman.

The role of courts in protection of human rights and freedoms comes from the fact that all procedural laws in Montenegro provide for the right to effective legal remedy through regular and irregular legal remedies. The Law on Civil Procedure introduces the new institute of repetition of procedure when the European Court for Human Rights stipulates the violation of human rights or fundamental freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. In addition, the Criminal Code stipulates series of criminal offences against rights and freedoms of the person and citizen, against electoral rights, violation of dignity and reputation, against humanity and other goods protected by international law, criminal offence of domestic violence and others.

The Constitutional Court is in charge for deciding upon constitutional complaints due to alleged violation of human rights and freedoms guaranteed by the Constitution, after the use of all efficient legal means. Namely, the Constitution stipulates that every person is entitled to the right to legal remedy against the decision ruling on the right or legally based interest thereof.

The starting point of the Ombudsman work is to protect citizens from illegal, irregular, and ill work of State administration body or local body, and other bodies with public competences as well, by acting upon the citizen's complaints or self initiated. Ombudsman acts in two directions: timely warning on the violation of human rights of citizens and assists in their achievement, and contributes to democratic control of the administration and its improvement.

### ***General legal framework, strategies and action plans for the achievement and protection of human rights and freedoms***

- Constitution of Montenegro (Official Gazette of the Republic of Montenegro 01/07)
- Law on Ombudsman (Official Gazette of the Republic of Montenegro 41/03)
- Law on Health Protection (Official Gazette of the Republic of Montenegro 39/04)
- Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03, 07/04, 47/06)
- Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06, Official Gazette of Montenegro 40/08)
- Law on Execution of Criminal Sanctions (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03, 65/04)
- Law on Non Civil Procedure (Official Gazette of the Republic of Montenegro 27/06)
- Law on Civil Procedure (Official Gazette of the Republic of Montenegro 22/04, 76/06)
- Law on Executive Procedure (Official Gazette of the Republic of Montenegro 23/04)
- Law on Inheritance (Official Gazette of the Republic of Montenegro 4/76, 10/76, 22/78, 34/86, Official Gazette of the Republic of Montenegro 64/06, Official Gazette of Montenegro 47/08)
- Law on Administrative Dispute (Official Gazette of the Republic of Montenegro 60/03)
- Law on Offences (Official Gazette of the Republic of Montenegro 25/94, 29/94 and 48/99)
- Law on Inheritance (Official Gazette of the Republic of Montenegro 74/08)
- Law on Non Governmental Organisations (Official Gazette of the Republic of Montenegro 27/99, 09/02, 30/02, Official Gazette of Montenegro 11/07)
- Strategy for Judiciary Reform (2007-2012) and Action Plan for its implementation
- Poverty Reduction Strategy Paper (2003-2007)
- Strategy for Combating Poverty and Social Exclusion (2007-2011)

- National Strategic Response to Drugs (2008-2012)

***Legal framework, strategies and action plans for the achievement and respect of prohibition of discrimination on any grounds, achievement of minority rights, gender equality, rights of persons with the status of refugees and asylum, rights of persons with special needs***

- Law on Minority Rights and Freedoms (Official Gazette of the Republic of Montenegro 31/06, 51/06, 38/07)
- Law on the Use of National Symbols (Official Gazette of the Republic of Montenegro 55/00)
- Law on Gender Equality (Official Gazette of the Republic of Montenegro 46/07)
- Law on Legal Status of Religious Communities (Official Gazette of the Republic of Montenegro 9/77 and 26/77)
- Law on Celebration of Religious Holidays (Official Gazette of the Republic of Montenegro 56/93)
- Law on Foreigners (Official Gazette of Montenegro 82/08)
- Law on Identity Card (Official Gazette of the Republic of Montenegro 12/07),
- Law on Travel Documents (Official Gazette of the Republic of Montenegro 21/08 and 25/08),
- Law on Birth Registers (Official Gazette of Montenegro 47/08)
- Law on Asylum (Official Gazette of the Republic of Montenegro 45/06)
- Law on Personal Name (Official Gazette of Montenegro 47/08)
- Law on Montenegrin Citizenship (Official Gazette of Montenegro 13/08)
- Law on Transport Benefits for Persons with Disabilities and for their Escorts (Official Gazette of Montenegro 80/08);
- The Law on Movement of Blind Person and Accompanied by Guide Dogs (Official Gazette of Montenegro 18/08);
- The Law on War Veterans and Disability Insurance (Official Gazette of the Republic of Montenegro 69/03 and Official Gazette of Montenegro 21/08);
- The Law on Pension and Disability Insurance (Official Gazette of the Republic of Montenegro 54/03, 39/04, 47/07 and Official Gazette of Montenegro 79/08);
- Law on Ratification of the UN Convention on the Rights of Persons with Disabilities and Optional Protocol (Official Gazette of Montenegro – International Treaties 2/09).
- Law on Professional and Social Rehabilitation and Employment of Persons with Disabilities (Official Gazette of Montenegro 49/08);
- The Law on Protection and Exercise of the Rights of the Mentally Ill (Official Gazette of the Republic of Montenegro 32/05)
- Law on Special Education (Official Gazette of the Republic of Montenegro 56/92)
- Law on Education of Children with Special Needs (Official Gazette of the Republic of Montenegro 80/04)
- Strategy for Minority Policy (2008-2012)
- Strategy for the Advancement of the Status of RAE Population in Montenegro (2008-2012)
- National Action Plan for the „Decade of Roma Inclusion 2005-2015“ in Montenegro
- Action Plan for the Achievement of Gender Equality (2008-2012)
- Strategy for Permanent Resolution of the Status of Refugees and Internally Displaced Persons in Montenegro (2005- 2008)
- Strategy of Integration of Persons with Disabilities in Montenegro (2008-2016)
- Action Plan for the Strategy for Integration of Persons with Disabilities in Montenegro (2008-2009)
- Strategy for Development of Social Protection of Elderly

***Legal Framework, strategies and action plans for the achievement of the rights of the child, right to education, and cultural rights***

- Family Law (Official Gazette of the Republic of Montenegro 1/07)
- General Law on Education (Official Gazette of the Republic of Montenegro 64/02, 31/05, 49/07 and Official Gazette of Montenegro 04/08)
- Law on Primary School (Official Gazette of the Republic of Montenegro 34/91, 48/91, 17/92, 56/92, 32/93, 27/94, 2/95, 20/95, 64/02)

- Law on Primary Education (Official Gazette of the Republic of Montenegro 64/02, 49/07)
- Law on Grammar School (Official Gazette of the Republic of Montenegro 64/02, 49/07)
- Law on High School (Official Gazette of the Republic of Montenegro 28/91 and Official Gazette of the Republic of Montenegro 35/91, 56/92, 27/94-391, 27/94-395, 64/02)
- Law on Special Education (Official Gazette of the Republic of Montenegro 56/92)
- Law on Education of Children with Special Needs (Official Gazette of the Republic of Montenegro 80/04)
- Law on Pre-School Education (Official Gazette of the Republic of Montenegro 64/02 and 49/07)
- Law on Vocational Education (Official Gazette of the Republic of Montenegro 64/02 and 49/07)
- Law on the Adult Education (Official Gazette of the Republic of Montenegro 64/02 and 49/07)
- Law on Higher Education (Official Gazette of the Republic of Montenegro 60/03)
- Law on School Inspection (Official Gazette of the Republic of Montenegro 80/04)
- Law on Scientific and Research Activity (Official Gazette of the Republic of Montenegro 71/05)
- Law on Recognition and Evaluation of Educational Documents (Official Gazette of the Republic of Montenegro 4/08)
- Law on Culture (Official Gazette of the Republic of Montenegro 49/08)
- Law on Editing (Official Gazette of the Republic of Montenegro 20/95 and 22/95)
- Law on Cinematography (Official Gazette of Montenegro 14/08)
- Law on Theatre (Official Gazette of the Republic of Montenegro 60/01)
- Law on Copy Rights (Official Gazette of the Republic of Montenegro 61/04)
- Law on Protection of Cultural Monuments (Official Gazette of the Republic of Montenegro 49/91)
- National Action Plan for Youth (2007-2011)
- National Action Plan for Children (2004-2010)
- National Program of Prevention of Unacceptable Behaviour of Children and Youth in Montenegro (2004-2006)
- Strategy for Development of the System of Social and Child Protection in Montenegro (2008-2012)
- Strategy for Inclusive Education in Montenegro (2008-2012)

### ***Legal framework, strategies and action plans for the protection of dignity and immunity of persons, respect for rights to privacy***

- Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03, 07/04, 47/06)
- Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 13/04, 47/06, Official Gazette of Montenegro 40/08)
- Law on Execution of Criminal Sanctions (Official Gazette of the Republic of Montenegro 25/94, 29/94, 69/03, 65/04)
- Law on Protection of Rights to Trial within Reasonable Time (Official Gazette of the Republic of Montenegro 11/07)
- Law on Police (Official Gazette of the Republic of Montenegro 28/05)
- Law on Public Order (Official Gazette of the Republic of Montenegro 41/94)
- Law on Data Security (Official Gazette of Montenegro 14/08)
- Strategy for Judiciary Reform (2007-2012) and Action Plan for its implementation
- Police Ethics Code
- Rulebook on the conditions that have to be met for rooms for detainees

### ***Legal framework, strategies and action plans for the achievement of freedom of thought, expression and right to information***

- Law on Media (Official Gazette of the Republic of Montenegro 51/02, 62/02)
- The Broadcasting Law (Official Gazette of the Republic of Montenegro 51/02, 62/02, 46/04, 56/04, 77/06, Official Gazette of Montenegro 50/08)



- Law on Public Broadcasting Services „Radio of Montenegro“ and „Television of Montenegro“ (Official Gazette of the Republic of Montenegro 51/02 and 62/02)

### ***Legal framework, strategies and action plans for the achievement of rights from the labour field and on the basis of labour***

- Labour Law (Official Gazette of Montenegro 49/08)
- The Law on Social and Child Welfare (Official Gazette of the Republic of Montenegro 78/05)
- Law on Employment (Official Gazette of the Republic of Montenegro 5/02, 79/04, 29/05, 12/07, 21/080 and Official Gazette of Montenegro 49/08)
- Law on Health Insurance (Official Gazette of the Republic of Montenegro 39/04, 23/05, 29/05 and Official Gazette of Montenegro 12/07, 13/07)
- Law on Social Council (Official Gazette of the Republic of Montenegro 16/07)
- Law on Employment and Work of Foreigners (Official Gazette of Montenegro 22/08)
- Law on Pension and Disability Insurance (Official Gazette of the Republic of Montenegro 54/03, 39/04, 47/07 and Official Gazette of Montenegro 79/08)
- Law on Voluntary Pension Funds (Official Gazette of the Republic of Montenegro 78/06 and 14/07)

### ***Legal framework, strategies and action plans for the achievement of rights to healthy environment***

- Law on Environment (Official Gazette of Montenegro 48/08)
- Law on Integrated Prevention and Control of Environmental Pollution (Official Gazette of the Republic of Montenegro 80/05)
- Law on Strategic Assessment of Impact on Environment (Official Gazette of the Republic of Montenegro 80/05)
- Law on Waste Management (Official Gazette of the Republic of Montenegro 80/05)
- Law on Air Quality (Official Gazette of the Republic of Montenegro 48/07)
- National Strategy for Sustainable Development
- National Policy for Waste Management

### **Validity of international treaties on human rights and freedoms**

The Constitutional Law for the implementation of the Constitution of Montenegro (Official Gazette of the Republic of Montenegro 1/07) stipulates the following: “provisions from international treaties on human rights and freedoms, that Montenegro acceded before 3 June 2006, shall be applied on legal relations that succeeded after signing”. Thus the implementation of international agreements on human rights in Montenegro is fully provided.

### **75. What is the rank of these conventions in your domestic legal system including your constitution? Have you introduced the direct applicability in domestic law of international conventions in all cases?**

Article 9 of the Constitution stipulates that the ratified and published international treaties and generally accepted rules of international law make an integral part of the internal legal order, and have the supremacy over the national legislation and are directly applicable when they regulate the relations differently from the national legislation. This regulation verifies not only the legal effect of international treaties by considering them as the part of national legislation with supremacy, but also the State administration bodies are referred to the need for harmonisation of national legislative with the international one, above all in the field of guarantee, promotion and protection of fundamental human rights and freedoms.

Constitutional Law for the implementation of the Constitution of Montenegro (Official Gazette of the Republic of Montenegro 1/07) in the Article 5 stipulates: “Provisions from international treaties on

human rights and freedoms, that Montenegro acceded before 3 June 2006, shall be applied on legal relations that succeeded after signing“.

**76. Is there an Ombudsman with general competence in the field of human rights, the rights of women , rights of children and protection of minorities? If so, provide a description of the relevant legislation, as well as statistics on the total number of cases received by him in recent years, the number of recommendations he has made, and the number of his recommendations which have been implemented by the relevant authorities.**

The Protector of Human Rights and Freedoms (Ombudsman) has been established by the Law on the Protector of Human Rights and Freedoms (Official Gazette of the Republic of Montenegro 41/03), as a independent body in charge for protection of human rights and freedoms guaranteed by the Constitution, the Law, and ratified international treaties on human rights and generally accepted rules of international legislative when violated by the act, activity, or ill treatment of the local self government, public service or other bodies with public competences. The first Ombudsman has been appointed by the Parliament of Montenegro in October 2003. According to the Law on Ombudsman, it has at least one deputy, and the Decision upon the number of deputies is adopted by the Parliament of Montenegro, at the proposal made by the Ombudsman. One of the deputies is in charge for the protection of minority rights. Currently, the Ombudsman has three deputies.

The provision 81 of the Constitution stipulates that: “The Ombudsman of Montenegro shall be independent and autonomous authority that takes measures to protect human rights and freedoms. The Ombudsman shall exercise duties on the basis of the Constitution, and the law and the confirmed international treaties, observing also the principles of justice and fairness.

In the process of compliance or Montenegrin legislation with the *acquis communautaire*, which is implemented also in the field of protection of human rights and freedoms, the activities on the adoption of the Draft Law on Amendments to the Law on Ombudsman are in progress. The draft law stipulates that the Ombudsman has at least four deputies and while making special duties for deputies for certain areas it is necessary to take into account the protection of persons deprived from freedom, protection of rights of persons belonging to minority nations and other minority communities, protection of children’s rights, gender equality, protection of rights of persons with disabilities and protection from discrimination. With the adoption of above mentioned Law on Amendments to the Law the Ombudsman with perform the duty of the national mechanism for prevention of torture and other forms of inhuman and degrading treatment or punishment, as well as the national mechanism for the protection from discrimination.

Regarding the number of complaints received by the Ombudsman, number of recommendations made towards the State administration bodies, as well as those fulfilled by the authorities; hitherto we provide the following statistics:

YEAR	NUMBER OF COMPLAINTS	NUMBER OF RECOMMENDATIONS	RECOMMENDATIONS FULFILLED
2003 and 2004	373	34	19
2005	575	29 (10 are transferred from 2004)	20
2006	495	34	22
2007	448	13 (7 are transferred from 2006)	9
2008	430	30 (7 are transferred from 2007)	19
2009	300	6	2

## 77. Which guarantees exist for the independence of the Ombudsman?

Independence of the Ombudsman is guaranteed by the Article 81 of the Constitution, which stipulates: "The Ombudsman of Montenegro shall be independent and autonomous authority that takes measures to protect human rights and freedoms". In addition, the Article 2 of the Law on Ombudsman (Official Gazette of the Republic of Montenegro 41/03), stipulates: "The Ombudsman shall be independent and autonomous in exercising its duty".

Ombudsman of Montenegro is an independent and autonomous authority, having the following competences:

- Protects human rights and freedoms guaranteed by the Constitution, the Law, and ratified international treaties on human rights and generally accepted rules of international legislative when violated by the act, activity, or ill treatment of the local self government, public service or other bodies with public competences;
- Deals with general issues of significance for the protection and promotion of human rights and freedoms, and cooperates with relevant nongovernmental organisations dealing with human rights and freedoms;
- Acts upon complaints regarding ongoing court procedure, in cases of the delay of procedure, obvious abuse of procedural competences or non execution of court decisions;
- Initiates amendments to the certain regulations, in particular for the purposes of compliance with international standards in the area of human rights and freedoms;
- Makes opinions to the draft laws, other regulations or general acts if necessary for the purpose of protection and promotion of human rights and freedoms;
- Initiates proceedings before the Constitutional Court of Montenegro for the assessment of constitutionality and legality of regulations and general acts relating to human rights and freedoms;
- Makes the opinions to the protection and promotion of human rights and freedoms, upon the request of a body that is making decision on those rights, regardless of the type and the level of procedure that is ongoing before this body.

Beside these competences, the Ombudsman has even wider mission, which is the creation of awareness on the need of full and coherent ensuring of the rule of law and, in more general terms, creation of legal security of citizens and building their trust into the institutions, legal and objective work of the state administration bodies, where citizens exercise their rights, freedoms, obligations, and legal interests. This means that the work and activities of the Ombudsman should contribute to fully achievement of constitutional principle of constitutionality and legality, as well the principle of justice and fairness.

Ombudsman institution has few main characteristics: it is a special body appointed by the Parliament, which, within its competences, does not encroach with the current system of monitoring of the bodies and public services work, but it is complementary to them. In addition, it does not represent the substitute or concurrence to neither current institution, does not undertake their duties, and does not disturb the balance of legislative, executive and judicial authorities. It does not have the mandate to change or revoke the decisions made by the bodies, or to punish them because of illegal or incorrect work, but to point out their failures and initiate the punishment of perpetrators of a certain body. The mandate of Ombudsman is to provide for that civil servant and public administration bodies and judiciary exercise their duties in legal manner, faithfully, legally, and in more qualitative manner and in due course. In that regard the Ombudsman gives recommendations, references, opinions, suggestions, initiatives, internal or public character, that do not have obligatory legal character and legal effect, i.e. they are directed towards impact beyond the law on public administration authorities, aimed at protection of freedoms and rights of citizens from the activities meaning „ill performing of public administration duties“.

The Ombudsman acts upon the initiative made by citizens who may refer to without special formalities and expenses, and also may proceed on its own initiative. Proceeding before the Ombudsman is confidential and no one who submits the complaint or participates in the procedure implemented by the Ombudsman shall be recalled on responsibility or be put in unfavourable position for these reasons.

The Ombudsman informs the Parliament and the public on its findings, standpoints and opinions, which contributes to the openness and transparency of public administration and other public services towards the Parliament, the Government, public and citizens.

The Institution of Ombudsman is relying on the following principles: constitutionality, legality, independence, autonomy, publicity of work, availability, justice and fairness, responsibility and confidentiality.

### Civil and political rights

#### **78. Please provide an overview of legislation or case law relevant to the right to life.**

In order to align Protocol 6 and Protocol 13 concerning the right to life, with provisions of the European Convention on Human Rights, the Montenegrin Law on Amendments to the Criminal Code from 2002 abolishes the death penalty and prescribes conditions for replacing it with up to 40 years imprisonment.

The Constitution of Montenegro prohibits the death penalty; guarantees the right to dignity of the human being with regard to the application of biology and medicine; it prescribes two bans against cloning and practicing other medical procedures on people without their consent.

Montenegrin Criminal Code defines criminal acts against life and body as: murder, homicide, manslaughter, infanticide, compassionate murder/euthanasia, non-criminal homicide, inciting to a suicide and assisted suicide, and illegal termination of pregnancy.

The punishment prescribed for murder is five to fifteen years of imprisonment. For homicide or a cruel murder, such as: killing through violent behaviour; killing with an intent while consciously endangering lives of other people; killing for self-interest; killing in order to hide another criminal offence; killing for revenge; killing of civil or military personnel while on duty; killing of a child or a pregnant woman; killing of a family member that was previously molested; and intentionally killing more people (excluding manslaughter, infanticide and compassionate murder/euthanasia) the punishment is minimum ten to maximum forty years of imprisonment.

The punishment for non-criminal homicide is from one to eight years of imprisonment, while for infanticide, compassionate murder and manslaughter it is six months to five years of imprisonment.

The punishment for inciting to a suicide and assisted suicide is different from case to case depending on circumstances. Depending on whether the suicide actually took place or was attempted the punishment varies from one to five years. If a person assisted a suicide for compassionate reasons the punishment is from three months to three years. Assisting or inciting a suicide of an under age person or a person with impaired reasoning is punished by two to ten years imprisonment. If the victim of this criminal offence is a child or mentally impaired person that cannot reason then this criminal offence will be treated as homicide. If a dependant person is mistreated and as a result of it he/she commits or attempts a suicide then a person responsible for the dependant could be punished with six months to five years prison for inciting a suicide through neglect.

For the illegal termination of a pregnancy with consent the sentence is three months to three years imprisonment, however if as the result of the illegal pregnancy termination a woman dies or her health is irreversibly damaged then offender will be punished with six months to six years prison sentence. If the illegal pregnancy termination is performed without consent, the sentence is one to eight years of imprisonment. If as the result of the illegal pregnancy termination without consent, a woman dies or her health is irreversibly damaged then the punishment is two to twelve years of imprisonment.

Criminal offences against life and body recognise and define serious bodily harm, injury, taking part in a fight, endangering people by using dangerous weapons during fights and disputes, exposing to danger, denying help and abandoning a person with disabilities.

The Criminal Code defines a group of criminal offences against humanity and international law, such as: genocide, a crime against humanity, war crimes, terrorism, etc. It includes criminal offences against human health such as: not acting according to health procedures during pandemics, transmitting contagious diseases, transmitting HIV, providing medical treatment with a lack of conscience, denying medical treatment. Having in mind that the incrimination of criminal offences against human health actually protects the right to life in a wider context and that health is a very important segment of this right, we dedicated a separate Chapter to criminal acts against environment, general security of people, traffic and public transport security. Indirectly, the right to life is additionally protected by qualifying cases when criminal activity during some other criminal offence results in the death of one or more people as a serious kind of this criminal offence. According to the existing criminal law regulations in Montenegro the use of force that results in loss of someone's life will not be considered a criminal offence, hence the perpetrator will not be held liable, in cases of necessary self defence, or extreme emergency or threat. In these cases, especially in the case of self defence, the first condition for excluding liability is the inexistence of any other way to protect oneself or the other person from the immediate or imminent illegal attack or from the immediate or imminent obvious danger – this meets the basic request of Article 2(2) of the Convention concerning a necessary use of force. The second request of Article 2 from the Convention which is developed through judiciary practice is that the force has to be strictly proportionate to the aim that needs to be fulfilled. In the case of extreme necessity the harm done must not be greater than the imminent harm that was threatening. In the case of self defence and necessary use of force, the court has the obligation to establish the proportion between consequences and force used or between the legality and justification of the aims that needed to be fulfilled, in every single case. If a person crosses the boundaries of self defence and the extreme need to use force, he/she could be treated lightly. However, if the boundary of self defence and extreme need to use force is crossed under strong mental distress and fear caused by the attack, then a perpetrator would be acquitted of any responsibility.

Principle “the use of force for the legal arrest or for stopping an escape of an arrested person” which is in accordance to Article 2 of the Convention is the basis for eliminating the existence of a criminal offence and criminal liability in certain cases. Issues concerning the use of force by officials on duty, including the use of arms and possible consequences to someone's life are regulated by the Law on Police and the Law on Execution of Criminal Sanctions.

The Law on Police prescribes that the implementation of all police authorisations must be proportionate to danger that needs to be eliminated, among various authorisations police should choose one that will have the least harmful effects on the person they are using restrictive measures against. This law regulates the use of fire arms on duty. Arms could be used in the following cases: to reject a direct attack by firearms, dangerous weapons or other objects that can pose a threat to life; to reject attack of two or more people at a time and place when help in order to protect peoples' lives cannot be expected; to stop the escape of a person caught in criminal activity for which the prescribed sentence is ten or more years in prison; to stop the escape of an apprehended person or a person that was served a warrant for arrest for a serious criminal offence or the criminal offence for which the prescribed sentence is ten or more years in prison; to reject a direct attack that poses a threat to life; to reject the attack on a building if it is clear that the attack is going to endanger lives of building security personnel and other people. In all circumstances the use of firearms is conditional upon the existence of a direct life threat to a policeman; a policeman has to caution a perpetrator that firearms will be used if an escape or an attack is attempted; and the policeman has to safeguard lives of other people at all time. Law on Execution of Criminal Sanctions stipulates that a police officer can use weapons only if there is no other way to repel the direct attack that poses a threat to an officer's or other person's life; to repel the attack on a building that he/she is safeguarding; to prevent the escape of an apprehended person who serves a sentence in a closed or semi closed prison wing; to impede the escape of a person being apprehended or safeguarded at the particular moment, only if a person is sentenced for a serious criminal act to ten or more years imprisonment.

**79. What strategies are in place to ensure the respect for fundamental rights? Please refer particularly to measures which relate to human dignity, the right to life, the right to integrity of the person, the prohibition of torture and inhuman or degrading treatment or punishment.**

The Montenegrin Government has adopted a number of strategies and action plans for their implementation with the aim to ensure the protection and respect of human rights. Most important among those strategies are: Minority Policy Strategy (2008-2012); Strategy for Improvement of RAE Population Status in Montenegro (2008-2012); National Action Plan for "Decade of Roma Inclusion 2005-2015" in Montenegro; Action Plan for Gender Equality (2008-2012); Development and the Reduction of Poverty Strategy (2003-2007); National Youth Action Plan (2007-2011); National Plan of Action for Children (2004-2010); National Program for the Prevention of Unacceptable Social Behaviour of Children and Young People in Montenegro (2004-2006); Strategy for Permanent Solution of Issues of Refugees and Internally Displaced Persons in Montenegro (2005- 2008); Strategy on Poverty Reduction and Social Exclusion (2007-2011); Strategy for the Development of Social and Child Protection (2008-2012); Strategy for Integration of Persons with Disabilities (2008-2016); Action Plan for the Strategy for Integration of Persons with Disabilities Montenegro (2008-2009); Inclusive Education Strategy (2008-2012); National Strategic Drug Response (2008-2012); etc.

Among the strategic documents adopted by the Government of Montenegro there is the Strategy for Judiciary Reform and the Action Plan for the implementation of Strategy for Judiciary Reform, as well as an Action Plan for Prevention of Torture. These documents define objectives that will ensure the respect of basic human rights of apprehended people, emphasizing the importance of respect and protection of basic human rights and freedoms for this particular population. The Strategy for Judiciary Reform was adopted at the end of 2007. It consists of eleven chapters among which there is a Chapter which defines aims for the improvement of the prison system. Some of the aims are:

- creating conditions to separate different categories of prisoners, especially for separating under aged sentenced and apprehended persons, improving accommodation and providing staff for the juvenile prison.
- reconstruction and adaptation of the existing prison buildings and the construction of new ones.
- refurbishing and improving the prison hospital,
- improvement of the security system through providing modern technology equipment especially for video surveillance.
- continuous professional training, specialisation and assessment of prison officers` knowledge and skills
- improvement of prisoners treatment through the introduction of various educational, work, cultural, sport and other programs.

Action Plan for the Implementation of the Strategy for Judiciary Reform defines a number of measures needed for the achievement of the aims envisaged by the Strategy, and the realisation of those measures is expected in period 2007 - 2012. The integral part of the Action Plan is the financial evaluation of means needed for the realisation of planned measures. The Government of Montenegro formed an Interdepartmental Committee whose task is to supervise the implementation of the Action Plan.

Action Plan against Torture was adopted at the beginning of 2009 and it followed the first periodical visit of Council of Europe Committee for the Prevention of Torture or Inhumane and Degrading Treatment or Punishment (CPT) to Montenegro. The Action Plan has an interdepartmental character and it implements suggestions and requests made by the Committee, through defining specific aims, measures and activities for the Ministries and other governmental offices and institutions. The Action Plan also establishes dynamics for the implementation of measures and activities, indicators for the assessment of success and it gives a financial estimate for implementation.

Aims defined in the Action Plan for the Prevention of Torture are as follows:

- solving the problem of overcrowded prison units and improving them,
- improving health treatment of prisoners,
- improving general treatment of prisoners,
- improving record keeping system,
- implementing standards for the protection against police torture of apprehended people,
- improving control system for legal and efficient police practice.
- ensuring that police premises for detention comply with hygienic and technical standards.
- improving conditions for mentally impaired people.
- improving the accommodation for people with disabilities,
- solving the problem of overcrowded units for accommodating forensic patients,
- improving health treatment of people sentenced to mandatory psychiatric treatment and care,
- provide security guard service for the forensic-psychiatric ward of the Special Psychiatric Hospital,
- secure the reintegration of chronically ill patients.

The Action Plan for the prevention of torture anticipates the establishment of a national mechanism for the prevention of torture according to an optional Protocol from the UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. In order to ensure the respect of human dignity, prevent torture and inhumane, degrading treatment or punishment, we have adopted a number of measures which are described in more detail through the responses to Question 48 (Political Criteria – Democracy and the Rule of Law), Question 116c (Chapter 23: justice and fundamental rights).

**80. Please provide information on specific national legislative as well as administrative measures designed to prevent the occurrence of torture, inhuman or degrading treatment or punishment in state institutions, prisons or police stations. In this respect, what measures are in place providing for the inspections of detention centres or police stations? Is legal redress foreseen for victims?**

The Constitution of Montenegro (Official Gazette of the Republic of Montenegro 1/07) guarantees the right to human dignity and security, the sanctity of physical and mental integrity, privacy and personal rights, constituting that no one should be subject to torture, inhumane or degrading treatment and that no one can be held imprisoned or enslaved. The Constitution guarantees the respect of personality and dignity during a trial and other proceedings, in the case of detention or freedom constraint, during serving a sentence; the Constitution prohibits and punishes any form of violence, inhumane and degrading treatment of a detained person or a person with a constraint order. The Constitution also forbids and punishes offences of forced confessions and statements. Torture and harassment are criminal acts according to the Criminal Code (Official Gazette of the Republic of Montenegro 70/03, 47/06 and 40/08). The law anticipates a penalty for an official who committed torture or harassment on duty.

One of the main principles of Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03 and 47/06) is that it prohibits and punishes any use of violence on a detained person or a person with a constraint order, as well as extortion of confession or other kind of statement from a detainee or other person involved in the proceedings, it prescribes that a court verdict cannot be based on a confession or any statement acquired through extortion, torture or inhumane treatment.

According to the new Criminal Procedure Code (Official Gazette of the Republic of Montenegro 57/09), that came into force on 26<sup>th</sup> August.2009 and that will be applicable a year after it came into force, it is forbidden to threaten or use any violence on a suspect, an accused person or any other person that takes part in the proceedings. The law prohibits extortion of confession or other kind of statement from those persons and a court verdict cannot be based on a confession or any statement acquired through extortion, torture or inhumane treatment.

The rules concerning the treatment of people serving their sentence are regulated by Law on Execution of Criminal Sanctions (Official Gazette of the Republic of Montenegro.25/94, 29/94, 69/03 and 65/04), and by other secondary legislation made on the basis of this law. During the prison sentence, the State can remove or limit certain rights that an offender has, this could only be done in a measure suitable for the nature and contents of the sentence, and in a way which will ensure the respect of the offender's personal integrity and dignity. All the acts of torture, harassment or degradation of a prisoner, medical and scientific experiments, illegal or actions disproportionate to keeping order and discipline in a prison unit, and other acts that limit prisoner's basic rights and make him/her suffer are strictly forbidden and punishable. During serving a prison sentence prisoners must not be put into an unequal position with regard to race, skin colour, gender, religious beliefs, political or other views, nationality, social background, property, place of birth, education, social status, etc.

The measures of constraint against a prisoner can be applied only under conditions and in the way prescribed by this law and according to regulations based on this law. The constraint measures such as (physical force, tying up, isolation, using baton, water tops, trained dogs, chemicals and firearms) can be used only when it is absolutely necessary to stop an escape, a physical assault on the official or other detainees, to stop injuring other prisoners, self injury or causing material damage to property, and when it is necessary to prevent resistance to legal official command.

Pursuant to conditions prescribed by the Law, every prisoner is entitled to: legal aid, work, information, health security, mail service, visits, parcel service, marital rights, freedom to practice religion and other rights prescribed by the Law and by secondary legislation. Every sentenced person has the right to appeal, if he/she believes that his / her right to serving a sentence has been hurt or that he / she has been inadequately treated. This law regulates the protection of the prisoners' rights through the protection on an organisational level which is responsible for managing prison sentence service - Institution for the Execution of Criminal Sanctions (plea against the organisational unit head's decision, the head of prison is deciding about a plea) and through judicial protection of prisoners' rights that could be satisfied through an administrative dispute (an appeal against a prison head's decision).

In case of use of constraint measures against a prisoner, the Institution for Execution of Criminal Sanctions has to write a report with established facts and breach of authority evaluation and send the report to the Ministry of Justice.

The Ministry of Justice has the jurisdiction over inspection of legality and expediency of the Institution for Execution of Criminal Sanctions work, the authorised official from the Ministry inspects the legality of prison sentence service. During the control the official can inspect the rooms where prisoners spend their time, speak to prisoners, inspect general and special statute articles, records and other documents that concern prisoners and are important for establishing facts, and check the procedure for making a decision about a prisoner's complaint.

The rules for serving a prison sentence are regulated by Criminal Procedure Code (Official Gazette of the Republic of Montenegro RCG 71/03 and 47/06). During an imprisonment no one can cause offence to prisoner's personality and dignity. We can apply only the constraints necessary to prevent an escape, to prevent inciting third party to destroy, hide, change or falsify proofs and other evidence of a criminal offence, and to prevent direct or indirect contact of a prisoner with a witness, accomplices or other people holding important facts. Prisoners of different sex can not be placed in the same cell, nor can be placed convicted prisoners together with detainees. Every prisoner has the right to eight hours of sleep in 24 hours and at least two hours a day of physical exercise. Prisoners are entitled to wear their own clothes, use their own linen, buy and use food, books, magazines, newspapers, writing and drawing equipment, and other things they need, which can't cause harm to health and be used in an escape attempt.

In compliance with Investigating Judge permission, under his or her personal supervision when needed or the supervision of an authorised person, and in line with house rules, a prisoner can receive visitors like close relatives, a doctor or other people like diplomatic and consular representatives. Diplomatic and consular representatives have the right to visit and talk to prisoners, who are the citizens of a state they are representing, without supervision. According to the permit of the President of the Court the representatives of domestic and international



organisations dealing with human rights can visit a prisoner. The prisoner can write to people outside with knowledge and under supervision of the Investigation Magistrate, who has the right to ban all correspondence if it harms the investigation. The ban is not valid for the mail that prisoner sends to or receives from international courts, domestic legislative, judiciary and executive authorities. The ban is not valid for sending to and receiving correspondence from prisoner's defence attorney, unless it's otherwise justified. No one can prohibit sending a request, a complaint or an appeal.

According to the new Criminal Procedure Code (Official Gazette of the Republic of Montenegro 57/09) the prisoner has the right to receive visits from spouses, civil partners, close relatives and doctors and other persons if needed.

If a person is detained, a defence attorney can exchange correspondence and talk to the detainee. In specific cases, Investigating Judge can order that all the correspondence to and from a defence attorney is forwarded to Magistrate first for a check before it is given a prisoner. This usually happens if there is a reasonable doubt that correspondence is used for organising an escape, to influence or intimidate witnesses or otherwise distracts the investigation. Investigating Judge has to write a record about keeping and inspecting letters. Once the investigation is over and a prisoner is sentenced, the freedom to exchange correspondence with his/her defence attorney without supervision cannot be denied.

According to new Criminal Procedure Code (Official Gazette of the Republic of Montenegro 57/09), defence attorney's correspondence and talk with a prisoner in jail can be conducted without supervision. The defence attorney has the right to a confidential talk to his client, who has been apprehended, even before the police interview. Confidential talk before the first police interview is controlled by watching but not listening to it.

In case of discipline breach, Investigating Judge Magistrate or President of the Court can deliver a disciplinary measure of limited visits to prisoner; however this doesn't effect prisoner's communication with defence attorney. A prisoner can appeal against this disciplinary measure to the Competent Judicial Council within 24 hours after the decision was made and the Council has to issue a decision on the appeal within three days after the appeal was made. The appeal, however, doesn't postpone the implementation of the measure.

In line with the new Criminal Procedure Code (Official Gazette of the Republic of Montenegro 57/09), a prison warden or a person authorised by the prison warden can deliver a disciplinary measure of limited visits to a prisoner or 15 day isolation measure. This measure doesn't effect prisoner's communication with defence attorney. A prisoner can appeal against this disciplinary measure to the Investigation Magistrate within 24 hours after the decision was made and the Magistrate has to render a decision concerning the appeal within three days after it was made. The appeal however doesn't postpone the implementation of the measure.

President of the Court is authorised to supervise prison sentence service and prisoners alike. The President or a person he/she authorises has the obligation to visit prisoners at least once a month, and if needed, without a presence of prison warden or guards, he/she can directly enquire about prisoners' eating arrangements, the way they are treated and if their needs-rights are respected. The President or a person he/she authorises has the obligation to use measures needed in correcting irregularities noticed during a prison inspection. President or other authorised person can visit prison at any time, talk to prisoners and accept their complaints.

According to new Criminal Procedure Code (Official Gazette of the Republic of Montenegro 57/09), President of the Court or other judge he/she authorises has the obligation to visit prisoners at least two times a year and to write a report that will be handed to the President of the Supreme Court and to the Ministry of Justice.

The Ministry of Justice adopts legislation that standardises prison sentence service.

In case that any constraint measures were used Institution for Execution of Criminal Sanctions has to write a report enclosing evidence and an evaluation of authority breach. This report has to be sent to the Ministry of Justice. The Head of the Institution for Execution of Criminal Sanctions must notify the Court President who is in charge of supervising legality of prisoners' treatment.

Institution for Execution of Criminal Sanctions activities are directed towards elimination of any kind of torture committed by prison officials. The emphasis is given to educational activities especially in the area of human rights, and fight against torture, inhumane and degrading treatment or punishment of prisoners. Convicted prisoners and detainees can report any potential case of torture to prison management, using letter type boxes that are distributed throughout a prison, or to other state institutions and NGO representatives.

Police dealings, as well as police authorisations and obligations are regulated by the Law on Police (Official Gazette of the Republic of Montenegro 28/05). According to this law a police officer must execute the order directly given by his/her line manager or the Head of Police if the order is legal and it doesn't constitute a criminal offence. Hence a police officer cannot use the order as an excuse if its execution had elements of torture or harassment of a detainee.

The Law describes in detail when a police officer has the authority to use coercive measures. In line with the Law constraint measures could be used to prevent an escape of a prisoner or a person caught committing a criminal offence for which is being prosecuted; to eliminate resistance of a person disturbing public order and peace or a person who has to be apprehended by the law; to repel the attack on him/herself, another person or a building a police officer is protecting. A police officer can use coercive measures in proportion to danger or a threat and with least damage to a person the coercive measures are used against. Coercive measures are: physical strength, baton, strapping, equipment for forced stopping of a moving car, trained dogs, chemicals for temporary incapacitation, special vehicles, and special types of weapon, explosives and firearms.

The Law stipulates that firearms and other coercive measures can be used only if ordered by a police officer who is charge of a particular police operation. The police officer who used or order the use of coercive measure must immediately notify the Head of Police. If the Head of Police decides that coercive measures were used illegally, then the Head has to take steps to establish the responsibility of the officer that used or ordered the use of coercive measures, within 3 days from the moment information was received. Police officer that used or ordered the use of illegal coercive measures is personally accountable for it.

Police Directorate Internal Control assesses if the use of coercive measures is justified or not. Rulebook on performing police tasks and the use of the authority stipulates that the police officer who holds a person in custody is responsible for detainee's security from the moment of apprehension or the admittance to police station premises to the moment of discharge. According to the Rulebook, ill or injured person who is in obvious need of medical help, or a person with symptoms of serious alcohol or drug poisoning can not be held apprehended in a police station. A police officer on duty must provide ill or injured detainees with transport to hospital where they can get medical care. If a detainee requires medical help then police officer on duty is obliged to provide help either at the police premises or to take a detainee to the nearest hospital. A person detained for more than 12 hours has a right to food, three meals a day, and uninterrupted eight hour rest during 24 hours. If a person under arrest was brought to police station in wet clothes or clothes that can pose threat to detainee's health, then a police officer has to provide a detainee with suitable clothing.

According to the Police Ethics Code, a police officer is responsible for the protection and security of every detainee or a person under arrest.

Throughout professional education at all levels, police officers acquire knowledge in various areas of human rights, with the emphasis on international conventions, rules and declarations concerning rights of detainees, especially prevention of torture and other inhumane treatment. Core subject during basic and additional training are ethics, police ethics and human rights.

Apart from the internal control, the Law on Police stipulates civil control of police work. Council for Civilian Control of Police Work supervises and evaluates the use of police authority in order to ensure the respect of human rights and freedoms. The Law on Police anticipates parliamentary control of police work as well. This control is conducted by the Parliament through its competent working authority.

A civil servant or a state employee, this includes prison and police officers, have disciplinary responsibility for conducting their work, and for a possible violation of working duties, misconduct.

If the actions of a civil servant or a state employee have the elements of the criminal offence then the official is a subject to criminal liability.

Anyone who thinks that his/her rights and freedoms have been breached through certain acts or the lack of them, can contact the Ombudsman – a protector of human rights and freedom. According to the Law on Ombudsman (Official Gazette of the Republic of Montenegro 41/03) Ombudsman's duty is to investigate breaches of human rights and freedoms caused by institutional acts, actions or the lack of them. Ombudsman should, according to law, take actions to mend damage that was done. Ombudsman has the right and opportunity to contact a competent body and submit an initiative for the start of disciplinary proceedings or for a removal from office of a civil servant or a state employee whose actions cause an infringement of human rights and freedoms. A legal satisfaction for victims of torture, inhumane and degrading treatment is ensured through the right to complaint, right to material compensation, right to submit a proposal concerning a real property rights, and right to legal remedy.

**81. In the fields of medicine and biology, what are the precise rules which indicate what is and what is not permitted? Are these rules subject to a permanent monitoring process, in particular with regard to the right to integrity of the person?**

The highest legal act, the Constitution of Montenegro guarantees in its Article 27 the right to dignity of the human being with regard to the Application of Biology and Medicine, it prohibits any procedure that has the aim to create a human being genetically identical to other human being, deceased or alive. The same Article strictly prohibits all medical procedures and / or experiments conducted without the consent of a person. This constitutional order guarantees that the right to personal dignity, as a basic human right, will be protected. A provision of Article 28 of the Constitution, says that the right to human dignity and security, as well as the sanctity of physical and mental integrity and sanctity of privacy and human rights, are guaranteed. Provision of Article 16 of the Constitution regulates the way in which people can practice their right to human rights and freedoms, when this is necessary. Hence the Ministry of Health and Social Welfare prepared two legal acts that regulate in more detail practice and protection of those rights. The Government of Montenegro submitted these two legal acts, in the form of proposals, to the Parliament for their adoption. The two legal acts are the Law on Infertility Treatment and Assisted Reproductive Technologies (ART) and Extracting and the Law on Transplanting Parts of Human Body for Purpose of Medical Treatment.

**1. The Law on Infertility Treatment and Assisted Reproductive Technologies**

**a) A reply to a question `What is allowed by this law`?**

The provision of Article 2 of this law says that everybody is entitled to infertility treatment through assisted reproductive technology procedures, equally, of their own free will and according to this law. So this provision guarantees equality in practicing the right to infertility treatment regardless of racial, religious, social or other background.

The same provision ensures the respect of the right to dignity through the application of biomedical achievements in infertility treatment; it protects the identity, personal integrity and other personal rights and freedoms. It takes special care of health protection, of the rights and interests of a child conceived and born through assisted reproductive technologies, and of the protection of mother's health. These provisions clearly and without any doubt guarantee protection of the right to live and be healthy, personal dignity, identity security, personal integrity and the protection of other rights and freedoms in the application of biomedical procedures. By the internal legal regulations marriage and civil partnership are made equal in the eyes of law, so that both married couples and civil partners can practice the right to infertility treatment if at the time of treatment they live together. Single women, who are not married and have no partner, also have the right to infertility treatment. The application of assisted reproductive technologies is conducted out of free will, upon

the written consent of married or civil partners, and of a woman who is not married and has no civil partner.

The application of ART is regulated by the provisions of Articles 25-27 of this Law.

A provision of Article 28 of the Law standardises the procedure dealing with donors sex cells. Before the insemination a doctor has to acquaint married or civil partners or a single woman, who is neither married nor in a civil partnership, with the possibilities for success, possible risks during a procedure and give them all necessary instruction and advice. If doctor finds it necessary he/she can refer them to another institution so that partners or a single woman can get all information and additional consultation. The lawyer has to inform married / civil partners and a single woman about legal consequences concerning the use of donor sex cells, which includes the collection of their personal data that are kept secret; the lawyer has to inform them about the rules for sex cells and embryo storage, about their right and duty to decide for how long will they be stored and what will happen with remaining, unused sex cells and embryos.

In case when a partner's sex cells are used, both partners sign the consent form which can be revoked and the treatment can be abandoned at any time before semen cell, un-inseminated egg cell or a zygote is introduced into a woman's body. Fertilisation by donated sex cells can be performed after the parties are fully informed and consent is signed. This type of fertilisation can be revoked at any time before a zygote is formed.

This law prescribes that a donor has to be fully informed about donation procedure and about rights concerning a child conceived in this manner. The donor has no rights to a child conceived in this way (Articles 29-34). Donation of semen cells or unfertilized egg cells can be performed on the basis of the written consent and it can be revoked at any time before the cells are used.

The life and health welfare and giving birth to healthy offspring is regulated by provision of Article 11 of this Law. The article says that apart from married and civil partners, women who are not married and are not in the civil partnership are entitled to the right to infertility treatment in the following cases: if the pregnancy cannot be achieved naturally, after trial of other medical treatments that didn't result in pregnancy, or in a case when transmission of a serious hereditary disease to a child should be prevented. Provisions of Article 33 of the Law have the same aim. It says that before taking donor sex cells, the doctor has to check donor's health and the condition of sex cells, which according to biomedical achievements and standards can be used only if they will not cause danger to a woman and a child health. The provision of Article 4 of the law stipulates that all the data concerning ART procedure, especially personal information about a woman, her marital, civil or other status, her married or civil partner, her child conceived through ART, and about a donor are professional secret. This article guarantees the protection of personal data.

The freedom to conceive through ART procedures and care about life and health are regulated by Article 12 of the law which says that all married and civil partners, as well as a woman who is not married or in a civil partnership have the right to ART infertility treatment if they are: adult, able to work, mature enough to fulfil parental duties like raising a child, educating it and preparing a child for an independent life of their own, and if they can provide psychological and social environment in which children can properly develop and achieve their full potential. In order to exercise the right to giving birth to healthy offspring provisions of Article 14 (1) prescribe the possibility of using donor sex cells if married or civil partner's sex cells cannot be used or when the transmittance of a serious hereditary disease should be prevented. In order to ensure giving birth to healthy offspring and to control the state of donated sex cells, the provision of Article 22 prescribes that donor sex cells can be donated / given only in the particular medical institution that deals with this type of procedures. Provision of Article 24 stipulates that the legal representative of a child or a child (once it is 15 years of age and mature to reason) can request from the medical institution to be acquainted with important health data of a sex cell donor, if there are justifiable health reasons for it. A doctor too has the right of access to sex cell donor data register if there are justifiable medical reasons concerning a child conceived that way, and if it complies with professional medical rules.

Data from the sex cell donor register can be made available according to the law that regulates that procedure, only for the needs of court trials and if the court requires.

Semen cells, un-inseminated egg cells, zygotes and small embryos can be used in scientific research and in scientific verified procedures with the written consent of married or civil partners, or a woman who is neither married or in civil partnership, after a positive decision of Medical Ethics Committee and the approval given by the Ministry of Health (Articles 36, 40 (3) and 41 (3)).

Provision of the Article 37(1) allows performance of procedures on sex cell and small embryo genes in specific medical cases to change child's genetic base only in order to protect the child's life and health.

Insemination of egg cell with semen cell that has been specially designated in order to determine child sex can be used only with the aim to stop transmitting a serious disease which is connected to child's sex. (Article 37(3)).

Genetic embryo testing or detection of chromosome and / or gene anomalies before its embryo transfer and implant is allowed only if there are medical indications that the embryo could transmit serious hereditary disease. (Article 37 (2)).

The framework of accepted ethical rules of conduct allows use of small embryos acquired through ART procedures in scientific research, with the aim to sustain scientific progress, to protect and improve human health, to prevent and eradicate serious hereditary illnesses; however Animal Experimental Model must not be used as we can't predict the consequences of side effects.

Early embryos can be used only in verified scientific procedure with written consent of married or civil partners, or a woman who is neither married or in civil partnership, after a positive decision of Medical Ethics Board and the approval given by the Ministry of Health (Articles 41(2), (3)).

The law allows the use of early embryos which are, according to medical achievements and biomedical experience, not suitable for implanting into woman's body; and it allows the use of stored embryos that should be let to die. The use of those embryos is possible only with the written consent of married or civil partners, or a woman who is neither married or in civil partnership, after a positive decision of Medical Ethics Board and the approval given by the Ministry of Health (Article 42).

b) Response to the question `What is prohibited by this law`?

In the interest of woman's life and health protection, the law forbids use of ART infertility treatment when a woman is of the inappropriate age for the procedure or if she is medically incapable for giving birth. This decision is made according to valid medical standards, and it is made by the Medical Board for the Application ART Procedures (Article 12 (2), (3)).

Surrogate motherhood is strictly forbidden by Article 13 which says that infertility treatment by ART procedures is strictly forbidden for a woman that has intention to give a child away after its birth to a third party with or without compensation.

Provisions of Article 14 (2),(3) and (4) prohibit special forms of biology and medical abuse, such as: infertility treatment through ART procedures by simultaneous use of donated semen cells and donated egg cells; the use of mixture of semen cells from two or more man or mixture of egg cells of two or more women. It is forbidden to use sex cells from people that are related: close relatives like brothers and sisters, half brothers and sisters, uncles and nieces, aunties and nephews, brothers and sisters` children, half brothers and sister`s children, even people related through the complete or partial adoption can use each others sex cells. Indirectly related people or in-laws like father-in-law and daughter-in-law, son-in-law and mother-in-law, step father and step daughter, step mother and step sun must not use sex each others cells.

Decision to donate sex cells is an expression of free will as the provision of Article 15 of the law prescribes, so donation is forbidden to underage people, to ill or people incapable of work. The same article bans illegal gifting of human embryos for use in ART procedures.

Sex cell donation is an act of philanthropy; hence a provision of Article 16 forbids any kind of commercialisation. It forbids giving or accepting any kind of compensation for donated sex cells.

The law strictly bans any kind of mediation in cell donor process, and advertising an offer or an expression of a need for the cells in media, except through a registered medical institution and according to rules of medical good practice.

Protection of personal identity of people that take part in ART procedures is regulated by the provision of Article 24 (4) which says that all people that had an access to cell donor register throughout their service and that gained knowledge about donor's personal data are obliged to keep that knowledge as a secret. This means that giving unauthorised information about sex cell donors is forbidden.

The protection of basic human rights and of the genetic identity is guaranteed by the provision of Article 37 which says that no procedure that has the aim to alter child's hereditary base can be performed on sex cells genes or embryos genes, because the sanctity of human being genetic identity must be protected.

Abuse of ART procedures in order to predetermine child's sex is forbidden by the provision of Article 37 (3) which forbids insemination of egg cell with semen cell that has been specially designated for that purpose.

In order to protect basic human rights the provision of Article 39 proscribes a series of bans, such as: an embryo older than 14 days whose cells started dividing must not be developed outside human body; embryo cannot be produced for solely scientific purposes; embryo with the same hereditary base or embryo which shares identical hereditary base with another deceased or alive person and could be used in cloning must not be used or developed; human egg cell must not be inseminated with animal semen cell, animal egg cell must not be inseminated with human semen cell and embryo must not be altered through grafting parts of other human or animal embryos (producing hybrids and himera); introducing altered embryos as mention in previous case into a woman's or animal body; introduction of human sex cell or embryo into an animal body; introduction of animal sex cell or embryo into a woman's body; the change of hereditary cell base which is a basic part of an embryo is prohibited unless the procedure is used in medical cases as a treatment for the prevention of hereditary diseases; use of embryo material in biological weapon production is forbidden; production of new embryo from a cell or a part of a cell of other embryo or fetus as well as introducing such an embryo into a woman's body are prohibited; a human being must not be created outside a womb and identical twins must not be created artificially. This article generally prohibits other activities that are in line with this law.

The abuse of scientific-research work in biology and medicine, as well s as protection of human dignity and integrity are regulated by the provision of Article 41 (1) which forbids use of sex cells in creation of „in vitro“ embryo or use of unexploited embryos which would infringe on dignity of human entity.

## **2) The Law on Transplantation of Human Body Parts**

### **a) What is allowed by this law**

This law emphasises the importance of life and health protection too. It provides people for whom the transplant of a body part is the only possible treatment with rights to be placed on a waiting list which is managed by the Ministry of Health, without discrimination and under same conditions. Health institutions that are dealing with transplants compile the waiting list and send it to the Ministry of Health.

The waiting list is compiled according to a type of needed body parts. Acquired body parts are given to a receiver according to the waiting list, in line with transparent, fair and acknowledged medical criteria (Article 12).

The provision of Article 2 of the Law prescribes that acquiring and transplanting body parts for the purpose of medical treatment must be performed according to professional standards of medical science and practice, ethical principles must be observed; this type of treatment may be used only if it is medically justified and if it is the only way of treatment. Hence, this law prescribes, who, how

and under what conditions the performing of treatment by acquiring and transplanting human body parts is allowed.

The provision of Article 3 of the law prescribes principles that this procedure will be based on, with the aim to protect human dignity, integrity and other basic human rights and freedoms. In that way, this procedure will have to be performed according to the following principles: donor and receiver have to give consent; body parts may be donated only for medical treatment; donation must be free and never commercial; and donor / receiver anonymity must be respected.

Article 4 excludes any possibility of abuse of the procedure by prescribing that the procedure of acquiring and transplanting body parts can be performed only after detailed medical checks and other methods of treatment through which it became evident that the receiver can benefit from the procedure while for the donor it is an acceptable risk with high possibility of success.

The provision of Article 5 clearly states that during the procedure of acquiring and transplanting body parts, protection of donors and receivers' identity, personal dignity and other fundamental human rights and freedoms are guaranteed. Article 9 states that a receiver's doctor has the right to access donors' health data in line with medically justifiable reasons.

Medical workers that take part in acquiring and transplantation of body parts procedure are obliged to observe all prescribed standards, and take measures and activities to prevent any risk of transmitting a contagious or other kind of disease onto a receiver; and to avoid any change or damage to a body part for transplant. This has to be done according to regulations drafted by the Ministry of Health approved after the adoption of the Law (Article 8 (2)).

Human integrity is protected by the provision Article 13 which states that body parts of a live donor can be taken for medical treatment of a receiver only if the same parts are not available through the deceased donor and there is no other adequate medical treatment. The provision of Article 16 adds that body parts of a live donor can be taken only with donor's written consent which expresses his/her free will and donor can revoke the decision any time before the procedure. Donor's consent is valid only for a planned medical procedure which means that only specific body parts can be taken as planned; donor can condition consent by dedicating a body transplant to a specific person.

The provision of Article 15 protects personal integrity too; it says that body parts can be acquired only from adult persons, a person that is capable for work and sound reasoning. Before acquiring body parts a donor has to be medically checked and evaluated concerning physical and psychological risks for donor's health. The same article prescribes that body parts can be taken only if the risks to donor's life and health according to medical criteria are in the limits of acceptable and in the proportion of expected benefits for a receiver. Donor has all the right to be informed of any result achieved during the procedure and which could be of importance for his/her health.

Obtaining body parts is done on the basis of informed consent as prescribed by Article 17, which says that a doctor, who is taking part in the procedure, has to acquaint a donor with the nature, purpose and the way the procedure is done, with possibilities of its success and the usual risks of taking body parts procedure.

Donor has the right to an independent advice concerning risks; to advice given by the doctor who will not take part in a procedure of obtaining and transplanting body parts and who is not a receiver's personal doctor.

According to Article 8 the Ethics Board for a Medical Institution approve use of regenerative tissue of an under age person or a person not capable of reasoning, in the following situations: a compatible donor able of reasoning and giving consent does not exist; receiver is donors brother or sister; donation would safe receiver's life; legal representative or donor's custodian has given a consent; if donor has no parent or custodians the Centre for Social Work gives consent; and both donor and receiver have nothing against the procedure. The same article allows acquiring cells for transplant if the aim of the procedure is saving receiver's life. It can be done if donor's legal representative or parent / custodian give consent; in case that donor has no parents or legal representatives then Centre for Social Work has the authority to give consent; and it has to be clear that taking cells includes only minimal risks for the donor.

The provision of Article 19 allows collection and keeping of blood stem cell from umbilical cord of a live born child. These cells can be used for transplants among relatives and other people.

Article 21 regulates acquiring body parts from a deceased donor, the procedure should respect dignity of a deceased and family's grief; during the procedure a doctor should take all measures possible to restore the looks of a dead donor.

Taking into account customs and tradition in our society the provision of Article 22 says that body parts of a deceased person can be taken only if the deceased is an adult, capable of work and reasoning during his/her live, gave a written consent for this procedure to his/her chosen doctor (GP). The provision of Article 23 prescribes that body parts of an under age deceased can be taken for transplant only with the consent of both parents, and one parent in case that the other parent is dead.

Body parts of a dead donor can be taken as transplants for another person after positively determining and confirming donor death according to legal medical criteria. Death is confirmed according to medical criteria when doctor establishes without any doubt that all brain activity stopped.

Body parts of a deceased donor can be taken after the Health Board of Medical Institutions, comprising of at least three doctors, confirms the death of a donor.

The provision of Article 24 permits taking body parts of a deceased foreign citizen or of a person that has no residence in Montenegro, unless otherwise regulated by international treaties

Transplant of body parts is performed when it is the only possible treatment for people with permanently damaged parts of body or face, which resulted in diminished life quality and impossibility of applying any other medical treatment and after all other medical treatments are exhausted, according to medical standards and practice.

Transplant of body parts with the purpose of medical treatment is performed upon permission of the Medical Board of the Institution. Hence this article guaranteed protection of physical and personal integrity.

Willingness to receive transplant is regulated by the provision of Article 27 which says that transplant can only be performed after the written consent of the receiver, if he/she is adult, capable of work and of reasoning. If a receiver is under age, or an adult incapable of work and reasoning, then legal representative, a parent or custodian have the authority to give consent. If a receiver doesn't have the ability to express oneself, then a spouse, parent blood or close relative can give consent. Being informed is a major element in this kind of procedure, so the provision of Article 28 obliges a doctor who is taking part in a transplant procedure to inform a receiver about the nature, purpose and the way the procedure is done, with possibilities of its success and the usual risks of taking body parts procedure; doctor has to make notes of these information for the medical record.

If there is urgency due to life threatening injury and a compatible part of human body is available, then doctor can perform transplantation without consent and he/she has to make a note of the procedure for the medical record. Hence the life and health of a person can never be endangered if people act according to medical standards and rules.

b) Response to the question "What is prohibited by this law"?

The fear of instrumentalism and commercialism of a human body led to the establishment of unique premise that human organs must not be a subject of trade. This premise is embodied in the provision of Article 6 which prohibits giving or taking any kind of compensation for body parts, while the provision of Article 7 strictly prohibits trade in organs and body parts, advertising in media an offer or a need for a part of a body, or any kind of mediating in acquiring and donating parts of a body.



Protection of personal rights and dignity is regulated in the provision of Article 9 which says that information about donor and receiver of organs and body parts are a professional secret. It is illegal to give information about deceased donor to a receiver or to give receiver's personal information to the family of deceased donor.

### **3) Monitoring of the implementation of these laws**

Supervision of the application of these laws and other rules that will be adopted in order to regulate the application of the law is done by the Ministry of Health, as prescribed by the Law on Infertility Treatment and Assisted Reproductive Technologies.

The provision of Article 8 stipulates that the Ministry of Health will form the special Committee for the Implementation of ART Procedures, as a professional advisory body, and Article 9 describes the Committee's jurisdiction and its scope of practice. The process of continuous supervision presupposes reporting all ART procedures in vitro or in vivo. The Ministry keeps the unique register of all conducted ART procedures.

Supervision process is regulated by the provision of Article 10. The provision of Article 43 regulates record keeping about ART procedures, while the provision of Article 45 prescribes that all medical institutions have to inform the Ministry about a number and a type of procedures conducted, their success rate, about frozen sperm cells, unfertilized egg cells and small embryos, and about scientific research projects. The reports are submitted annually or could be submitted earlier upon Board's request. The committee examines reports on conducted procedures and their application and gives an opinion on early embryo scientific research. Suggestions, propositions and opinion concerning reports are presented to the Ministry.

Supervision of the application of **the Law on** Transplantation of Human Body Parts is conducted by the Ministry of Health. Medical institutions that deal with acquiring and transplanting organs and parts of body send reports to the Ministry with data on donors and receivers, on every body part acquired and transplanted, on the exchange of body parts, success rate, possible complications, on medical condition of donor and receiver after the procedure, on measures taken to ensure quality of transplant procedure, etc. All these issues are regulated by the provision of Article 38. Reports are submitted on annual basis but could be submitted earlier if so requested.

It should be emphasised that supervision of the quality of work in medical institutions is conducted continuously through internal inspection organised according to the institute's statute and external control organised and conducted by the Ministry or Ministry's special Board. Provisions of Articles 112-118 of the Law on Health and Social Security regulate the way supervision is conducted. The Ministry can supervise medical institutions through the Health Inspection which is granted authority by the Law on Health Inspection.

### **82. Please provide information on any legislative measures designed to protect and uphold respect for private and family life, home and communications. In which circumstances can these rights be infringed upon?**

Determination of Montenegro and its citizens to live in the State which is built on the respect of human rights, democracy and the rule of law is confirmed by the Constitution. Constitutional provisions deal with the right to privacy. The provision of Article 2 of the Constitution of Montenegro guarantees the sanctity of human physical and psychological integrity, privacy and personal rights.

The provision of Article 4 of the Constitution guarantees that everybody is entitled to respect of one's private and family life, while the provision of Article 41 guarantees the sanctity of home or that nobody can enter and conduct a search of a home or other rooms against the owners' will. The provision of Article 42 guarantees the secrecy of written correspondence, telephone calls and other forms of communication. The right to secrecy of written correspondence, telephone calls and other

forms of communication can be breached only if it is absolutely necessary for conducting criminal proceedings or if it is in the interest of protecting the State's security.

The Constitution guarantees everybody the right to protection of personal data. Personal information must not be used but for the purpose it was collected. Everybody has the right to know what personal information about oneself has been collected and the right to court protection in case of the abuse of their personal data. (Article 43 of the Constitution of Montenegro).

The Family Law which prescribes the protection of the family unit at the same time provides protection against unjustified interfering of the State into one's family life and prescribes positive duties that the State has towards the family unit. Hence, while respecting the autonomy of a family unit this law defines in more detail cases when specialized authorities (especially courts and other custodian authorities) are allowed and have the obligation to interfere in order to protect the interests of particular family members, especially children. So, the basis for intervening can only be the best interest of the family, or the need to protect rights and interests of members of marital-family relations in certain cases like conflict situations. The personal character of this kind of relations demands that the Family Law clearly defines all presumption and conditions that need to be fulfilled for the intervention to take place, and that will prevent competent authorities from crossing the line of duty. Hence the intervention which is not in best interest of a family unit and its members is not justified and allowed.

The Criminal Code of Montenegro protects the above Constitutional principles through following incriminations:

Article 170 (conducting illegal search) incriminates conducting any illegal search and prescribes a prison sentence of up to three years for any official who conducted illegal search of a home, other premises or a person, while on duty.

Article 171 (illegal disclosing of a secret) if a lawyer, doctor or other official illegally disclose a secret that he/she acquired through professional practice, he/she will be fined or given a prison sentence up to one year. The official will not be punished or fined if the secret is disclosed in the general interest or the interest of other person which is more important than the interest of keeping secret.

Article 172 (infringement of secrecy of a letter and other forms of correspondence) stipulates a fine or a prison sentence for up to one year for a person who illegally opens someone else's letter, telegraph, parcel or other posted item; illegally keeps, hides, destroys or hands over a letter, telegraph, parcel or other posted item to another person; and who infringes the secrecy of e-mail. The same punishment is given to a person who discloses to another person the content of someone's letter, telegraph, parcel or other posted item, which was initially acquired through the infringement of posted items secrecy; or if the person abuses that content in any other way. If the above described act is committed by the official on duty then the prescribed punishment is up to three years imprisonment.

Article 173 (unauthorised audio and video surveillance) prescribes that a person who is listening or recording a conversation, statement or an announcement without authorisation and by using special covert equipment, may be fined or sentenced up to one year in prison. A person shall be fined or punished with up to one year prison sentence if it divulges to another person a conversation, statement or an announcement that were listen to or recorded without authorisation. If this act was perpetrated by an official on duty then the official shall be sentenced with one year imprisonment.

Article 174 (unauthorised photographing) a fine or one year imprisonment sentence is prescribed for a person who takes a photograph or makes a film or video record of another person without his/her authorisation, infringes the right to a privacy of private life in this manner or hand over or show recorded material to another person. If this act was perpetrated by an official on duty then the official shall be sentenced with up to three years imprisonment.

Article 175 (unauthorised publishing and presenting somebody's writing, picture or video record) a fine or a prison sentence of up to one year shall be given to a person who publishes or presents a record, portrait, photograph, film or phonogram of a personal character without a consent of a person who wrote a record and who is a subject of a portrait, photograph, film and whose voice is

on phonogram, and this infringes that person right to private life. If this act was perpetrated by an official on duty then the official will be sentenced with up to three years imprisonment.

Article 176 (unauthorised collection of private data) prescribes a fine or a prison sentence of up to one year for a person who illegally acquires personal data that can be collected, processed and used only according to law; passes the personal data to another person or uses them for a purpose they are not meant for. The same punishment is given to a person who illegally collects and uses citizens` personal data. If this act was perpetrated by an official on duty then the official will be sentenced with up to three years imprisonment.

Article 197 (disclosing personal or family circumstances) of the Criminal Code prescribes that any person who exposes details from somebody`s personal or family life, which can harm the honour and respect of that person, will be fine three to ten thousand euros. If the offence is committed through media and other information services or at the public gathering then the perpetrator will be fine five to fourteen thousand euros. If the information disclosed this way could have has a serious consequence on victim`s life then the perpetrator will be fined with at least eight thousand euros. Disclosing personal or family circumstances in official capacity; through journalist work, in order to defend a certain right or justified interests, the perpetrator shall not be fined if he/she proves that information disclosed is true or that he/she had a justified reason to believe that disclosed information was true. Truth or falsity of what is disclosed from somebody`s personal or family life cannot be proved, only when information is disclosed in professional capacity; through journalist work, or in order to defend a certain right or justified interests.

Article 350 (computer sabotage) stipulates one to eight years prison sentence for a person who imports/enters, alters, damages, hides or renders computer data or program unusable in any other way; who damages or destroys a computer or other electronic device used for data processing and transfer, which are important for the State`s institution, public services, companies and other subjects.

Article 352 (computer fraud) stipulates six months to five years prison sentence for a person who enters an incorrect data, misses to enter a correct data, hides or falsely presents data, consequently directly influences on the result of electronic data processing and transmitting as well as on functioning of an entire computer system, with the intent to acquire for him/herself or another person an illegal benefit and which would cause an asset damage to another party. If the criminal act resulted in acquiring more than three thousand euros, the perpetrator shall be punished from two to ten years in prison and if the acquired sum exceeds thirty thousand euros the stipulated sentence is two to twelve years in prison. If a person commits this criminal act with the sole aim to cause damage to another party, it will be fined and sentenced up to two years in prison.

Article 355 (unauthorised access to protected computer or computer network) prescribes a fine or up to one year in prison sentence for a person who breaches protection measure and switches on and enters a computer or computer network without authorisation. The same punishment is stipulated for a person who intercepts computer data without authorisation and if the person uses data acquired in this manner than he/she will be fines and sentenced up to three years in prison. If using intercepted computer data resulted in serious damaged for a victim, the perpetrator shall be punished with six month to five years in prison.

Article 211 (broadcasting/showing/displaying pornographic material) stipulates that a person who sells or shows pornographic material to a child, displays pornographic material in public or makes texts, photos, audio visual or other pornographic material available to a child, or shows a pornography performance shall be fined or sentenced up to six months in prison. If a person uses a child for the production of photos, audio-visual content or other objects of pornographic nature, or uses a child in pornographic performance, it will be punished with six months to five years in prison. If a person sells, broadcasts, displays publicly or electronically any photos, audio-visual material or other objects of pornographic nature for which production a child was used, or shows a pornographic performance shall be punished with two years of prison sentence. All material found will be confiscated and destroyed.

Criminal Procedure Code extends the protection of privacy. Article 237 of the Criminal Procedure Code stipulates that upon a written and justified proposition of a Public Prosecutor, Investigating Judge can allow secret surveillance measures regulated by the Article 237 of Criminal Procedure

Code against persons, when there is a reasonable doubt, who personally or together with other people committed criminal offences for which a prescribed penalty is prison sentence of ten years minimum or more; or committed criminal acts which have elements of organised crime. Surveillance measures that can be allowed include: secret supervision and technical recording of telephone calls, secret photographing, and visual recording in private premises, public places and open spaces, etc. These measures can be used against other people when there is a doubt that they carry messages which are in connection with the criminal act, defined by Article 238, to or for the perpetrator or if the perpetrator is using their phone line and other telecommunication equipment.

Article 75 of the Criminal Procedure Code stipulates that the search of a home or other premises, and personal property of a perpetrator and other people can be conducted if there is a possibility that the search will result in capturing of a perpetrator or in finding traces of a criminal act or other evidence important for the criminal procedure. In this sense the search of personal property would include a search of a computer and any other equipment for automatic data processing that is connected to the computer. People can be searched when there is a possibility that the search will result in finding traces of a criminal act or other objects important for the criminal procedure.

Article 76 of the Criminal Procedure Code prescribes that the search can be authorised by the Court through the written order or a search warrant. Before conducting a search of a person or his/her property, the person has to be presented with the search warrant. Before the search is conducted, a person to whom a search warrant refers will be asked to voluntarily give up people or objects that are wanted. The person has to be informed that he/she has the right to call a lawyer or a defence attorney to be present during the search. If the person, to whom the search warrant refers, demands presence of his/her lawyer or defence attorney then the search will be postponed until legal representative's arrival, maximum up to two hours. Search may be conducted without serving a search warrant, without asking a person to voluntarily give up people or things wanted and without notifying a person of his/her right to lawyer or defence attorney presence during the search in the following cases: if use of weapon resistance or some other kind of violence can be expected, if it is necessary to conduct an unexpected search, if it is evident that a person is preparing or has already started destroying evidence of a criminal offence and other things of importance for the criminal procedure or if the search is to be conducted in public premises.

Article 79 of the Criminal Procedure Code regulates the entrance into somebody's flat, home and search without a warrant. This article stipulates that an authorised police officer can enter into someone's flat, home or other premises and conduct a search without a warrant issued by the Court if the owner of the property demands so, if someone from inside the property calls for help, if the officer has to execute court's decision and either arrest a criminal offender or bring the offender or other person before the court, If a police officer has to arrest an escaped offender who committed a criminal offence that is prosecuted ex officio and that could entail a prison sentence of three or more years, and if entering the property is necessary for removing a threat of serious danger to life and health of people or danger to valuable property. Property owner, if present, has the right to make an objection against the official act from paragraph 1 of this Article. An Authorised police officer must notify the property owner of the right to make an objection and to make a note of this objection in a written record about entering and searching the property.

Law on Protection of Personal Data (Official Gazette of the Republic of Montenegro 79/2008) provides protection of personal data according to principles and standards adopted by ratified international treaties on human rights and freedoms and according to all accepted rules of the international law. Article 2 of the law prescribes that personal data can be processed for purposes defined by the law or after the consent of a person whose data is being processed. Personal data cannot be processed in a bigger quantity than it is needed for the purpose of processing or in the manner which is not in accordance with the purpose of processing. Every person enjoys the right to personal data protection regardless to citizenship, residency, race, sex, language, religion, political and other beliefs, nationality, social background, social status, education, etc. In order to establish a separate supervising authority this Law stipulates the establishment of the Agency for the Protection of Personal Data.

### **83. Elaborate on the legislative structures in place to ensure protection of the right to freedom of thought, conscience and religion.**

Every person is guaranteed the right to freedom of thought, conscience and religion, including the freedom to change one's religion or belief by the Constitution (Article 46). In addition, every person is entitled to the right to freedom, either alone or in community with others, and in public or private, to manifest one's religion or belief, in worship, teaching, practice or observance. No one is obliged to state their religious and other beliefs.

The implementation of the religious rights is regulated by the Law on Legal Status of Religious Communities (Official Gazette of the Republic of Montenegro 9/77 and 26/77) and Law on Celebrating Religious Holidays (Official Gazette of the Republic of Montenegro 56/93). In accordance with the Law on Legal Status of Religious Communities, religious institutions and organizations, or religious communities, can be set up freely, being bound to notify their establishment or closure to municipal administrative body competent for internal affairs in the municipality where the religious community is being founded or shut down. Law completely prohibits abuse of religious communities and their institutions as well as the misuse of religious activities, and accordingly the abuse of one's religious emotions for political purposes. Any kind of prevention and obstruction of performing religious services and religious affairs and manifesting religious emotions is prohibited by the law. The law prescribes sanctions if these or other provisions are violated. With regard to the guaranteed religious freedom, it is prohibited to force a person to become a member of a religious community or to force him/her to participate unwillingly in religious services.

Religious services can be performed in churches, temples, religious premises, cemeteries, or private houses and etc., without the authorisation of the competent authorities, but the authorisation of the competent authorities is needed if religious services are performed outside these premises.

Hospitalised persons, those in institutions for social protection and in similar institutions have opportunities to profess their religion by obeying to house rules of that institution. Upon their request, these persons can be visited by a priest who performs the service. Incarcerated persons are also guaranteed the right to conduct religious life.

Religious communities have the right to set up religious schools and dormitories for the accommodation of their participants. These schools do not belong to the educational system of Montenegro because they are managed directly by religious communities. These religious communities establish a program and a curriculum and appoint teachers for its implementation. Every religious community uses this right and takes opportunity to organize religious teachings in their premises. Religious communities have the opportunity to publish and distribute religious press. With respect to the religious press, the general regulations on informing and publishing of the press are in force. Religious communities use this right and therefore there are internal religious publications of all religious communities in Montenegro.

The freedom to express their religious beliefs is ensured by the law so that the believers can use this right and be absent from work during the time of their religious holidays. Law on Celebrating Religious Holidays ensures the paid leave from work for people who celebrate religious holidays. The paid leave for Orthodox believers is on Christmas Eve, Christmas Day (two-day leave), Good Friday, Easter (the day after Easter Sunday) and on the Day of Veneration of Family's Patron Saint; the paid leave for Roman-Catholic believers is on Christmas Eve, Christmas Day (two-days leave), Good Friday, Easter (the day after Easter Sunday), and All Saints' Day; Muslims have three-day leave for Ramazan Bayram and three-day leave for Kurban Bayram; Jews have two-day leave for Pasha and two-day leave for Yom Kippur. This law provides penalties and money sanctions for persons in a position of responsibility in a company, institution or other legal persons, competent state body and for entrepreneurs who do not give their employees paid leave in the time of their religious holidays.

The State assists religious communities by its participation in paying for pension provisions, social security provisions and medical insurances of the priests (50% of all expenses), but the state mostly invests in sacred buildings, especially in preserving the cultural monuments. The state

financially assists religious festivals and cultural activities of the religious communities. Religious communities have right to own their property, and also they can collect voluntary contributions for religious purposes, which they themselves manage.

**a) Please give details and explain any limitations to this freedom which are permitted.**

The right to express religious beliefs freely can be limited if it is necessary to protect people's life and health and to ensure public order and security, as well as other rights guaranteed by Constitution (Article 46).

In the war times or during extreme situations, some human rights and freedoms can be limited in the scope that is necessary. This temporary limitation should not be based on discrimination on the grounds of sex, nationality, race, religion, language, ethnic or social origin, political or other opinions, social status or any other personal property. The right to thought, conscience and religion freedom is one of the rights which cannot be limited in this situation (Article 25).

**b) Please give information on the measures taken to prevent discrimination against religious minorities in the Montenegro.**

Apart from constitutional prohibition of direct or indirect discrimination on any ground (Article 8), the prohibitions of discrimination on any ground are regulated by many individual laws, and incriminated discriminations are regulated in penal legislation (Penal Code for violation of faith confession freedom and performing religious services freely). In addition, in Montenegrin society there are certain measures and activities that are undertaken aimed at to preventing religious discrimination and thereby ensure equality of citizens. The principles of the affirmative actions toward minorities (and religious minorities as well) are explained in more detail in the answer of the questions no. 86 and 102.

**c) What is the constitutional status of religions in your country? Is there any state religion?**

Montenegro is defined as a secular state where religious communities are set apart from the state. Religious communities operating on the territory of Montenegro are guaranteed equality and freedom to perform religious services and religious activities by Constitution (Article 14). The state does not interfere with their inner organisation and their religious activities, but these activities are within the limits of competence and responsibilities of the religious communities, namely religious communities independently manage their organisation and activities. There is no state's religion in Montenegro.

**d) Is there a legislative framework for conscientious objection? If so, please provide details.**

Article 48 of Constitution of Montenegro prescribes that every person is entitled to conscientious objection and no one is obliged to participate in military or other service that includes the usage of weapons, which is against their religion or beliefs.

Article 177 of the Law on Military of Montenegro prescribes that the person, who is not willing to participate in military service that includes the use of weapons due to his religious beliefs, is allowed the conscientious objection.

All Montenegrin eligible citizens are obliged to participate in a military service or conscription in times of war or during extreme situations.

During peace, adult persons can voluntarily be summoned for training in order to gain necessary skills for fulfilling one's duties in war. This training can last up to 15 days annually.

The Ministry issues the public announcement for training and determines the means of conducting the training.

The person who emphasises the conscientious objection is allowed not to take part in military service that includes the use of weapons.

### **84. Are the freedoms of assembly and association assured?**

The right to publicly assembly and the freedom of association are guaranteed by the Constitution of Montenegro and these rights belong to the category of political rights and freedoms. The Constitution of Montenegro guarantees the people the right to political, trade union and other gatherings and activities, without previous permission, but these should be registered at the competent authority.

The right to peacefully assembly without previous permission is guaranteed by the Article 52 of Montenegrin Constitution, but the gathering should be registered at the competent authority. Constitutional right of peaceful assembly is granted by Law on Public Assembly (Official Gazette of the Republic of Montenegro 31/05), which is in accordance with Human Dimension Criteria of OSCE from Copenhagen, as well as in accordance with Warsaw Recommendations (2001), and it affirms the freedom of public assembly.

Public gatherings can take place, but they are subject to prior notification that should be submitted to Local Police Administration Unit where the public assembly is planned to occur at least five days before its taking place. Public assembly notification should contain the following items: objectives, program, time and place, information about its organisers and his/her representative, personal details about the assembly manager, the number of police officers and the estimated number of participants.

The public assembly application form is submitted by the organiser of the public assembly. The organiser of the public assembly can be a natural person or a legal person. If the public assembly is organised by the group of citizens or more legal persons, they have a duty to appoint their common representative.

The Law on Violence and Misconduct Prevention at sporting manifestations and competitions (Official Gazette of the Republic of Montenegro 27/07) determines the measures that should be taken to ensure the safety of the spectators, competitors and other participants in the sporting events, and also the conditions for preventing, restraining, and taking sanctions for misconduct, riots, and violence before, in the middle of, and after sporting manifestation. The law states the duties of the organisers and the authorisation of competent authorities to carry out these measures. Preventative measures as well as repressive ones for violence preventing and restraining, that competent authorities and organisers may carry out at sporting manifestations as a form of public gatherings, especially at those which include a higher level of risk, are fully in accordance with European Convention on Violence and Misconduct of Spectators at Sporting Events.

Article 181 of the Criminal Code of Montenegro ensures the legal protection against prevention and obstruction of the peaceful assembly.

Everyone that prevents or obstructs the public assembly that is organised in accordance with Law by using force, threatening or deceiving, shall be sentenced to up to one year in prison and will have to pay a fine (Paragraph1).

Qualified form of this criminal offence (Paragraph 2) exists when the criminal offence is done by a person in official capacity during his/her officiating. A person in official capacity that prevents or

obstructs a lawfully notified public assembly by using force, threatening or in any other way, shall be sentenced up to three years in prison.

Normative prerequisites for implementation of these freedoms are effectuated by adopting the Law on Political Parties (Official Gazette of the Republic of Montenegro 21/04), Law on Non-Governmental Organisations (Official Gazette of the Republic of Montenegro 27/99, 30/02, 11/07), Law on Employment (Official Gazette of the Republic of Montenegro .48/08 and 26/09), as well as by adopting the corresponding secondary legislation for their development.

The Law on Political Parties regulates every form of citizens' association within political parties (it regulates the conditions and ways of establishment, organization, registration, association and termination of political parties). Pursuant to the provisions of this Law, the political party is an organisation of free and voluntarily associated citizens whose purpose is to achieve political aims by using democratic means. Political parties are legal persons; they act publicly and in accordance with the territorial principle. At least two-hundred citizens that have the right to vote in Montenegro can set up a political party if they free-willingly sign the declaration of the party establishment. Political party register is a public book that is kept by Ministry of Interior and Public Administration. The political party can be registered by filling in the application form that should be accompanied by decree of party establishment, party statute and programme.

As far as non-governmental organisations are concerned, the Law on Non-Governmental Organisations affirms the liberal concept of establishment and registration of non-governmental associations and non-governmental foundations. Non-governmental associations can be established by at least five persons with their permanent or temporary residence, or with their headquarters in Montenegro, and non-governmental foundation can be set up by at least one person irrespective of his/her permanent or temporary residence or his/her headquarters. Subscription into register is done at the state administration body competent for keeping records on non-governmental organisations (this is done in the Ministry of Interior and Public Administration which is competent for domestic non-governmental organisations). For the subscription, it is needed to fill in application form for registration and to submit the general documents of an organization: Statute and Document of Establishment.

According to this Law, the foreign non-governmental organisations are those whose headquarters are abroad, and they can operate on the territory of Montenegro if they register their branch office in the records kept by Ministry of Justice.

In compliance with the existing provisions that regulate different aspects of the Government and NGO relations, aimed at further democratisation, promotion, and protection of human rights and fundamental freedoms, and by respecting pluralistic principle and freedom of association, the Government of Montenegro adopted on 18 May 2006 "Grounds of Cooperation between Government of the Republic of Montenegro and Non-governmental organisations" document determining the following aims: development of democratic and open society and mutual cooperation aimed at developing European integration processes; mutual cooperation development, independence safeguarding and emphasising importance of NGO roles and improving their transparency ; establishing partnerships between NGO and state institutions; achieving and further improving complementarity and interaction, aimed at more efficient social development; creation of different institutional mechanisms for improving and further development of cooperation and mutual communication; improving working conditions of non-governmental organisations; and the document determined the cooperation principles like partnership, transparency, responsibility, mutually sharing information and non-governmental independence. Before the document was adopted, there was a discussion during which representatives of some NGOs and international organisations operating in Montenegro took part.

Based on this document, the Government of Montenegro established the Office for Cooperation with Non-Governmental Organisations in the first quarter of 2007, and the interdepartmental work group for drafting a proposal of Strategy for Cooperation between Government of Montenegro and NGOs in May 2007. Ministries and other state bodies appointed contact persons for the cooperation with NGOs (now there are 42 contact persons altogether in ministries, directorates, agencies, offices, etc). All this resulted with the adoption of the "Strategy for Cooperation between



the Government of Montenegro and NGOs” in 2009 and the adoption of the action plan for the realisation of the Strategy for 2009-2011 period, at the Cabinet meeting on 22 January 2009.

In addition to the Constitution which by principle guarantees the freedom to join a trade union, the Labour Law (Official Gazette of the Republic of Montenegro 49/08 and 26/09), as a special law regulates this area in more details. All employees are guaranteed a freedom of organising trade unions and trade union practice, without previous approval. A trade union has to be registered in the register kept by a competent state administration body. In order to additionally protect the right to organise trade unions and the freedom of trade union practice, it is stipulated that the trade union representatives and employees` representatives cannot be impeached in relation to any trade union activity, made redundant, reassigned to another post with the same or another employer due to any trade union activity or otherwise put into unfavourable position, during their trade union practice and 6 months after their trade union activity stopped. Employer must not put an employee in more or less favourable position because of his/her trade union membership or activity.

**a) Provide statistics regarding the number of non-governmental organisations and associations or foundations active in your country.**

Entry into the Register of NGOs, in the period from 199 until 2006, was under the jurisdiction of the Ministry of Justice. The Register was held in electronic form, and was available on the web site of the Ministry, which can also be found today, with updated data till May 2006 (the web site of the Ministry of Justice).

Since 2006, the maintenance of the Register of NGOs has been under the jurisdiction of the Ministry of Interior and Public Administration. In this connection, the Ministry of Interior and Public Administration works on creation of an innovated electronic form of the register of NGO. That activity is anticipated by “The Cooperation Strategy of Government of Montenegro and NGOs“, as well as the Action Plan for Strategy realisation. However, as the implementation of the Strategy and Action Plan, in relation to the activities provided for 2009 (especially the first half), has been shifted due to early parliamentary elections and forming of the new government, the realisation of this activity is in progress.

On 11 August 2009, it has been registered in Montenegro

- 4822 NGOs;
- 152 non-governmental foundations and
- 106 foreign NGOs.

The registers of non-governmental associations, non-governmental foundations and foreign non-governmental organisations are public books, which content is made available for every interested party.

**b) What is the legal status of non-governmental organisations and associations or foundations, including as regards financing, taxes, and restrictions on membership or on activities?**

Law on Non-Governmental Organisations (Official Gazette of the Republic of Montenegro 27/99, 30/02, 11/07), as *lex specialis* in this area, among other things, also regulates the status questions in relation regarding non-governmental organisations. NGOs, whether it is about non-governmental associations or non-governmental foundations, have the status of legal person and that virtue they gain on the day of entering the Register.

Non-governmental associations are non-profit organizations with membership, which are founded by domestic or foreign natural and legal persons, for the purpose of achievement of individual or common interests or of achievement of public interest.

Non-governmental foundations are non-profit organisations without membership, which are founded by domestic and foreign natural and legal persons, for the purpose of merging of assets and property with the aim of achievement of charitable and other activity which is of public significance.

Non-governmental organisation acquire their property of membership fee, charitable contributions, financial subsidies, legacy, interests on deposits, dividends, rentals and other legally approved means. It is envisaged by law the possibility for non-governmental organisation to deal with economic activity. The conditions are that they use the whole profit for achievement of objectives for which it has been founded and that should be done on the territory of Montenegro. If the revenue of the economic activity exceeds the amount of 4000 euro in the previous calendar year or if that revenue exceeds amount of 20% of total annual revenue in the previous calendar year, non-governmental organization cannot conduct an economic activity. Non-governmental organizations are obliged, for the purpose of performing economic activity, to register in the Central Registry of the Commercial Court in Podgorica.

The country provides aid for NGOs and assets for that aid are provided from the budget of Montenegro. Law on Non-Governmental Organisations and Law on Games of Chance (Official Gazette of the Republic of Montenegro 52/04 and (Official Gazette of the Republic of Montenegro 13/07), with accompanying decrees, regulate issues of asset allocation from the budget of Montenegro for financing NGO projects. In the previous period, NGOs have emphasised, as one of the major issues in allocation, among other things, inability of taking part of NGO representatives in activities of the Commission for Asset Allocation, so that the government of Montenegro, on the initiative of the NGO coalition "With Cooperation to the End", adopted an Act on Criteria for determining users and means of allocation of a part of income from the games of chance (Official Gazette of the Republic of Montenegro 45/08), which has made ineffective the Act on nearer criteria for determining users and means of allocation of a part of income from the games of chance (Official Gazette of the Republic of Montenegro 46/05). The most significant novelty is the fact that two members of the Commission for Asset Allocation are the representatives of NGOs. However, asset allocation of games of chance is conducted by a commission which is appointed by the government of Montenegro, the tender for allocation as well as the decision on assignation are published in daily newspapers and on the website of the Ministry of Finance. Percentages and domains, for which the assets are assigned, are defined by the Act, and these are: social security and humanitarian activity domain-5%, domain of satisfying the needs of the people with disabilities - 40%, the domain of sports development-20%, the domain of culture and technical culture-10%, the domain of extra institutional education and upbringing of children and youth- 5%; and the domain of contribution to the fight against drugs and all types of addiction- 20%.

The decision on nearer criteria means and procedure of asset allocation of the Commission of Parliament of Montenegro for asset allocation to NGOs regulates issues of asset allocation from the budget of Montenegro for project financing of NGOs. The allocation is conducted by the Commission for Asset Allocation to NGOs, which is appointed by the Parliament of Montenegro, at the proposal of the appropriate working body, and based on the public tender published in daily newspaper, which founder is the Parliament of Montenegro. The Commission makes a decision based on project which, along with the application for the tender, NGOs submit, respecting the following criteria accordingly:

- project contribution to achievement of the public interest in a specific domain;
- transparency and possibility of control of the project realization;
- compatibility and project cooperation with the international entities;
- recommendations by the experts from the relevant domains on the offered project.

It is defined by the Law on Games of Chance that at least 75% of the income from the games of chance, provided for non-governmental and other organizations, shall be used for financing of plans and programmes of NGOs.

Moreover, the projects of NGOs are also financed by certain ministries and by local government, based on the tenders that are published in the daily newspapers.

The State of Montenegro has provided an array of tax relief related to the financial aspect of operation of NGOs. Law on Profit Tax of Legal Persons (Official Gazette of the Republic of

Montenegro 65/01, 12/02, 80/04) and (Official Gazette of the Republic of Montenegro 40/08) defines an un-taxable profit of NGOs up to 4000 euro; Law on Property Sales Tax (Official Gazette of the Republic of Montenegro 69/03), and (Official Gazette of the Republic of Montenegro 17/07), which appoints that NGOs shall not pay this tax for the properties which they use for operating their programme activities for which they are founded; Law on Administrative Tax (Official Gazette of the Republic of Montenegro 55/03, 128/03, 46/04, 81/05, 2/06, and (Official Gazette of the Republic of Montenegro 77/08 and 3/09), with which NGOs are exempt from paying taxes for achieving of the objectives for which they are founded; Law on Value-Added Tax (Official Gazette of the Republic of Montenegro 65/01, 12/02, 38/02, 72/02, 21/03, 76/05, 4/06) and (Official Gazette of the Republic of Montenegro 16/07), with which NGOs services are exempt from tax, under certain conditions.

When the membership in non-governmental organisations is concerned, there are neither legal nor factual restrictions. Concerning the activities of the NGOs, it is regulated by the Constitution of Montenegro (Official Gazette of the Republic of Montenegro 1/07) that activities of political and other organisations are prohibited (hence, non-governmental too) which is directed towards subversion of constitutional order by force, violation of territorial integrity of Montenegro, violation of warranted freedom and rights or provocation of national, racial, religious or any other animosity and intolerance.

Also, Law on Non-Governmental Organisations stipulates that this law is not to be implemented on political organisations, religious organisations, union organisations, sports organisations, business associations, as well as organisations and foundations which have been founded by the State.

**c) Which, if any, justifications are permitted as regards possible restrictions placed on the exercise of these freedoms? Which body may impose such restrictions?**

Freedom restriction on merging is carried out by means of the decision on prohibition of operation of a political party or a non-governmental organisation which is made by the Constitutional Court of Montenegro. The process of decision-making on the prohibition of operation of a political party or a non-governmental organisation, is regulated by the Law on Constitutional Court (Official Gazette of the Republic of Montenegro 64/08), and is initiated by a proposal which can be submitted by: The Protector of Human Rights and Freedoms (Ombudsman), The Defence and Security Council, the public administration body responsible for protection of human and minorities rights, as well as the authority responsible for entry into the register of political parties and non-governmental organisations. The reason for which the Constitutional Court can make a decision on the prohibition of operation of a political party or a non-governmental organisation is the following: if their activity is directed towards or aimed at subversion of constitutional order by force, violation of territorial integrity of Montenegro, violation of warranted freedom and rights or provocation of national, racial, religious or any other animosity and intolerance.

By the Constitution of Montenegro (Official Gazette of the Republic of Montenegro 1/07), the restriction of freedom of political organisation is established for certain person categories, in the way that: the Constitutional Court judge, a judge, the public prosecutor and his deputy, the Protector of Human Rights and Freedoms, a member of the Central Bank Council, a member of the Senate of the State Audit Institution, a professional member of Army, Police and other security services, cannot be members of any political party. Likewise, any foreign political organisation and operation, which has its head office outside of Montenegro, is prohibited.

It is explicitly stated in the Public Gathering Law (Official Gazette of the Republic of Montenegro 31/05) that freedom of assembling and other gathering of citizens can be temporarily restricted due to protection of rights of other people, public order and security, public morality, environment and human health. Permitted restrictions are defined by the law and they are in the function of security of public order and peace as a legitimate objective, and they are fully in line with Article 11 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms.

For the purpose of respecting the rights and freedoms of the others, it is defined by article 11 of the quoted law that holding a public assembly can be temporarily prohibited if:

- 1) it is not beforehand and properly reported ;
- 2) it is reported to be held on the area, on which, in accordance with this law, it is not permitted to be held;
- 3) if the objectives are directed towards violation of warranted freedom and rights or abetment of using violence, national, racial, religious or any other animosity and intolerance;
- 4) there is a real danger that, by holding a peaceful assembly, people security and property would be endangered, or it would come up to violation of public order and peace on a large scale;
- 5) it is necessary for preventing of violation of human health, upon request of the public administration authority responsible for health affairs.

A decision on prohibition of holding a peaceful assembly is declared containing the reasons for causing the prohibition of holding the assembly. Appeal is permitted against the decision on prohibition of holding the assembly.

### **d) Is the right to join or not to join trade unions legislated for?**

The right of the employed to the freedom of union assembling and acting, without permission, with the entry by a competent body, is guaranteed by the Constitution of Montenegro.

According to the stated constitutional provision, by the Labour Law it is determined that the employees have the right, according to their free choice, without previous permission, to found their union organisations and to join them, under conditions regulated by the Statute and regulations of these organisations.

Joining of the employed to a union organization is on a voluntary basis.

The Law on Military of Montenegro prohibits union assembling of the persons in military service.

### **e) How is the freedom of association (trade-unions, professional associations) applied in the public administration in general, and in the Army, the Police and the Judiciary in particular?**

Freedom of union assembling explained in sub-question d) has also been implemented in the public administration, police and judiciary.

Civil servants and state employees, to which also belong the employees in the Ministry of Defence, Ministry of Interior and Public Administration, and the employees in the Police Directorate, as well as the employees in judicial organs, are organised in unions and registered with the Ministry of Labour and Social Welfare, and these also independently bring decisions on the means of assembling in the Judiciary and Administration Union, which protects their rights from labour and according to labour.

Under the provision of the Article 51 of the Law on Military of Montenegro it is defined that persons in military service are not allowed to assemble in unions.

### **85. What measures are there in place to prevent a person from being removed, expelled or extradited to a State where there is a serious risk that s/he would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment? Which bodies are responsible for fact-finding in such cases and do they have an adequate institutional framework to facilitate effective action? Please provide details.**

The Constitution of Montenegro prescribes that a foreign national shall not be expelled from Montenegro to a state where, because of his/her race, religion, language or national background,

he/she is at risk of being sentenced to death, tortured, being subjected to inhuman or degrading treatment, persecution or serious violation of the rights guaranteed by the Montenegrin Constitution.

The Law on International Legal Aid in Criminal Matter (Official Gazette of Montenegro, 4/08) regulates the extradition procedure applied in the case of the non-existence of an international treaty or when certain issues are not regulated by means of a treaty. The Law prescribes that the extradition for an act of political crime shall not be allowed, as well as for an act related to an act of political crime or an act of military crime in the sense of the European Convention on Extradition. In case the law of a requesting country prescribes capital punishment for an act of crime extradition is sought, the extradition may be allowed solely if such country offers guarantees that capital punishment will not be pronounced or executed.

The decision by means of which extradition is allowed is passed by the Minister of Justice, who shall not allow the extradition of a person who enjoys the right to asylum in Montenegro, or when it can be reasonably assumed that the person whose extradition is sought would, in case of extradition, be exposed to persecution or punishment on the grounds of his/her race, religion, citizenship, belonging to certain social group or on the grounds of his/her political convictions, or would his/her position be hardened because some of these reasons.

The Penal Code (Official Gazette of the Republic of Montenegro, 70/03, 13/04, 47/06 and Official Gazette of Montenegro, 40/08) as a security measure, prescribes the measure of expelling a foreign national from the country, the purpose of which is to eliminate the condition or conditions that might be of importance with regards to the committing of new acts of crime. A foreign national who has committed an act of crime may be expelled from the territory of Montenegro from one to ten years or permanently, for a repeated act of crime.

This measure may not be pronounced to a perpetrator who enjoys the protection in line with the ratified international treaties.

A foreign national who resides illegally in Montenegro (without a visa, residence permit or any other legal basis), pursuant to the Law on Foreign Nationals (Official Gazette of Montenegro, 82/08), by means of an order, the Police shall determine a deadline within which this person is obliged to leave the territory of Montenegro. This order may be appealed against, but the appeal does not delay the enforcement of the same (Article 62 of the Law).

A foreign national residing illegally in Montenegro, or who does not leave Montenegro within the specified deadline, shall be forcefully sent out of the country (Article 64 of the Law).

A foreign national may not be forcefully sent out to a country where his/her life would be put in danger or where his/her freedom would be jeopardized because of his/her race, religion or nationality, because of his/her belonging to a particular social group or because of political views, or indeed to a country in which he/she could be subjected to torture, inhuman and degrading treatment and punishment. (Article 65 of the Law).

Furthermore, the Law on Asylum (Official Gazette of Montenegro, 45/06) prescribes the prohibition of repatriation and expulsion. A persons who has had his/her asylum granted or whose asylum has ceased or has been abolished must not be repatriated or expelled to the border of the state where his/her life or freedom would be endangered because of his/her race, religion, nationality, because of his/her belonging to a particular social group, or indeed because of his/her political views, or where he/she could be exposed to torture, inhuman or degrading treatment or punishment, or where his/her life, security or freedom would be endangered due to general violence, external aggression, internal conflicts, mass violation of human rights or other circumstances which seriously endanger life, security or freedom.

**86. What steps have been taken to prevent discrimination based on membership of a national minority, ethnic or social origin, sex, race, colour, genetic features, language, religion or belief, political or any other opinion, property, birth, disability, age or sexual orientation? Has Montenegro established specialised services to combat discrimination? If so, which legislative framework, institutional context, composition, functions and powers pertain to these services?**

With a view to prevent discriminations based on one's belonging to an ethnic minority, ethnic or social background, gender, race, skin colour, genetic features, language, religion or belief, political or any other view, property, birth, disability, age or sexual orientation, Montenegro undertakes a series of measures, which include the following: legislative and strategic measures, educational and promotional measures, and institutional measures related to the establishment of appropriate institutions which competence is the prevention of discrimination, cooperation with NGOs and the cooperation with international institutions.

### **1. Legislative measures**

The Constitution of Montenegro, as the supreme legal instrument of the national legislation, prohibits any direct and indirect discrimination on any ground (Article 8). Also, the same article enables the passing of regulations and the introduction of special measures aimed at creating conditions for the achievement of national, gender and overall equality and the protection of individuals who find themselves in unequal position on any ground. It also ensures that such regulations and measures will not be considered discriminatory (positive discrimination, affirmative action). These special measures are time-bound, i.e. they may be applied solely until the objectives are achieved because of which they have been introduced. The Article 17 of the Constitution guarantees equality before the law, irrespective of any particularity or personal trait, which represents one of the highest values of Montenegrin constitutional order. The Constitution guarantees everybody's right to equal protection of their rights and freedoms (Article 19). The Constitution expressly prohibits the inducing or inciting of hatred or intolerance on any ground (Article 7). There shall be no restriction of individual human rights and freedoms on the basis of sex, nationality, race, religion, language, ethnic or social background, political or other conviction, assets or any other personal trait during the proclaimed state of war or extraordinary condition (Article 25). The Article 50 of the Constitution regulates that a competent court can prevent the dissemination of information and ideas in the media solely if it is necessary with a view to prevent, amongst other things, the propagation of racial, national and religious hatred or discrimination. Also, the Constitution prohibits the activities of political and other organizations the activities of which are directed towards the inciting of national, racial, religious and other hatred and intolerance.

Montenegro has ratified the majority of international treaties regulating the protection and improvement of human rights and freedoms. According to the Montenegrin Constitution, ratified and published international treaties and generally recognised rules of international law are the integral part of the internal legal order, and according their legal force these are above the law. In the field of the suppression of discrimination, Montenegro is a party to the following international conventions: the International Convention on Abolishing all Forms of Racial Discrimination from the year 1965, the Convention on Abolishing all Forms of Discrimination of Women from the year 1979, the Convention on the Right of the Child from the year 1989, the International Convention on Suppression and Punishment of the Crime of Apartheid from the year 1973, the Convention of the International Labour Organization (no. 100) on Equal Wages for Men and Women from the year 1951, the Convention of the International Labour Organisation (no. 111) on the Prohibition of Discrimination in Relation to Employment and Occupation from the year 1958, the UNESCO Convention Against Discrimination in Education from the year 1960, the European Convention on the Protection of Human Rights and Fundamental Freedoms from the year 1950, the Framework Convention for the Protection of National Minorities from the year 1995.

Along with the Constitution and the international treaties, national legislation contains a series of laws the provisions of which prohibit discriminations, promote equality and establish anti-discrimination measures. The most significant legal acts in the legal system of Montenegro which prohibit discrimination and promote equality are the following ones:

- **Law on Minority Rights and Freedoms** guarantees to the members of minorities equality with other citizens and the enjoyment of equal legal protection. Also, this law prohibits every indirect or direct discrimination on any ground, thus including race, skin colour, gender, national background, social origin, birth or similar status, religion, political or other convictions, assets, culture, language, age and mental or physical disability.
- **Law on Employment** envisages that the unemployed are equal in relation to exercising the right to employment irrespective of national background, race, gender, language, religion, political or any other conviction, education, social background, assets and other personal trait.
- **Law on Labour** prohibits direct and indirect discrimination of persons who seek employment, as well as of the employed, with regards to gender, birth, language, race, religion, skin colour, age, pregnancy, health condition, disability, nationality, marital status, family duty, sexual orientation, political or any other conviction, social background, assets, membership in political and trade union organizations or some other personal trait (Article 5). This law gives details of this discrimination. Direct discrimination is seen as every treatment caused by some of the grounds by means of which a person seeking employment, as well as an employed, is put in an unfavourable position in relation to other persons who are in a similar position. In the sense of this law, indirect discrimination exists when certain provision, criterion or practice puts or would put in an unfavourable position a person seeking employment, as well as an employed in relation to other persons, due to certain traits, status, orientations or convictions (Article 6). These forms of discrimination are prohibited with regards to employment conditions and the choice of candidates for certain job; working conditions and all the rights from labour relations; education, training professional development; career development; termination of labour agreement. Pursuant to the Article 10 of the Law on Labour, in cases of discrimination, a person seeking employment, as well as an employed, may initiate a procedure before a competent court, in line with the law.
- **Law on Social and Children's Protection** envisages that in exercising the rights from social and children's protection, the citizens are equal, irrespective of their national background, race, gender, language, religion, social origin or any other personal trait.
- **Law on Healthcare** prescribes that in exercising the rights to healthcare, the citizens are equal irrespective of their national background, race, gender, age, language, religion, education, social origin, assets and some other personal traits.
- **Law Gender Equality** defines and regulates the manner of securing and exercising the rights on the basis of gender equality and creating equal opportunities for the participation of women and men in all areas of social life.
- The content of the set of laws from the area of **education** (General Law on Formation and Education, Law on Elementary Education and Formation, Law on Secondary Education, Law on University Education), as well as the set of laws from the area of **media** (Law on Media, Law on Broadcasting, Law on Public Services Radio and Television of Montenegro), also contain the non-discriminatory approach in exercising the rights from these areas.

In Montenegrin legal order, discrimination is incriminated by penal legislation. **Penal Code** contains several provisions that incriminate every spreading of ideas based on racial superiority and hatred, every incitement to racial discrimination, as well as every act of violence with racist background. From the Article 158, all to the Article 182, the Penal Code prescribes crimes against human and citizens' freedoms and rights, as follows: violation of the right to use one's language and alphabet, violation of equality, violation of the freedom of expressing national or ethnic background, violation of the freedom of religious practice and religious rites, illegal deprivation of liberty, violation of the freedom of movement and residence, abduction, force, coercion, torture and abuse, endangering security, violation of the inviolability of home, illegal search, unauthorized disclosure of secrets, violation of the secrecy of correspondence, unauthorized tapping and recording, unauthorized photographing, unauthorized publishing and presentation of other person's act, portrait and recording, unauthorized collection of personal data, violation of the rights to the submittal of legal remedy, violation of the freedom of speech and public address, prevention of printing and distribution of printed material and broadcasting, prevention of publishing the reply and correction, prevention of public gathering, prevention of political, trade union and other association and activity. The Article 58 of the Penal Code puts an emphasis on the prohibition of discrimination:

(1) Whoever, on the basis of national or ethnic background, race or religion, or because of the absence of the same, or due to the differences in relation to political or other conviction, gender, language, education, social position, social background, assets or any other personal trait, deprives or restricts somebody's human or citizen's rights guaranteed by the Constitution, laws or other regulations or general acts or ratified international treaties, or grants privileges or benefits on the basis of these differences, shall be punished by the imprisonment term of up to three years.

(2) In case the act from the paragraph 1 above is committed by an official while performing his/her duty, he/she shall be punished by the imprisonment term from three up to five years.

The Article 443 also defines penal sanctions for the violation of the fundamental rights and freedoms, etc.:

(1) Whoever violates fundamental human rights and freedoms guaranteed by the generally accepted rules of the international law and the international treaties ratified by the State Union Serbia & Montenegro, on the basis of the difference in race, colour of the skin, nationality, ethnic origin or any other personal trait, shall be punished by the imprisonment term from six months up to five years.

(2) The punishment from the paragraph 1 above shall be imposed onto whoever persecutes organizations or individuals because of their efforts directed towards the equality of people.

(3) Whoever disseminates the ideas on the superiority of one race over the other or propagates racial hatred, or indeed incites racial discrimination, shall be punished by the imprisonment term from three months up to three years.

### **2. Strategic documents**

The Government has adopted several strategies and actions plans in various fields that are of importance for the suppression of discrimination. The most significant among them are: Minority Policy Strategy (2008-2012); Strategy for the Improvement of the Position of RAE Population in Montenegro (2008-2012); National Action Plan for „Roma Inclusion Decade 2005-2015“ in the Republic of Montenegro; Plan of Actions for the Achievement of Gender Equality (2008-2012); Development Strategy and Poverty Reduction (2003-2007); National Action Plan for the Young (2007-2011); National Action Plan for Children (2004-2010); National Programme for the Prevention of Unacceptable Behaviour of Children and the Young in Montenegro (2004-2006); Strategy for Durable Solution to the Issue of Refugees and Internally Displaced Persons in Montenegro (2005-2008); Strategy for the Prevention of Poverty and Social Exclusion (2007-2011); Strategy for the Development of Social Welfare System and the System of Children's Protection in Montenegro (2008-2012); Strategy for the Integration of Disabled Persons in Montenegro (2008-2016); Action Plan of the Strategy for the Integration of Disabled Persons in Montenegro (2008-2009); Strategy of Inclusive Education in Montenegro (2008-2012); National Strategic Response to Drugs (2008-2012); etc.

### **3. Educational and promotional measures**

Educational and promotional measures aimed at preventing discrimination on all grounds include a series of activities, educational ones above all (new concept of education and introduction of civic education in the formal system, seminars, lectures, workshops...), public awareness raising campaigns, activities of the NGO sector, international cooperation of Montenegrin public authorities with international organizations, states and international NGOs.

The measures that should be emphasized, amongst others, are the activities of the NGO sector in promoting tolerance, in the prevention of discrimination and in extending assistance to the victims of discrimination. These activities are mostly carried out by the NGOs which deal with the protection of human rights and the promotion of non-discrimination, with the organization of seminars, workshops, trainings and with the implementation of projects the purpose of which is the promotion of equality.

Media play a very important role in the raising of public awareness, in the promotion of tolerance and the need for the prevention of discrimination. The contents of the RTCG public service programmes mostly picture Montenegro as a multinational, multiethnic, multi-cultural state. Media campaigns organized by public authorities (individually or in cooperation with NGOs and



international organizations) result in informing the public and raising awareness on the colourful nature of Montenegrin society. The most significant media campaigns aimed at promoting equality and anti-discrimination in the elapsed period have been the following: “Everyone Together To School!”, “Really!”, “Roma Inclusion Decade”, “Enough”, “16 Days of Activism Against Violence over Women”, “Gender Equality-Fundamental Value of Democratic Montenegro”.

### 4. Institutional system

- **The Government of Montenegro** – in the implementation of normative acts, all the ministries and other public administration bodies, from the domain of their competence and operations, have got the imperative of guaranteeing equality and non-discrimination. The Ministry for Human and Minority Rights, Ministry of Justice, Ministry of Labour and Social Welfare, Ministry of Education and Science, Ministry of Health, Ministry of Culture, Sport and Media, Ministry of Internal Affairs and Public Administration, Police Administration, Institution for the Execution of Criminal Sanctions, Refugee Care and Support Office, Employment Office of Montenegro, Human Resources Administration, etc. most directly deal with the prevention of discrimination as the basis for the overall respect of the guaranteed human rights and freedoms, in line with their competences. Due to the sensitivity of the issue of the position of minority national communities (Roma in particular) and gender equality, two independent departments have been established within the Ministry for Human and Minority Rights – Gender Equality Department and Department for the Improvement and Protection of RAE Population Rights.
- **Parliamentary Committee for Human Rights and Freedoms** – discusses draft laws, other regulations, general acts and other issues related to: freedoms and rights of men and citizens, with special emphasis on minority rights, application of ratified international acts related to the exercising, protection and improvement of these rights; monitors the implementation of these documents, measures and activities for the improvement of national, ethnic and other equality, especially in the area of education, healthcare, information, social policy, employment, entrepreneurship, decision-making process and similar; participates in the preparation and drafting of documents and in the harmonization of legislation in this area with the standards of the European legislation; cooperates with the appropriate working bodies of other parliaments and the NGOs in this area.
- **Ombudsman** – protects human rights and freedoms guaranteed by the Constitution, law and ratified international human right treaties and generally recognized rules of international law, when they are violated by means of an act, action or failure to act by public authorities, local self-government bodies and public services and other holders of public authorities. This is a body which citizens can address easily without special formalities and expenses for an expedient and efficient intervention, but it can also act upon its own initiative. The procedure before Ombudsman is confidential and no one who lodges a complaint or in any way participates in the procedure conducted by the Ombudsman may be held responsible or brought in unfavourable position on such grounds. It informs the parliament and the wide public on its findings, views and opinions, by which it contributes to the opening and transparency of public administration and other public services and bodies towards the Parliament, the Government, public and citizens. According to the existing legislative solutions the Ombudsman has got two deputies, one of whom deals with the protection of minority rights.
- **Judicial system** – In Montenegro, 15 Basic courts, two Higher courts, two Commercial courts, one Appellate court, one Administrative court and the Supreme Court carry out judicial authority within the scope of their competences, stipulated by the law. The Constitution, as the supreme legal act, along with the traditional role of the control of constitutionality, awards to the Constitutional Court decision-making competence, not only in relation to the harmonization of laws and other general acts with the Constitution, but also with the ratified international treaties, with a view of securing high degree of protection of human rights and freedoms. The institute of the Constitutional complaint is introduced, as a legal remedy which is to be deliberated upon by the Constitutional Court. Everyone shall have the possibility to address the Constitutional Court for the violation of human rights and freedoms, after having exhausted the legal remedies before other public authorities. Upon the completion of the proceedings before national judicial authorities, i.e. upon the

exhaustion of all legal remedies, both in administrative and judicial proceedings, the dissatisfied party is entitled to initiate the proceedings before the European Court of Human Rights at the Council of Europe. The right of Montenegrin citizens to access the European Court of Human Rights results from the fact that Montenegro ratified the European Convention on Human rights and Fundamental Freedoms.

**NGO Sector** – There is also a series of NGOs which deal with the fight against discrimination in various fields. Given the fact that it is possible to register NGOs for an unlimited number of areas, NGOs are not obliged to „opt“ for certain sectors or fields of activity, so that their statutes and acts on establishment, which they are obliged to submit together with the request for the inscription into the register with the competent body – Ministry of Internal Affairs and Public Administration, contain a wide range of fields of activity, very different and varied. Nevertheless, the analysis of the data from the unique Register of NGOs indicates that approximately 2.5-3% of all the registered non-governmental organizations, both indirectly and directly, perform the activities directed towards anti-discrimination.

### **87. Please provide details on legislative measures which ensure equality between men and women, commenting particularly on equality in areas such as employment, work and pay.**

The Constitution of Montenegro establishes that the State should guarantee the equality between women and men and develop the policy of equal opportunities (Article 18). This is complemented by the Constitutional principle of prohibition of any form of direct or indirect discrimination. At that, the regulations and the introduction of special measures directed towards the creation of conditions for the achievement of national, gender and overall equality and the protection of persons who are in an unequal position on any ground shall not be considered discrimination. The Constitutional provision according to which ratified and published international treaties and generally recognised rules of international law make constitutive parts of the internal legal order is of importance for the achievement of gender equality (Article 9).

Gender Equality Law was adopted on 27<sup>th</sup> July 2007 (Official Gazette of the Republic of Montenegro 46/07). This law represents the first anti-discrimination law in Montenegro and the most important mechanism for the eradication of gender based discrimination and the establishing of gender equality. The law as the most important institutional mechanism for the achievement of gender equality in Montenegro establishes a public administration body competent for the activities related to the achievement of gender equality – Ministry for the Protection of Human and Minority Rights. Gender Equality Law prescribes efficient mechanisms for the achievement of gender equality, taking into consideration not only the provisions of this law, but also the provisions of the law by means of which anti-discriminatory norms are, or are about to be, introduced into the public administration system. With a view of eliminating discrimination based on sex and the achievement of gender equality, the Law establishes the obligations of public authorities, public administration bodies and local self-government bodies, public institutions, public enterprises and other legal entities which perform public functions with the purpose of achieving the objective set by this law. The Law also emphasises the role of the civil sector and gives significant room for the overall activities of NGOs aimed at achieving gender equality.

As regards the equality in the areas like employment, labour and wages, it is regulated by the Labour Law (Official Gazette of Montenegro 49/2008) and by the Law on Employment Official Gazette of the Republic of Montenegro 5/2002, 21/2008). The Labour Law prohibits both direct and indirect discrimination based on sex of the persons seeking employment, as well as of the employed. In the sense of this law, discrimination is prohibited in relation to: a) employment conditions and the selection of candidates for certain job; b) working conditions and all the rights from labour relation; c) education, training and professional development; d) career development; e) termination of labour contract. The same law prohibits harassment and sexual harassment at work and in relation to work. The Article 9 of the Labour Law defines positive discrimination. Pursuant to the provisions of the Law on Employment (Article 3) unemployed persons are equal in exercising of the right to employment, regardless of their sex.

**88. What is the average length of time a person may be detained without being brought before a competent legal authority? What is the average length of time between the lawful arrest and detention of a person and his trial?**

According to the current Criminal Procedure Code (Official Gazette of Montenegro, 71/03 and 47/06) authorized police officers may deprive certain person of his/her liberty provided there is any of the reasons for detention to be ordered, but it is their duty to take that person before the investigating judge, without delay and with criminal charges. Exceptionally, the Police may detain a person deprived of liberty for the purpose of collecting information or interrogation in the capacity of a suspect no longer than 48 hours as of the moment of him/her being deprived of his/her liberty. It is the duty of the Police to pass and deliver the decision on detention to the detained person and his/her lawyer immediately and no later than within two hours. The suspect must have a lawyer from the moment the Police passes the decision on detention. The suspects and their lawyers can lodge a complaint against this decision to the investigating judge, who is obliged to decide upon the same within four hours as of the moment of the receipt of the same. The Police are obliged to inform the investigating judge and the state prosecutor of the detention, and the investigating judge can request for the detained person to be brought immediately before him/her. In case the Police should fail to press criminal charges and take the detained person before the investigating judge within 48 hours, the detained persons shall be released.

The new Criminal Procedure Code (Official Gazette of Montenegro, 57/09) which will come into effect on 26<sup>th</sup> August 2010 introduces a new concept of investigation which will not be conducted by the investigating judge any more (judicial investigation) but by the state prosecutor (prosecutorial investigation). In that sense, there have been certain changes in relation to the existing Code in relation to the change of the investigation concept being introduced by the new Code. According to the new Code, authorized police officers may deprive some person of his/her liberty in case there is some of the reasons for detention to be ordered, but it is their duty to promptly inform the state prosecutor, compile official record which must contain the time and place of the deprivation of liberty, and take this person to the state prosecutor without delay, at which occasion the authorized police officer shall hand the official note over to the state prosecutor, who shall then enter into the minute the statement of the person who is deprived of liberty, the time and place of the deprivation of liberty. In case a person who is deprived of liberty is not taken before the state prosecutor within 12 hours as of the moment of the deprivation of liberty, the Police are obliged to release such person. The suspect who is deprived of liberty, may be detained by the state prosecutor in case he/she should estimate that there are some reasons to order detention, no longer than 48 hours as of the moment of the deprivation of liberty. The state prosecutor shall decide on and deliver the order for police custody to the detained person and his/her lawyer, immediately and no later than within two hours. The suspect and his/her lawyer may lodge an appeal against the order for police custody which is then immediately forwarded to the investigating judge together with the case file. The investigating judge is obliged to decide upon the appeal within four hours as of the moment of the receipt of the same. The appeal does not delay the enforcement of the order. Once the state prosecutor passes the order for police custody and assesses that there are reasons for detention, he/she will suggest to the investigating judge to order detention for the suspect. This proposal is submitted to the investigating judge prior to the expiry of the police custody. The detained person must be brought before the investigating judge within this deadline. The investigating judge shall interrogate the person who is deprived of liberty, in the presence of the state prosecutor, on all circumstances relevant for the passing of the decision on detention and, immediately upon the interrogation, and no later than within 24 hours as of this person being brought before him/her, decide whether to order detention or reject the proposal for ordering detention.

The average duration of detention in the cases which were concluded by an enforceable judgement during the year 2008 is 70.51 days. With the basic courts the average duration of detention is 46.74 days and with the higher courts 246.41 days. According to the data obtained from the courts, in all detention cases (both the ones with an enforceable judgement and the ongoing ones) during the year 2008, from the day of the legal deprivation of liberty to the first trial day, detention lasted 77.71 days on average.

### **89. To what extent is support to victims provided?**

The Constitution of Montenegro guarantees and protects rights and freedoms. Everybody is entitled to equal protection of his/her rights and freedoms. Victim support in the legal system of Montenegro is regulated through the Criminal Procedure Code, the Penal Code and the Law on Obligations.

The Criminal Procedure Code prescribes for the victim to be entitled to submit the proposal for his/her property claim resulting from an act of crime to be achieved in a criminal proceedings. The court will accept such proposal if it would not mean considerable delay in the proceedings. According to the Article 234 of the Criminal Procedure Code, property claim can refer to damage compensation, return of objects or annulment of certain legal transaction. The Article 235 prescribes for the proposal for a property claim to be achieved in a criminal proceeding after being submitted by a person authorized to achieve it in a civil proceedings.

The Article 236 of the Criminal Procedure Code prescribes for the proposal for the achievement of the property claim to be submitted to the state prosecutor, or to the court before which criminal procedure is conducted, no later than until the completion of the main hearing before the first instance court. The person authorized for the submittal of the proposal is obliged to mark his/her claim in a specific manner and to submit evidence. In case the authorized does not submit the proposal for the achievement of the property claim in the criminal proceedings until the charges are pressed, he/she will be notified that such proposal can be submitted by the completion of the main hearing.

By the end of the main hearing the authorized persons can renounce the proposal for the achievement of property claim in criminal proceedings and achieve the same in civil proceedings. In case of the renouncement of the proposal, the same may not be submitted again.

On the occasion of determining the property claim, the court before which the proceedings is conducted will hear the accused in relation to the facts stated in the proposal and the circumstances will be examined that are of significance for determining the property claim. The court is obliged to collect evidence and to establish the things that are necessary for deliberating on the claim even prior to the submittal of such a proposal. In case the establishing of a property claim would mean a considerable delay of criminal proceedings, the court will restrict the activities on the collection of the data the establishing of which would subsequently not be possible or would be considerably hindered.

Pursuant to the Article 239 of the Criminal Procedure Code, court deliberates on property claims. In the convicting judgement the court may award the property claim in its entirety or partially, and for the remaining part refer to civil proceedings. In case the facts established in the criminal proceedings do not offer a reliable basis neither for thorough nor partial judgment, and if their establishing would lead to considerable delay of the proceedings, the court will refer the authorized person to achieve the entire property claim in civil proceedings. Also, when the court passes the judgement releasing the accused from the charges against him/her or by means of which the charges are rejected, or when it stops criminal proceedings by means of a decision, the authorized person will be referred to achieve property claim in civil proceedings.

During the criminal proceedings, or upon the conclusion of the same, irrespective of the kind of decision it passed, the court may refer the victim, or the person who submitted the property claim and the accused to try to resolve their controversial relationship which is the subject matter of the claim in the mediation procedure, pursuant to the law which regulates the rules of mediation procedure.

Pursuant to the Article 240 of the Criminal Procedure Code, in case the property claim is related to the return of object, and the court establishes that the object belongs to the victim and that it is in the possession of the accused or of some of the participants in the act of crime or of the persons to whom it has been entrusted, the judgement should order the return of the object to the victim.

In line with the Article 241 of the stated Code, in case the property claim is related to the cancellation of certain legal transaction, and the court finds that the claim is not justified, the

judgement will contain entire or partial cancellation of such legal transaction, with the consequences resulting from the same, not infringing upon the third person rights.

Together with the property claim, the victim can propose for the criminal proceedings to introduce temporary measures for securing the property claim resulted from the perpetration of the act of crime, which is regulated by the Article 243 of the Criminal Procedure Code. During the investigation, it is the investigating judge who passes the order for the introduction of temporary measures. Following the indictment, it is the President of the Panel who passes the order outside the main hearing, whilst during the main hearing it is the decision of the Panel.

In case it is beyond any doubt that the objects belong to the victim, and that the same do not serve as evidence in the criminal proceedings, they will be handed over to the victim even before the completion of the proceedings. In case there are several victims in dispute over the ownership right, they will be referred to civil proceedings, whilst in the criminal proceedings the court will solely order the safeguarding of objects as a temporary security measure. The objects serving as evidence will be temporarily seized only to be returned to the owner upon the completion of the proceedings. In case such an object is indispensable for the owner, it can be returned to him/her even before the completion of the proceedings, with the obligation of bringing it back if requested so.

In case the victim has got a claim towards a third party because of the fact that this party possesses the objects obtained by means of an act of crime, or because this party obtained proceeds by means of criminal actions, pursuant to the Article 254 of the Criminal Procedure Code, in the criminal proceedings the court can, upon the proposal of the authorized persons and in line with the provisions of the law which regulates the executive proceedings, order temporary security measures even towards that third party.

The provisions which regulate the protection of witnesses from intimidation, as well as special manners of participation and examination of protected witnesses, like witness examination under pseudonym, examination with the assistance of technical devices (protective wall, voice distortion devices, image and sound transmitting devices) and similar, apply accordingly to the participation and examination of the victim in the criminal proceedings.

Victim protection is also guaranteed by the Penal Code of Montenegro which in it Article 114 prescribes that in case the property claim of the victim has been adopted during criminal proceedings, the court shall order the confiscation of proceeds only in case these should exceed the awarded amount of the victim's property claim. The victim who has been referred to civil proceedings during the criminal proceedings, in relation to any property claim may request the compensation from the confiscated proceeds, provided he/she initiates the lawsuit within six months as of the day of the coming into force of the decision on the referral to civil proceedings and if within three months from the day of the coming into effect of the decision on adopting the property claim he/she requests the compensation from the confiscated proceeds. The victim who fails to submit his/her property claim in criminal proceedings may request the compensation from the confiscated proceeds in case he/she initiated the lawsuit for the purpose of determining his/her claim within three months as of the day his/her becoming familiar with the judgement which ordered the confiscation of proceeds, no longer than within three years as of the day of the coming into effect of the decision on the confiscation of proceeds and if within three months as of the day of the coming into effect the decision on adopting his/her property claim he/she requests the compensation from the confiscated proceeds.

The Law on Obligations regulates cases of special responsibility, like the responsibility because of acts of terrorism, public demonstrations or events where the state, the bodies of which were obliged according to the valid regulations to prevent the damage, is responsible for the damage suffered by death, body injury or damage or destruction of property belonging to a natural person due to the acts of terrorism, as well as on the occasion of public demonstrations and events.

**90. What guarantees are in place to ensure a public hearing? Give details of the circumstances in which limitations may be placed on the public pronouncement of judgements and the extent to which this occurs.**

The Constitution of Montenegro prescribes that everybody is entitled to a fair and public trial within a reasonable time before an independent, impartial and legally established court. Also, the Constitution establishes that the hearing before the court is public and that the verdicts are pronounced publicly. Exceptionally, the court may exclude the public from the hearing or one of its parts for the reasons that are necessary in a democratic society, solely to the extent needed: in the interest of morale; public order; when juveniles are on trial; for the purpose of the protection of private lives of the parties; in marital disputes; in the proceedings related to guardianship or adoption; for the purpose of keeping military, business or official secret and the protection of security and defence of Montenegro. The publicity of judicial proceedings is secured in line with the Constitution and the Criminal Procedure Code and the Law on Civil Procedure.

The Criminal Procedure Code (Official Gazette of the Republic of Montenegro 71/03, 7/04 and 47/06) prescribes that the main hearing is public. From the opening of the session to the closure of the main hearing the Panel may, at any time, either ex-officio or upon the proposal of the parties, but always upon the examination of the same, exclude the public for the entire proceedings or for one part of the same, in case this is necessary for the keeping of secret, maintaining of public order, protection of morale, protection of the interests of juveniles or the protection of personal or family life of the accused or of the victim. The exclusion of the public is not related to the parties, the victim, their representatives and defence counsels. The Panel may allow for certain officials and scientific workers to participate in the main hearing where public are excluded, and upon the request of the accused this may be allowed to his/her spouse or relatives and the person who he/she lives with in an extra-marital community. The Chair of the Panel shall warn the persons who are present at the main hearing where public are excluded that they are obliged to keep as a secret everything they have heard at the hearing and they shall be warned that the disclosure of a secret constitutes an act of crime. The decision on the exclusion of the public is passed by the Panel, which must be justified and publicly announced. In case the public was excluded from the main hearing, it is also prescribed for the text of the verdict to be always read at a public session. The Panel will decide whether to exclude the public on the occasion of publishing the rationale of the verdict.

The essential violation of the provisions of criminal proceedings exists in case the public was excluded from the main hearing contrary to the law, which always leads to the abolishment of the verdict in the case of illegally, excluded public.

The Law on Civil Procedure (Official Gazette of the Republic of Montenegro, 22/04 and 76/06), prescribes that the main hearing is public. Solely adult persons may be present at the hearing. The court may exclude the public from the entire main hearing or from one part of it, in case the interests of keeping the state, official, business or personal secret, the interests of public order or the reasons of morale require it. The court may exclude the public even in the case when the measures for maintaining order could not secure the undisturbed conducting of the hearing. The exclusion of the public is not related to the parties, their legal representatives, attorneys and interveners. When the public is excluded from then main hearing, the court may allow the presence of certain officials, as well as scientific and public workers, if this is of interest for their service, i.e. scientific or public activity. In case the public is excluded upon the request of a party, the court may allow for the hearing to be attended by no more than two persons designated by this party. The court shall warn the persons who are present at the hearing where public has been excluded that they are obliged to keep as a secret everything they have found out at the hearing and they shall be warned about the consequences of the disclosure of a secret. The public is excluded on the basis of a decision which must be justified and publicly announced. No special appeal is allowed against the decision on the exclusion of the public.

The essential violation of the provisions of civil proceedings exists in case the public has been excluded from the main hearing contrary to the law, which constitutes a reason for appeal and it always leads to the abolishment of the verdict.

### **91. Is the presumption of innocence a central part of your criminal justice system and, if so, how is it applied in practice? How are the rights of defence guaranteed?**

The presumption of innocence is in the centre of the criminal legal system of Montenegro. Thus, the Constitution of Montenegro prescribes that everybody shall be presumed innocent until his/her guilt is proved by means of an enforceable court judgement. The accused is not obliged to prove his/her innocence. It is the duty of the court to interpret the doubt over the guilt in favour of the accused.

The Criminal Procedure Code also guarantees the presumption of innocence, i.e. everybody is presumed innocent until his/her guilt for an act of crime is established by means of an enforceable court judgement. Public authorities, media, citizens' associations, public figures and other persons are obliged to adhere to the presumption of innocence and not to violate other rules of proceedings, the rights of the accused and of the victim and the principle of judicial independence by means of their public statements on ongoing criminal proceedings. The suspicion on the existence of the fact which characterizes an act of crime or which the application of some criminal legislation provision depends on, the court resolves in the manner which is more favourable for the accused. Already at the first hearing, the suspect must be notified on the act of crime he/she is charged with and the grounds for suspicion against him/her. The accused must have the opportunity to plead on all the facts and evidence he/she is charged with and to present all the facts and evidence that are in his/her favour. The suspect, or the accused is not allowed to present his/her defence nor to respond to questions. Also, the accused is not obliged to plead on the charges nor to express his/her defence, he/she is presumed innocent. The burden of proof is on the side of the prosecutor. In case the state or private prosecutor, who are charged with the burden of proof in criminal proceedings, do not manage to prove the guilt of the accused, the court shall pass the releasing judgement due to the lack of evidence that would make him/her guilty of the act he/she is charged with, which constitutes direct application of the presumption of innocence in practice.

The Constitutional principle guarantees the right to damage compensation due to illegal treatment, which makes the person, who was illegally or unjustifiably deprived of liberty or unjustifiably convicted, entitled to damage compensation by the state. The right to damage compensation for unjustified conviction belongs to the person who was the subject matter of an enforceable criminal sanction or who was pronounced guilty and exempted from punishment, and subsequently, on the occasion of an extraordinary legal remedy, new proceedings were rightfully suspended, or if he/she was exempted from the charges by means of an enforceable judgement, or if the charges were rejected, except if the proceedings were suspended or in case of a releasing judgement for the fact that in the new proceedings the victim as a prosecutor, or a private prosecutor, renounced the prosecution, and if the renouncing came as a result of plea bargaining with the accused, or if in the new proceedings the charges were rejected by means of a decision on the grounds of the incompetence of the court, and the authorized prosecutor has taken over the prosecution before a competent court. The convicted, or the released person is not entitled to damage compensation, if by means of his/her false testimony in the pre-trial proceedings or in another way caused the conducting of criminal proceedings, or if by means of such statements during the proceedings he/she caused his/her conviction, except if he/she was forced to do it. In case of the conviction for crimes in concurrence, the right to damage compensation can also be related to individual crimes in relation to which conditions are met for compensation to be granted. The right to damage compensation falls under the statute of limitations within three years as of the day the enforceability of the first instance judgement by means of which the accused was released from the charges or by means of which charges were rejected, or indeed as of the enforceability of the first instance decision on the suspension of the proceedings, in case it was the higher court that deliberated upon the appeal – as of the day of the receipt of the Higher court judgement. Prior to the submittal of the complaint for damage compensation, the victim is obliged to address the Ministry of Justice with his/her claim, in order to achieve the agreement on the existence of damage and on the kind and extent of compensation. In case damage compensation claim is not adopted or in case the Ministry of Justice does not make a decision upon the same within three months as of the day of the submittal of the claim, the victim may lodge a complaint for damage compensation before a competent court. In case the agreement has been reached solely in

relation to one part of the claim, the victim may lodge a complaint in relation to the remaining part of the claim. Damage compensation complaint is lodged against Montenegro. The successors inherit solely the right of the victim to the compensation for damage to property. In case the victim has already lodged the claim, the successors may continue the proceedings solely within the limits of already lodged claim for the compensation for damage to property. The victim's successors may continue the proceedings for damage compensation after his death, or initiate the proceedings in case the victim died prior to the expiry of the statute of limitations and if the claim was not renounced, pursuant to the rules on damage compensation prescribed by the Law on Obligations. Except for the right to damage compensation, the person whose employment ceased or who lost the capacity of a socially insured person, due to the unjustified conviction or unjustified deprivation of liberty, his/her length of service is acknowledged, or the length of insurance just as he/she was employed for a period during which he/she lost his/her employment due to an unjustified conviction or unjustified deprivation of liberty. The employment also includes the time of unemployment which occurred due to the unjustified conviction or unjustified deprivation of liberty, which did not occur due to that person's fault.

The presumption of innocence is a personal right and pursuant to the Law on Obligations, the violation of this right could be also spoken of as the right to the compensation for immaterial damage.

In line with the Law on Obligations, in case of the violation of personal rights, the court may order, at the expense of the injurer, the publishing of the judgement, or of the correction, or order the injurer to withdraw the statement that caused the violation or anything else which might realize the purpose achieved by the compensation. Also, the Law on Obligations prescribes that the court shall award just pecuniary compensation for the suffered emotional distress due to the violation of reputation, honour or personal rights and due to the suffered fear. There have been no such cases in the case law.

The Constitution guarantees the right to defence to everybody, especially in relation to the language they understand, so that they can become familiar with charges against them, that they have got sufficient time to prepare their defence and to defend themselves or via defence counsels appointed by themselves. This right is elaborated further in the Criminal Procedure Code. (See the response to the question 124 in the Chapter 23).

**92. Freedom of expression and freedom of the media: Provide information concerning the elaboration and implementation of legislation regarding the promotion of the freedom of expression and information in general and, specifically, freedom and pluralism of the media. Please detail measures designed to prevent interference with these freedoms. How is libel law organised, and what types of penalties are used? What is the general trend of court decisions in the area of freedom of expression (including the number of libel suits and other cases involving representatives of the news media)? Have recommendations of experts from the Council of Europe and OSCE been taken into consideration when drafting legislation establishing the broadcasting regulatory body, in particular Recommendation Rec (2000)23 to Member States of the Council of Europe on the independence and functions of regulatory authorities for the broadcasting sector and its annex contain guidelines on independence and functions of regulatory authorities for the broadcasting sector?**

The exercising of the rights in the area of information is guaranteed by the Constitution of Montenegro (Official Gazette of Montenegro 1/07). Everybody is entitled to express himself/herself freely by means of speech, written word, picture or any other way.

The right to the freedom of expression may be restricted solely by the right of others to dignity, reputation and honour and in case public morale or security of Montenegro are endangered (Article 47).

The freedom of press is guaranteed, just as are other forms of information, as well as the right to establish newspapers and other means of public information, without the approval, with their



registration with the competent authority. The Constitution guarantees the right to response and the right to correction of the untrue, incomplete or incorrectly communicated information by means of which somebody's right or interest has been violated and the right to the compensation for damage caused by the publishing of untrue data or information (Article 49).

There is no censorship in Montenegro. The Constitution envisages for the competent court to be able to prevent the dissemination of information and ideas through the means of public information solely if this is necessary for the purpose of preventing the inciting to violent abolishment of the constitutional order, the preservation of the territorial integrity of Montenegro, the prevention of war propaganda or inciting to violence or the perpetration of an act of crime, as well as for the purpose of preventing the propagation of racial, national or religious hatred or discrimination (Article 50).

According to the Constitution, everybody is entitled to have access to information held by public authorities and the organizations which perform public functions. This right may be restricted solely if it is in the interest of the protection of life, public health, morale and privacy, the conducting of criminal proceedings, security and defence of Montenegro, foreign, monetary and economic policy (Article 51)

Constitutionally guaranteed rights to the freedom expression in Montenegro are more closely regulated by media regulations which include the following laws:

- Law on Media (Official Gazette of the Republic of Montenegro 51/02 and 62/02)
- Law on Broadcasting (Official Gazette of the Republic of Montenegro 51/02, 62/02, 46/04, 56/04, 77/06, Official Gazette of Montenegro 50/08 and 79/08)
- Law on the Ratification of the European Convention on Cross-Border Television (Official Gazette of Montenegro 01/08)
- Law on Public Broadcasting Services of Montenegro (Official Gazette of Montenegro 79/08)
- Law on Electronic Communications (Official Gazette of Montenegro 50/08)

The Law on Media is a systemic media law which regulates the establishing of media, mandatory data publishing, rights and obligations in the area of media activity, right to correction and reply, and foreign media activity.

This law regulates the obligation of the state to secure and guarantee the freedom of information at the level of the standards contained in international documents on human rights and freedoms (UN, OSCE, Council of Europe, EU). The provision of the Article 1 of this law prescribes that this law should be interpreted and applied in line with the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms with the utilization of the case law of the European Court of Human Rights, that media are free as well as that censorship is prohibited.

This law guarantees the right to the establishing and undisturbed operation of media based on the freedom of expressing opinions, freedom of investigation, collection, dissemination, publishing and gathering of information, free access to all sources of information, protection of personality and dignity and the free flow of information. Equal participation in media activity is also guaranteed to domestic and foreign legal entities and natural persons (Article 2).

The Law prescribes that the state is to provide the part of financial resources for the exercising of citizens' right to information guaranteed by the Constitution and the Law, without discrimination, on the basis of programme contents which are of significance for the development of science and education, development of culture, information of persons with the impaired hearing and eyesight. For the purpose of achieving these rights, Montenegro directs financial resources for programme contents in Albanian and in the languages of other national and ethnic groups (Article 3).

The law also guarantees equal media participation to domestic and foreign legal entities and natural persons (Article 2), pursuant to this law and to the law on Broadcasting.

In case of the violation of the freedom of information guaranteed by the Constitution and the Law, the Law on Media envisages judicial protection (Article 4).

Chapter VI of the Law on Media is dedicated to the right to correction and reply, and in the Article 26 of the same chapter it is stated that every natural person and legal entity is entitled to correction and reply when the same considers that some of his/her/its constitutionally and legally established right has been violated by means of the published programme contents.

The Law on Broadcasting regulates the work of electronic media, as a specific form of exercising the right to the freedom of expression on the principles of freedom, professionalism and independence of electronic media, prohibition of every form of censorship or illegal interference with their work, as well as the development of competition and pluralism in the context of the affirmation of fundamental human rights and freedoms.

With the coming into effect of the Law on Electronic Communications and the Law on Public Broadcasting Services of Montenegro in 2008, certain decisions from the Law on Broadcasting have been fully or partially abrogated. First of all, the competences of the Broadcasting Agency in the area of granting the right to utilizing broadcasting frequencies have been abolished. With the enactment of the Law on the Ratification of the Convention on Cross-Border Television, Montenegro has accepted such legal framework by means of which the area of the freedom of expression is broadened in accordance with the Article 10 of the European Convention for the Protection of Human Rights and Freedoms.

The Law on Public Broadcasting Services of Montenegro regulates the rights and obligations of national public broadcasting services in the media system of Montenegro.

In line with this law, the idea behind public broadcasting service is to satisfy and protect public interest at the national and local level with the application of high standards of professional ethics and quality, by means of its programme contents, without discrimination, through information, cultural, educational, sports and entertainment programmes, paying special attention to children and the youth, members of minority nations and other minority national communities, persons with disabilities, socially endangered persons and other specific groups by means of which human rights and freedoms are promoted and respected, the pluralism of social ideas is promoted, the culture of public dialogue is enhanced, and the language differences are respected. This contributes to the free forming of opinion, with the existence of editorial independence related to the establishing of programme scheme, production concept and programme broadcasting, organizing and broadcasting information on current events and organizing the performance of activities (Article 9).

Considering the fact that the editorial independence (Article 13) also comprises the independence of journalists who prepare programme contents, the Law on Public Broadcasting Services guarantees the independence of RTCG journalists in their work and acting in the interest of public, as well as their protection from liabilities for the views and opinions expressed in accordance with professional standards and programme rules (Article 14).

Public broadcasting services operate in the interest of citizens/public and they are responsible solely to their public (Article 12).

The Law on Public Broadcasting Services of Montenegro prescribes for the Budget of Montenegro to provide part of the funds for the production and broadcasting of special programme contents of significance for the development of science and education, culture, for information services rendered to the persons with the impaired hearing and eyesight, as well as for the very same contents in Albanian and the languages of other minority national communities. The Law prescribes that the financial resources provided by the state may be used solely for the production of the stated programme contents (Article 17).

This law also envisages the possibility of establishing regional radio and TV studios with a special obligation to produce and broadcast regional shows and the ones in the languages of the members of minority nations and national communities in that area (Article 8).

Pursuant to the media laws, harmonized with the international standards in this field, media scene in Montenegro is characterized by the free establishing and work of media which contributes to media diversity and pluralism in printed and broadcasting media.

The enactment of the Law on Free Access to Information has contributed to the achievement and affirmation of the freedom of expression. Free Access to Information Law (Official Gazette of the Republic of Montenegro 68/05) regulates the manner and the procedure for exercising the rights of the citizens to request, receive and use the information held by authorities. The access to information held by public authorities is free. This law guarantees the right to accessing information at the level of principles and standards contained in international documents on human rights and

freedoms. The Article 3 of the Law prescribes that the publishing of the information held by public authorities is in public interest.

During the drafting the Law on Broadcasting from 2002 the principles and guidelines were considered contained in the Recommendation to the Council of Europe member states - Rec (2000)23 on the independence and the functions of the regulatory bodies for the sector of broadcasting and its annex. Thus:

- By the enactment of this law the establishing is regulated of an independent regulatory body in the area of broadcasting, i.e. Broadcasting Agency;
- Rights, obligations and competences are regulated so that the Broadcasting Agency, as the regulatory body in the area of broadcasting, was granted the authorities which enabled it to perform its tasks in line with the law in an effective, independent and transparent manner, pursuant to the guidelines contained in the Annex to this Recommendation. Thus, the Law regulated the independent and legally defined status/position of the Agency; independent and legally established sources of financing; legally established responsibility of the public, or citizens.

During the year 2008, the enactment of the Law on Electronic Communications and the Law on Public Broadcasting Services of Montenegro rendered ineffective certain provisions of the Law on Broadcasting which affect certain competences of the Broadcasting Agency (participation in the procedure of awarding rights to broadcasting frequencies, licensing of radio and TV programmes, ...), as well as its sources of financing (the fees were abolished for the issued permits, as well as all other stable sources of financing). The Draft Law on Electronic Media (which is currently at a public debate), incorporated the principles and guidelines contained in the Annex to the Council of Europe Recommendation Rec (2000)23.

The Constitution of Montenegro guarantees a broad corpus of human rights and freedoms out of which for the area of the freedom of expression we can emphasize equality before law, irrespective of any particularity or personal trait; the dignity and security of person is guaranteed and the inviolability of physical and psychological integrity, privacy and personal rights; everybody is entitled to freely express themselves by speech, written word, picture or in any other way which may be restricted solely by the right of others to dignity, reputation and honour, and in case public morale or security of Montenegro are endangered; the freedom of press is guaranteed and of other forms of public address, as well as the right to establish newspapers and other means of public information, without approval, with their registration with the competent body, the right to reply and the right to correction of the untrue, incomplete and incorrect information which violates somebody's right or interest, and the right to the compensation for damage caused by the publishing of incorrect data or announcement. There is no censorship in Montenegro. A competent court can prevent the dissemination of information and ideas by the means of public information system solely if this is necessary for the purpose of preventing the incitement to violent abolishing of the Constitutional order, preservation of territorial integrity of Montenegro, prevention of war propaganda or incitement to violence or perpetration of an act of crime; prevention of the propagation of racial, national and religious hatred or discrimination.

Our legal system envisages criminal and citizens' liability of persons for the violation of honour and reputation, and which is the subject of the courts in criminal or civil proceedings.

In relation to the criminal law aspect of the liability for the violation of honour and reputation, the Penal Code from the year 2003 codified criminal law matters with considerable amendments in relation to the former solutions which, amongst other things, are related to defamation and insult, or to a corpus of crimes against honour and reputation.

It is only a fine that is prescribed as the sanction for these acts of crime – as the main and only punishment instead of the former imprisonment term. Otherwise, the expertise of the Council of Europe, which is the integral part of the procedure for drafting all the laws of the Ministry of Justice, contains also the comparative-law aspect which points out to the fact that the acts of crime of defamation and insult are of usual incrimination in the penal codes of Europe and they are not contrary to the case-law of the European Court of Human Rights, nor to the Article 10 of the European Convention on Human Rights and Fundamental Freedoms. The research carried out by the Media Department of the Council of Europe Directorate General for Human Rights in the year

2003, indicates that only two countries in Europe (the United Kingdom of Great Britain and the Northern Ireland and Bosnia and Herzegovina) out of forty countries in which research was being carried out, do not contain in their penal codes the acts of crime against honour and reputation. Therefore, the fact of not prescribing the imprisonment term for the acts of crime against honour and reputation constitutes a significant step forward for Montenegro. The acts of crime against honour and reputation of are prosecuted upon a private complaint, contrary to the previous law on the basis of which these crimes had been prosecuted ex-officio.

The Penal Code – as the main form of the act of crime of Defamation – envisages the stating or spreading something that is untrue which might harm the honour or reputation, whilst a more serious form of this crime exists if defamation has been made through media or similar means, or at a public meeting since it is a so called public defamation, with which the qualificatory circumstance is the manner of its perpetration – through media, thus resulting in a larger number of persons becoming acquainted and consequently creating a danger of dangerous consequences. If the stating or spreading something that is untrue led or could have led to serious consequences for the victim, higher fine is envisaged. However, in case the accused has had justified reason to believe in the truthfulness of the things he/she has stated, he/she will not be punished for defamation, but he/she might be punished for insult.

Within the chapter on the acts of crime against honour and reputation, the Penal Code also prescribes the following crimes–insult, stating personal and family circumstances, violation of reputation of Montenegro, violation of the reputation of peoples and minority groups, violation of reputation of a foreign country or an international organization.

The general section of the Penal Code envisages that in case of a convicting judgement for an act of crime committed via media the publication of which would contribute to the elimination or mitigation of such danger, the court may decide that the judgement be announced in its entirety or partially in the same way or in some other appropriate manner, at the expense of the convicted person. The Law may order mandatory publication of the judgement. In that case, the court shall decide through which media the judgement is to be published and whether it will be published in its entirety or partially. The publication of the judgement can be made no later than within thirty days as of the day of the coming into effect of the same. The prevention of publishing the reply and correction is prescribed as an act of crime in a special section of the Penal Code.

In line with the provisions of the Law on Courts, and having in mind the prescribed punishment-fine it is the basic court which is competent for the act of crime of defamation and for other crimes against honour and reputation.

In relation to civil-law protection, i.e. the compensation for non-pecuniary damage, the Law on Obligations prescribes, amongst other things, that for the emotional distress suffered, for the violation of reputation, honour, freedom or rights of person, the court shall, if it deems that the circumstances of the case and especially the severity of the distress and its duration justify it, award just pecuniary compensation, independently from the compensation for pecuniary damage, as well as in the absence of the same.

**The number of criminal proceedings conducted for the act of crime of Defamation**

Year	Total number	Against media
2004	93	10
2005	80	6
2006	73	3
2007	78	9
2008	65	4

Source: Supreme Court of Montenegro

From the table above, it can be seen that before Montenegrin courts, 32 proceedings were being conducted against journalists for the act of crime of defamation. The following judgements were

passed in these cases: 13 not-guilty judgements, 4 convicting judgements involving fines from € 800, € 1.200, € 2000 and € 5000, whilst there are 15 ongoing proceedings.

In civil proceedings upon a complaint for the compensation for non-pecuniary damage the court may order the publishing of the judgement, or of the correction, or indeed order the injurer to withdraw the statement by means of which damage was caused, or anything else by means of which purpose can be achieved, which is achieved by the compensation.

The complaint for damage compensation for the suffered emotional distress due to the violation of reputation and honour, is lodged against a persons who committed such a violation, or against the author and the founder of a medium – Law on Media.

**Complaints for damage compensation, because of defamation through media.**

Year	Number of complaints	Awarded amounts
2004	1	-
2005	7	2x € 5.000; € 8000 € 10.000 and 2x € 5000
2006	9	€ 1.000; € 3.000; 3 x € 5.450
2007	9	€ 1.000, € 5.000; 3 x € 4.300
2008	5	€ 500; € 525; € 4.000; € 5.000 and € 8000

Source: Supreme Court

**93. Is the right of ownership recognised by the Constitution? How is the right to property assured? What are the justifications permitted for any possible restrictions placed on the exercise of this right and which body or bodies may impose such restrictions?**

The Constitution of Montenegro, in its chapter 4 defines economic, social and cultural rights and freedoms. The Article 58 of the Constitution prescribes that “the ownership right is guaranteed, that nobody may be deprived of and be limited in relation to ownership rights except when this is required by the public interest, with just compensation”.

The ownership right and other rights in rem, usufruct over the movable and immovable objects, the manner of acquisition, transfer, protection of ownership rights and the termination of these rights are regulated by the Law on Property Relations (Official Gazette of Montenegro 19/09). Pursuant to this law, the owner can protect his/her violated right by means of a complaint. The Law on Property Relations regulates the complaint for the recovery of objects, Actio Publiciana and the complaint for disturbing possession.

**1) Complaint for the recovery of objects**, by means of which the owner of an object may request from the holder the recovery of an individual object. The owner of the object must prove the right of ownership over the object the recovery of which he/she seeks, as well as that the object is in the factual possession of the defendant (usufructur). An unconscientious usufructur is obliged to pay the compensation for the utilization of the object, whilst a conscientious usufructur is not obliged to pay the compensation for the utilization of the object. The right to lodge a complaint for the recovery of objects does not fall under the statute of limitations, unlike the right of the owner to request from the unconscientious usufructur the handover of harvested crops and the compensation in the amount of the crops he/she has spent, alienated, failed to harvest or destroyed, within three years as of the day of the object handover;

**2) Actio Publiciana**, by means of which the person who acquired certain object individually according to a legal basis and in a legal manner, who did not now and could not have known that he/she did not become the owner, is entitled to request its recovery even from a conscientious usufructur who got into the possession of the same without a legal basis and or on the basis of a weaker legal basis. The person whose usufruct is favourable for the acquisition of the ownership

right by means of extraordinary positive prescription, is entitled to request the recovery of object from the person who does not have the same usufruct over that object. When two persons have got equal usufruct for the acquisition of the ownership right by means of positive prescription, stronger legal basis is on the side of the person who acquired the object by means of an encumbrance rather than on the one who acquired the object without an encumbrance. In case the legal bases of these persons are of equal strength, the person who is in the possession of the object has got the precedence. In relation to the conditions under which a conscientious usufruct may request the recovery of an object and the recovery of its fruits, as well as the conditions under which the possessor may request the compensation of expenses incurred in relation to the maintenance of the object, the provisions on the complaint of the owner for the recovery of objects are applied accordingly;

**3) Complaint for disturbing possession**, may be lodged to the court by the owner or possessor of an object in case a third party unjustifiably disturbs the owner or possessor in another way and not by taking away of the objects, thus the owner, or possessor may by means of a complaint request for this disturbance to end. The conscientiousness of the possessor and the legality of the usufruct are presupposed. The defendant is obliged to prove the existence of some right of his/her by the exercising of which he/she disturbs the owner of the object. The registration in the public register (real estate cadastre) is the proof of the existence of certain right of the defendant to the real estates. When damage is caused by the disturbance of exercising the ownership right, the owner is entitled to request damage compensation according to the general rules of damage compensation. The right to lodging a complaint for disturbing possession does not fall under the statute of limitations.

The Law on Property Relations envisages the protection of co-possession and joint possession as well.

In practice, regular courts are competent for adjudication in disputes over ownership rights and other rights in rem, whilst for the disputes over ownership rights and other rights in rem over real estates, in the disputes for the disturbance of possession of real estates, as well as in the disputes from real estate lease relations, it is solely the court in the territory of which real estates are located that is competent. In case real estates are located in the territories of several courts, each one of the courts is competent.

The penal legislation of Montenegro envisages the protection of property as well. The Penal Code of Montenegro, in its chapter twenty-two, Articles 239 to 257, prescribes several crimes against property.

Ownership right may be restricted in accordance with the law and on the basis of the law. General framework for the restriction of ownership right is prescribed by the Article 10 of the Law on Property Relations (Official Gazette of Montenegro 19/09) which determines that ownership right may be restricted in accordance with the law. Nobody may be deprived of ownership right, except when this is required by the public interest determined by the law or on the basis of the law, with the compensation which may not be lower than the just one. The owner can restrict or encumber his/her right for the purpose which is not prohibited. The ownership right in public interest may be restricted and taken away on the basis of the decision of a competent body on the existence of public interest for the taking away or restriction of ownership right in favour of certain person and if it is prescribed that such object may not be in somebody's possession. Pursuant to the Law on Expropriation (Official Gazette of the Republic of Montenegro 55/00, and Official Gazette of Montenegro 21/08), ownership right is restricted when it is required by the public interest, with just compensation.

Public interest for the expropriation of real estates is established by the law. Expropriation can be **full**, when there is a change of owner over the expropriated real estate and **incomplete**, when it is possible to establish servitude over real estates and the lease of the land for a definite period of time.

**Expropriation procedure** for the real estate for which public interest has been established is conducted by a competent public administration body. The proposal for expropriation may be submitted by the beneficiary of the expropriation after public interest for the expropriation of the real estate has been established. The proposal for expropriation of real estates must contain the

name and the seat of the beneficiary of the expropriation, the real estate which expropriation is proposed for and the location of the real estate, the data on the owner of the real estate which is proposed for expropriation, as well as the purpose because of which expropriation is proposed.

After the expropriation procedure has been conducted the competent public administration body, as a first instance body, passes the decision on expropriation which the dissatisfied party may lodge the appeal against to the second instance body, i.e. the Ministry of Finance. The expenses of the expropriation procedure are borne by the beneficiary of the expropriation. On the basis of the proposal for expropriation the competent public administration body registers into the real estate cadastre ex-officio the notification of expropriation. On the day of the coming into effect of the decision on expropriation, the beneficiary of the expropriation acquires the right to take the possession of the expropriated real estate. Until the decision on expropriation becomes effective the beneficiary of the expropriation may renounce the proposal for expropriation. In case of a dispute, property relations between the beneficiary of the expropriation and the owner of real estate are resolved by a regular court.

Also, ownership right may be restricted for the purpose of the protection of environment, defence or the security of the state, protection of human and animal health, in case it concerns historical, cultural or other properties for which, due to their significance, special method of exercising property authorities has been prescribed.

### **94. Denationalisation: What is the percentage of properties returned to persons dispossessed by the Communist regime? Have you faced any problems with this process?**

According to the available data it is not possible to state precise statistical data on the nationalized property.

In Montenegro, the issue of the return – restitution of agricultural land to former owners was addressed through the application of the Law on Restitution of Agricultural Land to Former Owners from Public Property from April 1992. This commitment was being implemented in Montenegro in the period from 1992 to 1996. According to this law, the total of 6.200 requests of former owners were submitted concerning the total area of 110.000.000 m<sup>2</sup>. Out of these, 4.153 (66.98%) requests were resolved and on the basis of them and in accordance with that law the total of 42.000.000 m<sup>2</sup> of agricultural land, or 38.18%, were returned to the former owners. This procedure was being implemented by the National Institute for Geodetic and Property Affairs of Montenegro, currently the Real-Estate Administration of Montenegro.

Following the enactment of the Law on the Restitution of the Seized Property Rights and Compensation from 2004, as well as following the amendment of the same in 2007, the total of 10.721 requests were submitted for the return of the seized property rights and/or for compensation.

Commissions, both municipal and regional ones, passed the decisions in the total of 1.914 cases, i.e. 17.85% of the total number of submitted requests in Montenegro. The number of positively resolved requests equals 1.037, or 54.179% out of the number of resolved cases, of which 119 decision, or 6.217% involves the return of the seized object in-kind, or 824.538 m<sup>2</sup>, whilst 918 or 47.962% of decisions involves pecuniary compensation, totalling € 172.970.355,70.

The number of decisions that dismissed the request as unjustified is 414, or 21.63% out of the number of resolved cases, whilst the number of decisions that rejected the request (as untimely or impermissible) is 463 or 24.19% out of the number of resolved cases.

In Montenegro, the total of 42.824.538 m<sup>2</sup> of land and structures were returned to former owners.

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### Tabulation:

Statistical data on nationalized property starting from the year 1945				
<b>Nationalized houses</b>	No data	No data	No data	No data
<b>Nationalized agricultural land</b> is not the subject of the return according to the Law on the Return of the Seized Property Rights and Compensation from the year 2004 and the year 2007, but of the former Law on the Return of Agricultural Land to Former Owners from Public Property from April 1992	6.200 is the total number of requests lodged by the former owners concerning the total area of 110.000.000 m2.			110 000 000m2
	4.153 requests (66.98%) resolved positively; the total of 42.000.000 m2 were returned to the former owners based on these decisions.			42 000 000m2
<b>Nationalized forests and woodland</b>	No data	No data	No data	No data
<b>The available data indicate that in relation to the surface area of the seized property, the return of which was requested according to the Law from the year 1992, the former owners have had 38.18% of their property returned.</b>				
<b>Regional Commissions for return and Compensation</b>	<b>Podgorica Commission</b>	<b>Bar Commission</b>	<b>Bijelo Polje Commission</b>	<b>TOTAL</b>
<b>Number of submitted requests</b>	3 596	2 522	4 603	10 721
<b>Number of processed requests</b>	885 (24.61%)	378 (14.98%)	651 (14.14%)	1 914 (17.85%)
<b>Number of completed requests</b>	885 (24.61%)	378 (14.98%)	651 (14.14%)	1 914 (17.85%)
<b>Number of accepted requests</b>	459 (51.864%)	116 (4.599%)	462 (70.967%)	1 037 (54.179%)
<b>Number of decisions on the return of property</b>	31 (3.02%)	64 (2.537%)	24 (3.686%)	119 (6.217%)
<b>Number of compensation decisions</b>	428 (48.361%)	52 (2.061%)	438 (67.281%)	918 (47.962%)
<b>Number of decisions on rejecting requests</b>	174 (19.661%)	142 (5.63%)	98 (15.053%)	414 (21.63%)
<b>Number of conclusions on dismissing requests</b>	252 (28.474%)	120 (4.758%)	91 (13.978%)	463 (24.19%)
<b>Area of returned property in m2</b>	314 318 m2	500 000 m2	10 220 m2	824 538 m2

The percentage of completely finished cases was calculated in relation to the total number of 10.721 requests.

The percentages of the kinds of decisions were calculated in relation to the number of requests on which decision were passed.

According to the Law on the Return of the Seized Property Rights and Compensation (Restitution), which has been applied since 2004, first of all municipal commissions were formed for the return and compensation, and according to the Law on Amendments to the stated Law from the year 2007, three Regional first instance commissions were formed for the return and compensation, one of which for the northern part of Montenegro is located in Bijelo Polje, for the south in Bar and for the central part in Podgorica. These commissions were established within the Ministry of Finance. The second instance body in this procedure is the Appeal Commission for the return and compensation established by the Government of Montenegro. Against the decision of the Appeal and Compensation Commission, a dissatisfied party may initiate an administrative dispute by means of a complaint lodged to the Administrative Court of Montenegro.



On the basis of the assessment based on the experience from former processing of requests, denationalization process will last for another 8 to 10 years.

The problems that the competent commissions most frequently encounter are the lack of the necessary, valid documentation for the adoption of a proper and legal decision. It concerns the properties which had been being taken away from their owners from 1945 to 1968, thus the parties very often are unable to submit the necessary documentation since they are not in the possession of the same (lost, destroyed etc.). Also, another significant problem is the impossibility to identify the seized properties due to improperly kept or non-existent appropriate cadastre records at the moment of the seizure, as well as the fact that a great number of persons whose property rights had been seized are no longer alive.

### **Economic, social and cultural rights**

#### **95. Please provide information on how, and to what extent, the right to education is guaranteed in legislative and practical terms. Please comment on the allocation of resources and institutional framework in place to facilitate the exercise of this right.**

In 2000 Montenegro began a comprehensive reform of the education system, which is based on several principles, among which the most important are those related to access and right to education and concern the provision of equal opportunities and choices according to individual needs, in order to achieve the goal that every citizen within the educational system has the same chance.

In legal terms, thus conceived the right to education is guaranteed by the Constitution of Montenegro, and separate laws in the field of education. In such a way, the Constitution of Montenegro (Article 75) guarantees the right to education under equal conditions, while primary education is compulsory and free.

General Law on Education (Official Gazette of the Republic of Montenegro 64/02, 31/05 and 49/07) which covers pre-school, primary and secondary education (grammar and vocational) guarantees equality in exercising of the right of education regardless of the national affiliation, race, gender, language, religion, and social background and of other personal characteristics (Article 9).

Law on Higher Education (Official Gazette of the Republic of Montenegro 60/03) stresses also the availability of higher education to all persons, and states that in exercising the right to higher education no discrimination is allowed on any grounds such as sex, race, marital status, colour of skin, language, religion, political or other beliefs, national, ethnic or other origin, belonging to a national community, material status, disability, birth, or on similar grounds, position or circumstances (Articles 6 and 7).

The teaching in the educational institutions is accomplished in the Montenegrin language, and in the municipalities, within which the significant part of population is Albanian, the teaching is accomplished in the Albanian language or bilingual (in the Montenegrin and the Albanian), while in a private elementary school for children of foreign nationals, the teaching is accomplished in the English language.

The locations of the institutions within the territory of the Montenegro enable citizens with the equal access in acquiring education and upbringing, while the network of institutions of primary education, stated as obligatory by the Constitution, is the most complex. In 2008/09 school year, the network of primary schools was consisted of 162 public primary schools and 300 school branch departments, and one private primary school for children of foreign nationals.

Preschool education institutions, 21 of them, exist in all Montenegrin municipalities, but due to lack of space, this system covers only about 30% of pre-school children.

In each of the Montenegrin municipality grammar and vocational programs are accomplished through a network of 47 public and 2 private secondary schools. Ministry of Education and Science

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on the occasion of enrolment policy for the vocational schools, special attention pays to consideration of priority areas, which are necessary for the further development of each of the three Montenegrin regions (northern, central and south).

Higher education institutions are available to students of all three regions of Montenegro, with university units and study programs that are organized on the territory of 9 municipalities in the state. In 2008/09 academic year the right to higher education could be achieved at a state university (University of Montenegro) consisting of 19 university units, one private university (University of "Mediterranean") with 6 units of the university, as well as the 9 private independent study programs.

In practical terms, the Ministry of Education and Science of Montenegro creates and implements policies that support the constitutionally guaranteed rights and laws. These activities relate primarily to the special care of most vulnerable categories of student populations, such as children with special needs, and on their inclusion in regular education system, whenever the conditions are real. In accordance with this intention, the Law on Education of Children with Special Needs (Official Gazette of the Republic of Montenegro 80/04) and the Strategy for Inclusive Education in Montenegro are adopted. At the same time, a large number of activities aimed at the inclusion of Roma children in education system, but also to support children who come from socially disadvantaged families. In this light, the Ministry of Education and Science, in cooperation with the Ministry of Labour and Social Welfare, from the 2004/05 school year provides free textbooks for all children whose parents were beneficiaries of the family cash benefit (FCB), thus providing one of the elementary conditions for equal access to education.

Budget for the separation of the education system in Montenegro amounted to 9% of the total budget of Montenegro for 2009 year, while the individual levels of education distribution of funds earmarked for education made in the following way:

Budget user		Amount
MES	Pre-school education	12 016 773.94 Euro
	Primary education	69 029 903.38 Euro
	High School Education	33 002 567.15 Euro
	Centre for Vocational Education	614 738.54 Euro
	Standard of Students and Pupils	8 334 388.88 Euro
	Science	2 243 194.96 Euro
	Project for Improvement of the educational system	55 800.00 Euro
	Institute for textbooks and teaching aids	710 123.00 Euro
University of Montenegro		17 033 500.00 Euro
Office for International Scientific, Educational, Cultural and Technical Cooperation		667 420.79 Euro
Education Office		1 490 138.52 Euro
Examination Centre		989 704.18 Euro
<b>TOTAL:</b>		<b>146 188 253.34 Euro</b>

**96. Elaborate on the legislative and administrative structures in place to ensure effective protection of the rights of the child.**

**Legal and institutional framework**

*Adopted international instruments in the area of human rights and rights of the child*

On the grounds of succession, Montenegro has acceded International Covenant on Civil and Political Rights and both of its Optional Protocols, International Pact on Economic, Social and Cultural Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Elimination of all Forms of Racial Discrimination, Convention on the Elimination of all Forms of Discrimination Against Women and its Optional Protocol, Convention on the Rights of the Child and its both Optional Protocols, UN Convention against Transnational Organised Crime 2000, Protocol Against the Smuggling of Migrants by Land, Sea and Air and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Convention on Civil Aspects of International Child Abduction, Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Suppression and Punishment of the Crime of Apartheid, International Convention Against Apartheid in Sports, Convention Relating to the Status of Refugees, Convention relating to the Status of Stateless Persons and Geneva Conventions. Montenegro has ratified International Convention on the Protection of the Rights of All Migrant Workers, Convention for the Protection of All Persons from Enforced Disappearance, Convention on the Rights of Persons with Disabilities and its Optional Protocol. Following Conventions of the Council of Europe are also adopted: European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols and the Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment with its two protocols.

*Rights of the child stipulated by the Constitution of Montenegro*

Article 9 of the Constitution stipulates the principle of supremacy of international law: „The ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall apply directly when they regulate relations differently than the national legislation”.

In the Constitution of Montenegro protection of the rights and interest of the children have been stipulated by following Articles: 6, 17, 40, 48, 69, 72, 73, 74, 75, 79.

*Strategies and plans*

The Government has adopted a number of strategies and action plans in different areas important for exercise and protection of the rights of a child including: Poverty Reduction Strategy Paper (2003-2007); National Action Plan for Children (2004-2010); National Program of Prevention of Unacceptable Behaviour of Children and Youth in Montenegro (2004-2006); Strategy for Permanent Resolution of the Status of Refugees and Internally Displaced Persons in Montenegro (2005- 2008); National Action Plan for „Decade of Roma Inclusion 2005-2015“ in Montenegro; Strategy for Combating Poverty and Social Exclusion (2007-2011); Strategy for the Advancement of the Status of RAE Population in Montenegro (2008-2012); Strategy for Social and Child Welfare Development in Montenegro (2008-2012); Strategy of Integration of Persons with Disabilities in Montenegro (2008-2016); Action Plan for the Strategy of Integration of Persons with Disabilities in Montenegro (2008-2009); Strategy for Inclusive Education of Montenegro (2008-2012); National Strategic Response to Drugs (2008-2012); Action Plan for Implementation of the National Strategic Response to Drugs (2008-2009).

Institutional framework for the protection and enforcement of the rights of the child is comprised of: courts, custodial body, the Council for the Right of the Child, Ombudsman and line ministries (Ministries of Health, Ministry of Labour and Social Welfare, Ministry of Education and Science, Ministry of Justice, Ministry of Interior and Public Administration). Besides, Ministry for Spatial Planning and Environmental Protection, Ministry of Finance, Ministry of Foreign Affairs, Gender Equality Office, Office for Cooperation with NGOs, Office for Anti-Trafficking, Refugee Care and

Support Office, Police Directorate and other institutions participate in different segments of the exercise of protection and promotion of the rights of the child.

### **Institutional protection**

#### **Courts**

In accordance with the Family Law, judges who conduct family disputes are obliged to have specific knowledge in the field of the rights of the child (Article 316). Education is carried out in the Judicial Training Centre, which is a separate organizational unit of the Supreme Court of Montenegro. Pursuant to the Judicial Education Law, education is organized in accordance with annual curriculum and special education curricula (Article 8). The Law on Juvenile Justice is underway, which stipulates that the procedure dealing with juvenile offenders is conducted by a Juvenile Judge who acquired specific knowledge in the field of the rights of the child and juvenile delinquency. The additional knowledge is also required for juvenile prosecutors, juvenile attorneys and police representatives.

#### **Custodial bodies**

The custodial body is a professional social protection department and legally empowered authority to regulate legal protection of the family. The custodial body's affairs are carried out by the specific state bodies – social welfare centres, which are established in municipalities. The second instance authority is the ministry competent for social affairs. Legal protection of the family and children is exercised and implemented by the custodial bodies in accordance with the Family Law, but also in accordance with other legal areas (criminal, social, civil and administrative). The role of the custodial body cooperated by the court is of utmost importance in the protection and exercise of the rights of the child. In the court procedure, custodial body may have the status of procedural party, legal representative, and intervenient and court expert. Also, this body provides assistance and support, recommendations and warnings; it also provides mediation services and protective measures. In preparing, pronouncing and implementing decisions and certain measures, the custodial body uses all forms of social care, methods of social and other professional work, so as services of social, health, educational and other organizations and institutions.

#### **Council for the Right of the Child**

In 2007 the Government of Montenegro established the Council for the Rights of the Child to be in charge of: monitoring of the implementation of the National Plan of Action 2004 - 2010; protection and promotion of the rights of the child within the areas of social and child protection, health protection, education and other areas important for protection of the rights and interests of the child; monitoring of the implementation of regulations related to the protection of the rights of the child; monitoring of the fulfilment of obligations of Montenegro arising from the Convention on the Rights of the Child and other international documents related to the protection of the rights of the child; initiation of the adoption of regulations for improvement and protection of the rights of the child; promotion of cooperation with local self government in the process of implementation and protection of the rights of the child; improvement of cooperation with non-governmental organizations in the implementation and protection of the rights of the child; raising public awareness on the rights of the child and reporting on the status of the rights of the child. In performing envisaged activities, the Council develops cooperation with UN agencies and other international organizations dealing with protection of the rights of the child. The Council has 9 members (6 ministers in the Government, representative of the Statistical Office, NGO representative and representative of public and cultural life).

#### **Ombudsman**

The institution of the Protector for Human Rights and Freedoms - Ombudsman was established in 2003. This was required by the necessity to provide more efficient institutional protection of human rights and freedoms in Montenegro.

The main tasks and objectives of this institution include: protection of human rights and freedoms as well as raising awareness and creation of the ambient with the sense for rule of law, and full and consistent exercise of freedom and rights of the citizens, legal safety, legitimacy and transparency of the work of the state bodies where citizens exercise their rights. Acting in accordance with the

complaints of the citizens or on its own initiative, the Ombudsman shall consider cases involving violations of human rights and freedoms committed by an act, action or failure to act on the part of the state bodies and other holders of public authorities and shall undertake activities to remedy such violations in accordance with the present law (Article 23). The Ombudsman shall act in two directions: it shall duly warn about violations of human rights and provide assistance to citizens in their realization and contribute to democratic control and improvement of the state administration.

In addition to this function, the mission of the Ombudsman also includes general issues of significance for protection and promotion of human rights and freedoms and development of cooperation with relevant organizations and institutions dealing with human rights and freedoms. All citizens, including children, may refer to the Ombudsman with a complaint without special formalities and costs and receive quick and efficient intervention. Montenegro does not have a special Ombudsman for protection of human rights of the child, but the Assembly is about to appoint the Deputy Ombudsman who will exclusively be in charge of the protection of the rights of juveniles.

### **DEFINITION OF THE CHILD**

The term child is not defined by the law. The term juvenile is most frequently used to define person who has not attained the age of 18. In the criminal legislation, a child is considered any person up to 14 years of age, while a juvenile is a person from 14 to 18 years of age.

In accordance with Article 45 of the Constitution, active and passive right to elect shall be granted to every citizen of Montenegro who is 18 years of age.

Pursuant to the Family Law, the age of maturity comes along with completing 18 years.

Full business capability is acquired with full age (maturity) and with entering into marriage before full age with a permission of the court (Article 13). A child has the right to education in accordance with abilities, desires and inclinations.

A child who has completed 15 years of life and who is able of forming its own opinion may decide which secondary school it will attend (Article 65).

Pursuant to the Family Law, person can not enter into a marriage if he/she has not completed 18 years of age (Article 24). Exceptionally, the court may allow a marriage to be entered into by a minor person older than 16 at his/her personal request. Thereabouts the court will, in appropriate manner, examine all circumstances important to determine if there is a free will and desire of the juvenile to enter into a marriage, so as if the juvenile achieved physical and mental maturity to carry out marital obligations. A child, who enters into a marriage with the court permit, obtains full business capability in the same time.

A child who has completed 14 years of life may undertake legal affairs along with a previously or subsequently obtained consent of the parents, i.e. consent of the custodial body if necessary to manages and disposes of its revenues or property. A child who has completed 15 years of life may undertake legal affairs by means of which it manages and disposes of its revenues or property it acquired by its own work (Article 66).

Right to inherit is acquired by birth, but also an embryo is considered as heir if born alive. A child of certain years of age may, by testament, dispose of the property *morits causa*. Pursuant to the Law on Inheritance, a testament can make anyone who is able of forming its own opinion and who has completed 15 years of age (Article 59).

Paternity may be acknowledged by a male who is mentally competent and who has completed 16 years of age (Article 104). Also, the consent of the child who is older than 16 is necessary, if a person wants to acknowledge the child as his/her own (Article 106). To adopt a child older than 10, the consent of the child is necessary (Article 133).

In accordance with the Labour Law, the Employment Contract may be concluded by a person if has completed at least 15 years of age and if he/she is in general health capacity (Article 16). The Employment Contract may be concluded with a person younger than 18 years of age, with a written agreement of a parent, adopting parent or custodial body, if such a work does not

jeopardize his/her health, moral and education, or if such a work is not prohibited by law. A person younger than 18 years of age may conclude the contract of employment only on the basis of findings of the competent health authority determining his/her capacity to perform the activities that the contract of employment is concluded for, and if such activities are not harmful for his/her health (Article 17).

According to the Criminal Code, criminal sanctions can not be applied to a juvenile who at the time of the commission of a criminal offence was under the age of 14 (a child) (Article 80). To a juvenile who at the time of the commission of a criminal offence had completed fourteen years of age but had not reached sixteen years of age (a junior juvenile) only educational measures may be imposed. A juvenile who at the time of the commission of the criminal offence had reached the age of 16 but not the age of 18 (a senior juvenile) can be punished by educational measures, but exceptionally, he/she can be sentenced to a juvenile custody. A juvenile can also be punished by security measures on the conditions set forth in the Code. A suspended sentence and a judicial admonition may not be imposed on a juvenile (Article 81).

Similar measures are prescribed by the Law on Misdemeanours. Misdemeanour procedure may not be conducted on any juvenile who at the time of the commission of a misdemeanour was under the age of 14 (a child) (Article 41). To a juvenile who at the time of commission of a misdemeanour had completed fourteen years of age but had not reached sixteen years of age (a junior juvenile) only educational measures may be imposed. A juvenile who at the time of commission of the misdemeanour had reached the age of 16 but not the age of 18 (a senior juvenile) educational measures or punishments may be imposed. Along with educational measure, protective measure may exceptionally be imposed to a juvenile, if it is necessary due to the nature of the misdemeanour (Article 42).

Pursuant to the Law on Primary Education, all children from six to fifteen years of age are obliged to attend primary school (Article 4). Primary education of persons over 15 is carried out in separate departments of the primary schools or in the primary schools for education of the adults (Article 5).

According to the Military Law, military obligation starts at the beginning of the calendar year in which a person, obliged to go to the military, reaches 18 years of age (Article 173). Military obligation is compulsory for all Montenegrin citizens during emergencies or war conditions. In a peace, servicemen may be invited to the training, on the voluntary basis, to acquire necessary knowledge for performing obligations in the war, for maximum 15 days during the calendar year (Article 172).

Pursuant to the Law on Civil Suit Procedure, a child may be interrogated as a witness, if the court considers, on the basis of the findings of the competent authority or expert, that the child is capable of giving the testimony (Article 231). Invitation in the capacity of witness of a juvenile who had not completed 16 years of age is performed over the parents or legal representative (Article 238). A child may also be a witness in the criminal procedure, but may, as other persons, be exempted from duty to testify in the legally prescribed cases. According to the Law on Criminal Procedure, a juvenile who, in view of his/her age and mental development, is unable to comprehend the importance of his privilege not to testify, may not be examined as a witness, unless so required by the defendant (Article 97).

There is no explicit provision on the minimum age of children necessary for allowed alcohol consumption. Nevertheless, pursuant to the Law on Public Peace and Order, a sentence for misdemeanour shall be imposed to a person who sells alcohol drinks to a juvenile younger than 16 years of age (Article 22).

A private complaint of a child in the court is governed by the Criminal Procedure Law and the Law on Civil Suit Procedure. In accordance with the Criminal Procedure Law, a juvenile who has reached sixteen years of age or more may file a private complaint by him/herself (Article 53), and a child as the injured party who reached sixteen years of age or more may make statements and undertake procedural actions on his/her own (Article 63). The Law on Civil Suit Procedure sets forth that a juvenile who has not reached a full business capability is entitled to take civil procedure activities within the limits in which the work capacity is acknowledged (Article 77 paragraph 3).

*The right to life, survival and development*

Having regard to the protection of unquestionably the most important right – right to life – the Constitution of Montenegro prohibits the death penalty (Article 26) and guarantees human dignity and safety, as well as inviolability of the physical and mental integrity (Article 28).

Protection of the right to life is provided in the criminal legislation, by prescribing criminal offences of murder and other criminal offences with death consequences, so as by prescribing criminal sanctions for their executors (Criminal Code – Chapter XIV – Criminal offences against life and body). Also, the Criminal Code provides for several criminal offences against human health (Articles 287 – 302), against environment (Articles 303 – 326), as well as criminal offences against general safety of people and property (Articles 327 – 338). In order to protect the rights of the child, the Criminal Code especially prescribes: criminal offence of infanticide (Article 146) as well as the qualified forms of the offence of incitement to suicide and aid in the commission of suicide if committed against a child younger than 14, i.e. against a child between 14 and 18 years of age (Article 149).

### *The best interest of the child*

The Family Law prescribes that everyone is obliged to act in the best interests of the child in all child related activities (Article 5). Courts are obliged to act in the best interest of the child in the disputes for the protection of the child's rights, as well as in disputes for exercising or depriving of parental right (Articles 78 – 87).

The custodial body shall be obliged to provide parents with appropriate forms of assistance and support and take necessary measures to protect the rights and the best interest of the child, on the basis of immediate cognition or notification. It is stipulated that a child may be adopted and that the foster care may be established only if it is in his/her best interest (Articles 123 and 158).

A complaint for the protection of the child's rights may be brought by: the child, the child's parents, state prosecutor and custodial body. The complaint may be brought with respect to all rights acknowledged by this law, if not protected in another procedure (Article 354 paragraph 1).

If there are conflicting interests between the child and his/her legal representative, the child is represented by the collision custodian. The child who has completed the age of 10 years and who is mentally competent may, by himself/herself or through some other person or institution, ask the custodial body to appoint a collision custodian. The child who has completed the age of 10 years and who is mentally competent may, by himself/herself or through some other person or institution, ask the custodial body to appoint a temporary representative for him/her due to existence of conflicting interests between him/her and his/her legal representative (Article 356).

In addition, the Family Law stipulates that the procedure for the protection of the rights of the child is urgent (Article 360). If there are conflicting interests between parents and child in the dispute for protection of the child's rights and in the dispute related to exercising parental rights, the custodial body may appoint another custodian. If the court estimates that in the dispute related to protection of a child's rights and in the dispute related to exercising parental rights the child as a party is not represented in an appropriate manner, the court shall be obliged to appoint a temporary representative for the child (Article 357 paragraph 2).

Aimed at protection of the child's interests, a series of measures are provided in the area of juvenile justice. Thus, the Law on Criminal Procedure, which contains special provisions on juvenile procedure, stipulates that on taking actions before a juvenile, especially on his/her interrogation, actors in the procedure are obliged to be careful, taking into account his/her mental capability, sensibility, personal particularities and privacy, so that criminal procedure may not have adverse effect on him/her (Article 468 paragraph 2). Neither the course of the criminal procedure against a juvenile nor the decision made in those proceedings may be published without the court's permission. Only the part of the proceedings or only the part of the decision for which there is a permission may be published, but in that case the name of the juvenile and other data on the basis of which it could be concluded who the juvenile may be, could not be stated (Article 475). Bodies involved in the juvenile procedure, so as other bodies and institutions asked for notifications, reports or opinions, shall be obliged to urgent action in order to complete the procedure as soon as possible (Article 476).

### *Non-discrimination*

The Constitution of Montenegro determines that direct or indirect discrimination on any grounds shall be prohibited. In the same time, it stipulates that regulations and introduction of special measures aimed at creating the conditions for the exercise of national, gender and overall equality and protection of persons who are in an unequal position on any grounds shall not be considered discrimination. Special measures may only be applied until the achievement of the aims for which they were undertaken (Article 8). All persons shall be deemed equal before the law, regardless of any particularity or personal feature.

The Law on Minority Rights and Freedoms, in its Article 39, paragraph 2, prohibits any direct or indirect discrimination, on any ground, including race, colour of skin, sex, national affiliation, social background, birth or similar status, religion, political or other belief, material status, culture, language, age, and mental or physical disability.

The Labour Law stipulates that direct and indirect discrimination of persons searching for employment, as well as employees, regarding their sex, birth, language, race, religion, color of skin, age, pregnancy, health condition or disability, ethnicity, marital status, family obligations, sexual orientation, political or other convictions, social background, material status, membership in political and trade union organizations or another personal features shall be prohibited (Article 5). These discriminations are precisely defined by this Law. Direct discrimination, under this Law, shall be every action caused by some of the grounds which places a person looking for employment, as well as employee, into less favorable position compared to other persons in the same or similar situation. Indirect discrimination, under this Law, shall exist when a certain provision, criteria or practice places or would place a person looking for employment, as well as employee, into less favorable position compared to other persons, due to a certain feature, status, orientation or belief (Article 6). These forms of discrimination shall be prohibited with respect to employment conditions and selection of a candidate for certain position; working conditions and all labour-related rights; education, training and advanced training; job advancement; cancellation of the contract of employment. Pursuant to Article 10 of the Labour Law, in cases of discrimination, a person who is looking for employment, as well as employee, may initiate the procedure before the competent court, in accordance with law.

### *The rights of the freedom of opinions and views*

The Constitution of Montenegro stipulates that everyone shall be guaranteed the right to freedom of thought and freedom of expression by speech, writing, picture or in some other manner (Articles 46 and 47).

The Family Law guarantees the right of the child to freely express his/her opinions in different situations. As a general principle, it is stipulated that a child who is capable of forming his/her own opinion has the right to free expression of those opinions (Article 67). A child has the right to receive in a timely manner all the information needed for forming his/her opinion. Due attention has to be devoted to the opinion of a child in all issues regarding it and in all the procedures in which his rights are decided on, all in compliance with the age and the maturity of the child. A child who has completed 10 years may freely and directly express its opinion in all actions in which his/her rights are being decided on. A child who has completed the age of 10 years may by its own, or through a mediation of some other person or institution, refer to the court or an administrative body and require assistance for the exercising of his/her right for free expression of opinion. Competent authority shall determine what the opinion of the child is through an informal talk conducted in an appropriate place, in cooperation with the school psychologist or the custodial body, family counsellor or some other institution specialized for family relationships, and in the presence of a person the child itself chooses.

Obligation of the Court, also stipulated, is to provide for a child to express his/her opinion. If the court establishes that in the dispute related to protection of a child's rights and in the dispute related to exercising parental rights the party is a child capable of forming an opinion, the court shall be obliged: 1) To provide that the child timely obtains all the information that he/she might need; 2) To allow the child to express his/her opinion directly and to pay due attention to the opinion of the child, in line with the age and maturity of the child; 3) To take the statement of the opinion of the child in the manner and on the place which is in line with the child's age and maturity, unless that would be obviously in conflict with the best interest of the child (Article 357).



## **CIVIL RIGHTS AND FREEDOMS**

### *The right of the child to identity*

Pursuant to the Law on Civil Registry Books, the birth of the child is entered into the municipal Birth Registry Book in which the child was born. If born in a transport vehicle, the birth shall be entered in the municipal Birth Registry Book in which the mother arrived. In the case of a child whose parents are unknown, the birth shall be entered in the Birth Registry Book of the municipality where the child was found. The entry shall be made on the basis of the Decision of the custodial body which contains: name, surname, sex and place of birth. The place where the child was found shall be entered as the place of birth. The Decision shall be brought on a basis of the records on the discovery of the child. The Decision and the records shall be submitted to Registrar (Article 18).

The birth shall be reported within three days as of the child's birth. The birth of the stillborn shall be reported within 24 hours as of its birth. If the child was born in the Maternity hospital or another Health institution, birth application shall be, as a rule, submitted via Internet by that Health institution. Reporting the birth of a child born outside of the Health care institutions is the obligation of the child's father, or mother if she is able to do so. In case that these two persons are not able to report the birth of the child, reporting shall be made by a doctor who delivered the child or a person who was present at delivery, or a person in whose home the child was born (Article 19).

In accordance with Article 6, personal name of the child shall be agreed by parents. If one of the parent is not alive, not known or fails to perform parental right, the child's name shall be made by another parent. The child's surname is determined by the parents according to the surname of one or both parents. If the parents are not alive, not known or fail to perform parental rights, the personal name of the child shall be determined by the custodian with prior approval of the competent custodial body. The custodial body shall determine the personal name of the child in case the parents of the child are not known. If the child was adopted prior to determination of the name, the personal name of the child shall be determined by the adopter. If parents fail to agree about personal name of the child, neither with the assistance of the custodial body, the name of the children shall be determined by the court in the extra-judiciary procedure at the proposal of one or both parents or the custodial body.

### *Preservation of the identity*

The Law on Personal Name stipulates the right and procedure for the change of personal name. Personal name, or only name or surname, may be changed upon the transformation of the family or personal status (adoption, paternity or maternity determination, marriage, divorce or cancellation of the marriage) or upon the request (Article 9). It is necessary to obtain the parents' consent in order to change personal name of the child. To change personal name of a juvenile who has completed ten years, it shall be necessary to obtain his/her consent if he/she is competent to express his/her opinion (Article 17). If the change of personal name of the child is required by the custodian of a juvenile, it shall be necessary to obtain approval of the competent custodial body. In case of adoption, the adoptee usually takes the same surname of adopters. If adopters do not have the same surname, they shall agree about the surname of the adoptee.

Pursuant to Article 12 of the Constitution of Montenegro there shall be a Montenegrin citizenship. In accordance with the Law on Montenegrin Citizenship, Montenegrin citizenship shall be acquired by: origin, birth in the territory of Montenegro, admission and under International treaties and agreements (Article 4). Montenegrin citizens are registered in the Registry Book which is a computer conducted database on the name and surname, place and date of birth, unique identification number, parents, manner of acquiring citizenship and other relevant facts (Article 34). In accordance with the law, Montenegrin citizen born in Montenegro shall be entered in the registry of the place of birth, while Montenegrin citizen born out of Montenegro, shall be entered in the Registry of the place where he/she was entered in the birth records in Montenegro.

The citizenship of Montenegro shall cease upon the request of Montenegrin citizen, by the operation of law and international treaties and agreements (Article 19). The release from Montenegrin citizenship may be given to a child provided that he/she shall not remain without citizenship

### *Freedom of thought, conscience and religion*

In accordance with the Constitution of Montenegro everyone shall be guaranteed the right to freedom of thought, conscience and religion, as well as the right to change the religion or belief and the freedom to, individually or collectively with others, publicly or privately, express the religion or belief by prayer, preaches, customs or rites. No one shall be obliged to declare own religious and other beliefs. Freedom to express religious beliefs may be restricted only if so required in order to protect life and health of the people, public peace and order, as well as other rights guaranteed by the Constitution (Article 46).

As regards freedom of thought, according to the Law on Family, parents have a right and duty to direct the child to adopt those values that have a universal character (Article 71). When placing the child into another family, the custodial body has an obligation to pay special attention to the national, religious and cultural origin of the child, his/her age, health and social status, as well as to the distance from the previous place of residence, i.e. parental residence and the school it attending (Article 160).

Constitution of Montenegro guarantees that everyone shall have the right to objection of conscience. No one shall be obliged, contrary to own religion or conviction, to fulfill a military or other duty involving the use of arms (Article 48). The same right is also guaranteed by the Military Law of Montenegro (Article 177).

### *Freedom of association and peaceful assembly*

The Constitution of Montenegro guarantees freedom of association and assembly. The Article 53 guarantees freedom of political, trade union and other association and action, without approval, by the registration with the competent authority. No one shall be forced to become a member of an association. The state supports political and other associations, when there is a public interest to do so. Freedom of peaceful assembly shall be guaranteed, without approval, with prior registration with competent authority. The freedom of assembly may be temporarily restricted by the decision of the competent authority due to prevention of disorder or commitment of a criminal offence, threat to health, morality or security of people and property, in accordance with the law (Article 52).

Association in non-profit organizations is governed by the Law on Non-Governmental Organization (previously the Law on Association of Citizens). With reference to this law, association can be established by at least five persons with their place of residence or dwelling place or location in Montenegro.

The Centre for the Rights of the Child of Montenegro, working in the field of promotion and protection of the child's rights, has its mission to improve quality of lives of the children and youth in Montenegro, and carried out various programme activities: camps, counselling, training sessions, participated in the development of the strategic documents for children, performed club activities and worked on establishment of the Pupil's Parliaments (in 19 Montenegrin primary schools).

### *The right to privacy*

The Criminal Code regulates criminal offences related to the violation of the right to privacy, as follows: infringement of inviolability of home, illegal search, unauthorized disclosure of secret, infringement of privacy of mail and other means of communications, unauthorized wiretapping and recording, unauthorized photographing, unauthorized publication and presentation of a somebody else's written texts, portraits and recordings, unauthorized collection of personal data (Articles 169 - 176). In that purpose, there are regulated criminal offences against honour and reputation: insult, defamation, spreading information about private and family life (Articles 195-197). The Criminal Procedure Code prohibits announcement of the course of a juvenile proceedings and a decision rendered in the proceedings without the court permission (Article 475).

The Law on Media also contains provisions on the privacy protection. Pursuant to Article 20 of this Law, if media announces any program which infringe the legally protected interest of a person the information was related to, or which violates honour or integrity of a person, spread or transmit false allegations on person's life, knowledge or abilities, the interested party has the right to fill a

complaint to the competent court for the compensation against the author or the founder of the related media.

It is also stipulated that the media shall be obliged to protect the integrity of juveniles. The media programs which could threaten health, moral, intellectual, emotional or social development of the child, should be clearly and visibly marked in advance and distributed in the least probable manner to be used by the child. Also, the media should not publish identity of the juveniles involved in the criminal offences, neither as the victims nor as the accused (Article 22).

### *The right of the child to protection against torture and unlawful or arbitrary deprivation of liberty*

The Constitution stipulates that detention of juveniles shall not exceed 60 days (Article 30, paragraph 7). The Criminal Procedure Code precisely stipulates duration of the detention depending on the phase of the procedure. According to Article 488, exceptionally, the judge for juveniles may, as per official duties or on the proposal of the State Prosecutor, order a juvenile to be detained if there are grounds for that prescribed by Law. In the pre-trial proceedings, detention ordered upon ruling of a judge for juveniles may last at the longest one month. The Panel for juveniles of the same Court may, for justifiable reasons, extend detention for a term not longer than one month. After pre-trial proceedings are closed, detention may last up to the four months for junior juveniles, or six months for senior juveniles.

The rule says that a juvenile shall be detained separately from adult detainees. Exceptionally, the judge for juveniles may order a juvenile to be detained together with adult detainees provided that his/her separation should last longer and there is a possibility for him/her to be detained in the room with an adult who would not be of a harmful influence to him/her (Article 489).

The Law on Police stipulates that on taking actions before juveniles, especially on his/her interrogation, the police officer shall be obliged to be careful, taking into account his/her mental capability, sensibility, personal particularities and privacy. As a rule, the police authorizations are executed on a juvenile in the presence of the parents or legal representative (Article 16).

## **FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

### *The right to parental care*

As regards the Family Law, the family is a community of living of parents, children and other relatives who, in terms of this Law, have mutual rights and obligations, as well as other basic community of living in which children are raised and cared for (Article 2). The special constitutional protection is guaranteed for each family: marital, extra-marital, adoptive, irrespective of the fact whether they are complete or incomplete.

The parental right shall belong to the mother and the father together. If one of the parents died or is not known or has been deprived of the parental rights, the parental right shall belong to the other parent. A parent can not renounce the parental right. Abuse of parental right is prohibited (Article 60).

The Family Law explicitly says that parents have a right and duty to take care of the child. Parents are obliged to take care of their child, to protect, raise, bring up, educate, represent and support the child, as well as to manage and dispose of the child's property. Parents shall have the right to obtain all information on the child from the educational and health institutions (article 69).

Specialized expert services or expert teams for counselling within the area of family relations are operating in all Social Welfare Centres. There are 10 Social Welfare Centres in Montenegro, covering 21 municipalities with their services.

### *Parental responsibility*

Pursuant to Article 76 of the Family Law, parents exercise the parental right jointly and by consent when living together. Parents also exercise the parental right jointly and by consent when not living together, if they conclude an agreement on joint exercising of the parental right and if the court estimates that such an agreement is to the best interest of the child. Only in accordance with the

Court's decision or based on parental agreement, parents for whom the Court estimates that is to the best interest of the child, the parental right shall be exercising by one parent.

With reference to the Family Law, parents have a right and a duty to watch and raise the child by taking care personally of its life and health. Parents must not subject the child to humiliating actions and penalties that offend human dignity of the child and they are under an obligation to protect the child from such actions of other persons. Parents must not leave a child of pre-school age unattended. Parents may temporarily entrust the child with another person only if such a person meets the conditions for a custodian (Article 70).

In addition, parents have a duty to provide the child with compulsory education, to represent him/her in legal affairs and proceedings, to support him/her and manage with its property.

In accordance with Article 80 the custodial body is responsible for providing parents with appropriate forms of help and support and undertakes necessary measures to protect the rights and best interests of the child, on the basis of direct knowledge or notification. If thus required by the justified interests of the child, the custodial body shall warn the parents about errors and failures in education and upbringing of the child and assists them to bring up the child properly, and it can direct them to address, alone or with the child, a particular counselling centre, health, social, educational or some other adequate institution.

In justified cases, the custodial body may require the parents to submit the bills on how they manage the child's property. In an extra-judiciary procedure, the custodial body may require to court to allow means of insurance on the parents' property with a view of protecting the property right of the child; and the custodial body may require the court to make a decision according to which the parents shall have the position of a custodian with regard to the management of the child's property (Article 84).

### *Separation from parents*

The Family Law stipulates that children have the right to live with their parents and the right to have its parents take care of them before everyone else. The right of the child to live with his/her parents may only be limited by the court decision when it is in the best interest of the child. A Court may make the decision to separate the child from its parents if there are reasons for restriction or depriving of the parental right or in case of domestic violence. A child who has completed 15 years of age and who is capable of forming its own opinion may decide which of the parents it wants to live with (Article 62).

A child has the right to maintain personal relations with the parent it does not live with (Article 63, paragraph 1). The right of the child to maintain personal relations with the parent it is not living with may be restricted only by a court decision if it is in the best interest of the child.

A parent who fails to exercise the parental right shall have a right and a duty to support the child, to maintain personal relations with the child and to make decisions on the issues influencing significantly of the child together and by consent with the parent exercising the parental right (Article 79, paragraph 3). In terms of this law, Issues that significantly influence the life of the child, in the sense of this law, are considered in particular: education of the child, undertaking of major medical interventions on the child, change of permanent residence of the child and disposing of the child's property of considerable value (Article 79, paragraph 4).

Pursuant to the Family Law, the Court is exclusively competent for the child's separation from his/her parents, while taking into account preventive and consultative role of the custodial body. Before passing the judgment on protection of a child's rights or on exercising parental rights, the court shall be obliged to ask for findings and expert opinion of custodial body, family guidance clinic or other specialized institution (Article 361).

The court may in extra-judiciary procedure, as per official duty or at the request of the parents, or custodian or other person to whom a child is entrusted to take care for and to raise it, or at the request of a custodial body, make a decision to send a child to an appropriate institution for upbringing, or to other family if there has been a disturbed behaviour of a child which requires upbringing affect and removal of the child from the surroundings where it lives. The Court shall determine duration for this measure, which can not be longer then one year (Article 83).

By the decision made in the extra-judiciary procedure the court may restrict the parental right to the parent who unconscientiously exercises the rights or duties towards the child. Through the restriction the parent may be deprived of the exercising of one or several rights and duties towards the child, except of the duty to support the child. The Court shall deprive a parent of the right to live with a child if the parent neglects to a larger extent the upbringing and education of the child or if, due to the family circumstances, there are a danger for the proper upbringing of the child (Article 85).

A parent is considered to neglect to a larger extent the upbringing and education of a child in particular if he/she does not pay sufficient attention to nutrition, clothing, medical assistance, regular attendance of school, does not prevent the child from keeping bad company, tramping, begging or theft. The procedure for the restricting parental right shall be initiated as per official duty, on the proposal of the custodial body, other parent or the child itself.

The parent who abuses parental duties or roughly neglect parental responsibilities shall be deprived of the parental right.

Decision on the deprivation of parental right shall be made by the competent court in the extra-judiciary procedure. The procedure for deprivation of the parental right may be initiated by other parent, custodial body or the Public Prosecutor.

### *Unlawful separation and deprivation of children abroad*

In case of unlawful separation and deprivation of children abroad, which can be classified as a violation of the right to the custody of children, or violation of the visiting rights (personal relations), the provisions of the Convention on the Civil Aspects of International Child Abduction may apply. The main executive body implementing the Convention is the Ministry of Justice. This Ministry receives the requests from abroad for returning the children unlawfully separated from their parents or custodians, and also dispatches the requests to the central authorities of other State members.

Montenegro also ratified European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children and Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Montenegro also signed a series of bilateral agreements on legal assistance between judicial and other competent bodies, i.e. states, in execution of the decisions related to the care of the child, and which should contribute to more efficient protection of children who are unlawfully separated from the parents.

The Criminal Code stipulates the criminal offence for depriving of a minor (Article 217).

### *Child support*

According to the Family Law, the parents are unconditionally obliged to provide support for their minor children. According to their possibilities, parents are also obliged to provide support for their children who have completed 18 years of age until they finish their education in the school or faculty, and if the period of education is extended due to justified reasons, they should provide support for their children up to the age of 26 (Article 254).

If a child, upon the age of maturity, due to disease, physical or mental deficiencies is not capable to work, has no means for living or cannot create the means from the existing property, the parents shall be obliged to provide support for the child for the time in which such a state of affairs exists (Article 255). A parent deprived of parental rights shall not be released from the duty to provide support for his/her children (Article 256). Obligations of the family members obliged to provide the support shall be determined proportionally to their possibilities, within the limits of the needs of the claimant of support. If the parent does not ask for execution of the support decision, the custodial body shall, on behalf of a minor child, submit the proposal for decision execution to the court, as per the provisions of the Law on Executive Procedure.

The Court is obliged to submit to the custodial body any decision on the support of the child. If the parent, who on the basis of the court decision is obliged to pay certain amount for support of his/her child, does not fulfill his/her obligations regularly, custodial body shall, at the proposal of other parent or *ex officio*, undertake measures to provide temporary support for the child according to the regulations on social and children protection until the parent starts fulfilling his/her obligation

(Article 282). If the amount of support is determined as a percentage, it may not be lower than 15% or higher than 50% of the regular monthly money incomes of the persons obliged to provide support (Article 281, paragraph 3).

Criminal legal protection is also provided. The Criminal Code stipulates penalization for avoiding of payment of support through the criminal offence – omission of the maintenance. Anyone who does not give maintenance to other person he/she is obliged to maintain according to law on the basis of a finally binding court decision or executive settlement before a court of law or other authorized body, to the amount and in the manner determined by the decision or the settlement (Article 221).

Within their competence, the Social Welfare Centres are trying to provide assistance to every child to exercises its right to support, especially when it comes to the support to be provided by the parents living outside the territory of our country. Intermediary authorities for the support of the child by the parent who lives abroad shall be the Ministry of Health, Labour and Social Welfare and the Ministry of Foreign Affairs.

### *Family reunification*

The Law on Travel Documents regulates the rights of the child and parent, citizens of Montenegro, to exit the country and re-enter it for the purpose of maintaining family relationships (uniting with the family), while the rights of the child and the parent who are foreigners, stateless persons or refugees, is regulated by the Law on Movement and Stay of Foreigners.

The freedom of movement and settlement and the right to exit the territory of our country, irrespective of whether it regards domestic citizens, refugees, stateless persons or foreigners, are subject only to legal restrictions in cases referred to Article 37, paragraphs 1 and 2 of the Charter on Human and Minority Rights and Civil Liberties and Article 28 of the Constitution of Montenegro). These rights may be restricted only if necessary to conduct criminal proceedings or for the country's defence.

Article 17 of the Law on Travel Documents stipulates that a passport shall be issued with the validity period of 10 years and, exceptionally, a passport may be issued to a child up to four years of age with the validity period of two years.

Pursuant to the above-mentioned Law, the request for a juvenile who has completed 18 years of age is submitted by one of the parents along with the written consent of another parent or legal representative (Article 26, paragraph 3).

### *Children deprived of family environment*

The legal basis for organizing special care of children without parental care exists in the Family Law and the Law on Social and Child Care. In accordance with the provisions of both laws a child without parental care is a child whose parents are not alive, a child whose parents are unknown or whose parents' place of residence is unknown, and a child whose parents are completely deprived of the parental right or business capacity.

The first protective measure is when a child without parental care is granted custody which purpose is providing for, upbringing and education of the personality of a child to be developed as fully as possible and that a child is capable for independent life and work (Articles 178 and 179). When appointing a guardian, custodial body shall carefully analyze the circumstances of the persons who are granted custody and it shall appoint a person who, having these circumstances in mind, shall be in a position to perform the duty of a guardian in the best possible manner (Article 188).

Basic forms of family-legal care of the children without parental care, in accordance with the Family Law, imply: adoption and custody. Apart from the custody of children, the Law on Social and Child Welfare provides for the right to placement in another family or in social welfare institution, in addition that the priority shall be given to the placement in another family. Regarding the selection of the appropriate form of care of children without parental care, a comprehensive consideration of each individual case is provided for by law, so that the solution for each individual child would be in accordance with his/her needs.

A child disturbed in its physical and mental development, or educationally careless child may be placed into another family only if it has been determined that members of that family, according to their characteristics are able to watch, take care of and educate such a child (Article 161).

Placement in the social and child welfare institution is present to a lesser extent than family placement. This form of placement is carried out through the competent social welfare centres in accordance with the Law on Social and Child Welfare and the Family Law.

### *Adoption*

Pursuant to the Family Law, adoption is a special form of the family-legal protection of children without parents or without appropriate parental care, by which parental or the relations of kinship are established. In Montenegro, adoption may be established as full or partial (Article 121). A child has the right to know that it has been adopted. Adopters shall be obliged to acquaint the child with the fact that it has been adopted at latest up to its 7 years of life, or immediately after adoption if an older child has been adopted, as well as to acquaint custodial body (Article 122). Adoption may be entered into only if it is done to the best interest of the adoptee (Article 123).

A child cannot be adopted before three months from his/her birth expire, neither a child born to minor parents cannot be adopted. As an exception, this child can be adopted after expiry of one year from its birth, if there are no prospects of it being raised in the family of parents or other close relatives.

A child whose parents are not known may be adopted only after three months expire from his abandonment (Article 124). An adopter can only be a person who is between 30 - 50 years of age and who is older than the adoptee at least 18 years. Adopters, who adopt the same child jointly, may adopt it also if only one of them meets required the conditions. If there are particularly justified reasons an adopter may also be a person older than 50, but the age difference between the adopter and the adoptee must not be bigger than 50 years. If adopters adopt sisters and brothers, or sisters and brothers who have the same mother or the same father, may enter adoption even if only one of them meets the conditions in relation to only one child. (Article 126).

A child up to its tenth year of life can be fully adopted. A child can be adopted completely by spouses jointly, and by the step-mother or the step-father of a child who is being adopted. A child can be adopted completely by extra-marital partners who have been living in an extramarital community for a long time (Articles 131 and 132).

A child can be adopted partially until it completes its 18 year of life. For adoption of a child older than 10 and able to understand the meaning of adoption, its consent is needed. A child can be adopted partially by spouses jointly, by one spouse with the consent of the other spouse or by the step-mother or the step-father of the child being adopted. A person who is not married and partners living in a extramarital community can adopt partially a child for a shorter period if there are justified reasons for this (Articles 133 and 134).

For conducting the procedure of entering into adoption the custodial body of the place of residence shall be competent or of the place of permanent residence of the child, if its place of residence cannot be determined. The public shall be excluded from the procedure of entering into adoption.

In the procedure of entering into adoption a parent of the child, a spouse of the person intending to adopt the child and the child shall give their consent to adoption before a custodial body conducting the procedure or before the custodial body of their place of permanent residence, or place of residence if permanent residence cannot be determined. If the consent was given before a body that is not conducting the procedure of entering into adoption, this body shall immediately submit certified minutes to the body conducting this procedure. A child shall give consent to adoption without presence of parents and the person wishing to adopt it. A parent may give his/her consent to adoption also before initiation of the procedure of entering into adoption, but only when the child completes three months of life.

Through full adoption an inseparable relationship of kinship equal to blood relationship is established between the adopters and their relatives on one side, and the adoptee and his descendants on the other. The adopters are registered as parents of the adoptee into the register of births. Through full adoption mutual rights and duties of adoptee and his/her blood relatives

cease to exist, except if the child is adopted by a step-mother or a step-father. Adopting persons shall agree about name of the adoptee. The adoptee shall take the same surname of adopters. If adopters do not have the same surname, they shall agree about the surname of the adoptee. If adopters fail to reach the agreement, the name and surname of the adoptee shall be determined by the custodial body. Contesting and determining of maternity and paternity is not allowed after entering into complete adoption.

Partial adoption creates rights and obligations between adopting persons on one side and adoptee and his/her offspring in another, which legally exist between parents and children, unless it is otherwise determined by the law. Partial adoption shall not influence the rights and obligations of the adoptee in relation to their parents and other relatives (Article 135 - 153).

Adoption between foreign citizen as an adopting person and domestic citizen as an adoptee can not be established. Exceptionally, a foreign citizen may adopt a child if no adopter can be found among domestic citizens. This adoption shall require approval of the Ministry competent for social welfare activities. The approval for adoption shall be issued on the basis of the opinion of expert commission. The expert commission shall be established by Minister competent for social welfare. The commission shall be comprised of 5 members with professional experiences in the work with juveniles (Article 125).

### *Illegal transfer of children across borders and depriving of a minor from their country of origin*

Montenegro signed the Convention on the Civil Aspects of International Child Abduction. The competent line authority for its implementation is the Ministry of Justice, which acts upon requests of our citizens when the child is abroad and upon requests of the foreigners if the child is in our country.

Anyone who prevents execution of a decision of a competent body stipulating the way in which personal relationships between a minor and his/her parent or another relative are to be maintained, is deemed as criminal offence pursuant to article 217 of the Criminal Code, and shall be punished by a fine or an imprisonment sentence not exceeding one year.

In accordance with the Law on Resolving the Conflicts of the Laws with the Regulations of Other Countries in Certain Relations, valid decisions, according to the law of the other State in which they have been made, are recognized under certain conditions. These court decisions are made equal to decisions of domestic courts.

### *Protection of children against abuse and neglect*

Measures for protection of the child against violence have been established by criminal and family legislation and therefore certain forms of violent behaviour of parents entail dual responsibility.

The Family Law stipulates that judicial authorities, other bodies, medical, educational and other institution, non-governmental organizations and citizens shall notify custodial body as soon as they get to know that a parent is unable to exercise parental right. Custodial body shall examine the case immediately after the receipt of the notification and undertake measures in order to protect the rights of the child (Article 80, paragraphs 2 and 3).

If thus required by the justified interests of the child, the custodial body shall warn the parents about errors and failures in education and upbringing of the child and assists them to bring up the child properly, and it can direct them to address, alone or with the child, a particular counselling centre, health, social, educational or some other adequate institution (Article 81).

When parents need longer-term support and direction in exercising their parental rights and duties or when an explicit follow up of the situation and conditions in which a child lives is necessary, custodial body shall determine supervision over the exercising parental rights regarding children or a specific individual child (Article 82).

The Criminal Code prescribes criminal responsibility for the criminal offence - Violence in a family or a family community (Article 220). More indictable offence refers to a person who by use of violence or endangers physical integrity or mental condition of a juvenile.



## **BASIC HEALTH CARE AND SOCIAL CARE**

### *Child health care*

The Constitution of Montenegro guarantees health protection to everyone, pursuant to the law. Children, a pregnant women and elderly have the right to health care out of the public revenues, if they do not exercise this right on some other grounds (Article 69).

The Law on Health Insurance (Article 12) proscribes that a child is entitled to compulsory health insurance, until termination of compulsory education, and if the child is included in regular or part-time education, then the entitlement lasts until the deadline envisaged for regular education elapses, but not later than the age of 26. The child, who has interrupted education due to an illness, shall be entitled to compulsory health insurance during such illness, and if the child continues education, he/she shall be entitled to compulsory health insurance even after the prescribed age limit has elapsed, but not longer than the period of interruption of education lasted, due to the illness. If the child becomes incapable for independent living and work, in terms of specific regulations, before the deadline for regular education (before the age of 15) he/she shall be entitled to compulsory health insurance during such incapability. The right to compulsory insurance is entitled to a child who shall become permanently incapable for independent living and work in terms of specific regulations after the prescribed age (before the age of 15), if he/she does not have his/her own income. The right to compulsory health insurance includes children born in or out of marriage, adopted children, step-children and foster children (Article 10).

The Law on Health Care prescribes, as its priority health protection measures (Article 10, paragraph 7 and 11), health care of children and adolescents until the end of legally prescribed formal education, protection of women in relation to the family planning, pregnancy, giving birth, and maternity; so as health care of physically and mentally disabled persons. The primary health care includes the health protection of mothers and children and family planning, so as the health rehabilitation of children and young people with disorders in physical development and health (Article 33, paragraphs 5 and 15).

### *Children with disabilities*

The Constitution of Montenegro (Article 68) guarantees special protection of the persons with disabilities, and the Law on Social and Child Welfare and corresponding secondary legislation stipulate the rights for children with disabilities and their families.

There are no precise data on the number of children with disabilities in Montenegro. Authorities and institutions, so as the NGO sector, providing specific kind of services to children with developmental disorders, are keeping records on their beneficiaries. Strategic documents provides for establishing a unique register of children with disabilities.

Pursuant to the Law on Social and Child Welfare, families with children with children with disabilities shall enjoy the following rights: the right to family cash benefit, the right to personal disability benefit, the right to allowance for home care and assistance, the right to placement in an institution, the right to assistance in upbringing and education of children and adolescents with special needs, the right to health care, the right to child allowance and the right to rest and leisure.

Health care of children with disabilities, as a part of general health care of population, is regulated by the Law on Health Care, the Law on Health Insurance and the Law on Protection and Exercise of the Rights of the Mentally Ill. The right to health care, among other things, includes the prevention, check-ups and medical treatment, dentists' check-ups and treatment, rehabilitation, medicaments and medical means and medical supplements and aids.

According to the Rulebook on detailed conditions regarding standards, normative and manner of primary health care realisation through the team of chosen team of physicians or a chosen physician, Daily Centres for children with disabilities have been established which are intended for children under the age of 15. There are 3 such centres in Montenegro.

Education of children with disabilities in Montenegro is regulated by the General Law on Education, the Law on Preschool Education, the Law on Primary Education, the Law on Grammar School, the Law on Vocational Education and the Law on Education of Children with Disabilities.

The current education system of children and youth with disabilities is organised in three basic forms: institutions for children with disabilities, separate classes within regular schools, regular school classes. Within first two forms, the system has been organised so to single out the children with the same type of disability into special schools or special classes. The rest of the children with disabilities or some other sort of special needs are placed in classes of regular schools together with other children, with provided professional assistance. Specialised mobile teams have been organised within the Education Office which imply engagement of professionals from special institutions and from regular system and which are specialised in inclusive education. They are included into regular school activities where children with disabilities are educated, depending on the type of disability. The aims of these teams are as follows: support to children with disabilities, parents, teachers and professional services in schools wherein the children with disabilities are included. The orientation towards the appropriate model of education is conducted by the Commissions for Orientation that are organised at local level and working in all municipalities in Montenegro. Their task is to recommend the optimal solution for education of the child with special educational needs. The proposal for orientation is made on the basis of pedagogical, special-pedagogical, psychological and other documentation that they receive from the relevant institutions.

There are four specialized institutions for the education of children and youth with disabilities in Montenegro: the Institute for Education and Professional Rehabilitation of Children and Young People with Disabilities; the Centre for Education and Training "1. June", the Institute for Education and Rehabilitation of Persons with Hearing and Speech Impairments in Kotor. The Ministry of Education and Science finances the schools, while the Ministry of Labour and Social Welfare finances the cost of accommodation and food.

### *Social care and services and institutions for child care*

Pursuant to the Article 67 of the Constitution of Montenegro the social insurance shall be mandatory and the state shall provide material security to the person that is unable to work and has no funds for life.

Social protection is prescribed by the Law on Social and Child Welfare. This Law includes all rights of children without parental care and children with disabilities. Within the social care system, children can be beneficiaries of all rights of common interest such as: the family cash benefit, the personal disability benefit, the allowance for home care and assistance, placement in an institution, placement in a foster family, assistance in upbringing and education of children and youth with disabilities (Article 12).

The right to family cash benefit – Conditions for acquiring this right are prescribed on the basis of personal and financial status of an individual. When it comes to the personal status, the family, or the member of the family may be entitled to the cash benefit if the family member is incapacitated for work or able to work, on condition that he or she is: pregnant, a single provider, a parent maintaining an underage child or a child of legal age who is incapacitated for work, a person who has completed his education according to the adjusted educational programme and additional professional support or special educational programme, and a child without parental care, until they get employed full-time or part-time, for a period of time longer than six months.

Entitlement to a personal disability benefit - this right shall belong to a person who has become incapacitated for work before reaching the age of 18. The Rulebook on Medical Indications for retaining the rights on social protection prescribes the diseases that are the basis for exercising such right.

Entitlement to the home care and assistance allowance - this right shall belong to a child who exercises the right to personal disability benefit and to a child with grave physical, mental or sensory impediment in need of permanent home care and assistance in the fulfilment of his/her basic living needs. The Rulebook on Medical Indications for retaining the rights on social protection prescribes the diseases that are the basis for exercising such right.

The right to placement into the institution of social protection and other family - the entitlement to be placed into an institution shall belong to: a child without parental care, children and youth with

physical, mental and sensor impairment and a child with social behaviour problems. The placement is administered through Social Welfare Centres.

### *Standard of living*

Aiming at establishing the rights to living standard, the Law on Social and Child Welfare prescribes the basic rights to child protection such as: the newborn allowance, the child allowance, the maternity leave pay, the child care allowance and entitlement to child rest and leisure (Article 43).

The newborn allowance - a parent shall be entitled to a newborn allowance for the supply of baby accessories for each newborn child. A parent may exercise the right to the benefit until the child reaches the age of one. The benefit shall be paid off in a lump sum of € 100 (Article 44).

The child allowance - the following children may qualify for entitlement to a child allowance: a child receiving a cash benefit, a disabled child who can be trained to develop skills for independent life and work, a disabled child who can not be trained to develop skills for independent life and work, and a child without parental care. A child shall be entitled to a child allowance after completing the age of 18 and undergoing regular secondary school education, until the end of the time limit set out for such education.

The maternity leave pay - An employed person shall be entitled to pay during maternity leave. The employee shall be rendered entitlement to such pay by the employer. A person working as an entrepreneur shall effectuate the entitlement to the benefit at the social welfare centre. The rate of the pay shall be equal to the wage the employee would receive for the position to which she/he is assigned. The pay rate can not be set at an amount lower than the lowest price of labour, in accordance with the law and General Collective Agreement.

The allowance for part-time work - Entitlement to the allowance due to intensive child care, that is, for taking care of a sick child shall be granted by the employer pursuant to the Law. A solely-employed entrepreneur shall receive the pay at the centre, in an amount equal to 50% of the base income for which taxes and contributions have been paid (Articles 58-61).

Rest and Leisure - Entitlement to rest and leisure shall belong to the child recipient of a cash benefit and to the child placed in an institution or in another family, for sports, leisure, cultural, entertainment and education activities. The entitlement of the person to rest and leisure shall be effectuated with their referral to a child holiday and leisure facility (Article 62).

## **EDUCATION, LEISURE AND CULTURAL ACTIVITIES**

### *Education, including vocational training and guidance*

Engaging in the overall reform system of education in 2000, Montenegro has defined as the key goal: "The new system of education must be compatible with the strategic development orientation and overall goals of the reform in Montenegro for the development of a democratic, economically prosperous and open society, based on the governance of law, peaceful interethnic coexistence, understanding and tolerance." (*"The Book of Changes", Ministry of Education and Science of Montenegro, Podgorica, 2001*).

The overall process of education reform is based on the basic principles that include: decentralization of the system, equal opportunities, making choice according to individual abilities and interests, application of a quality system, human resource development, life-long learning, flexibility, possibility of transfer and gradual introduction of changes (*"The Book of Changes", Ministry of Education and Science of Montenegro, Podgorica, 2001*).

The locations of the institutions within the territory of the Republic enables citizens the equal access in acquiring education, and citizens of Montenegro are equal in exercising the right to education regardless of the national affiliation, race, gender, language, religion, and social background and of other personal characteristics (the Law on General Education, Articles 8 and 9).

The preschool education in Montenegro has been regulated by the Law on Preschool Education and it is implemented as a part of unique educational system in Montenegro. This system includes all children until they enrol primary school.

The right to the primary education is defined by the Law on Primary Education and it shall be compulsory for all children from the age of 6 to 15. Parents or custodial body must ensure for their children to meet the compulsion of primary education which shall be considered completed after pupil's nine years long attending of primary school. The primary education shall last 9 years. For the purpose of the attaining of primary education in the school there shall not be any tuition fees.

The secondary school pupils in Montenegro may acquire general and vocational secondary education in secondary schools that are organised as grammar schools, secondary miscellaneous schools (simultaneously realising the grammar school curricula and secondary vocational education curricula) and secondary vocational schools. In each of the 21 municipalities in Montenegro the grammar and secondary vocational curricula are being realised in order to give the pupils the possibility to choose the secondary school.

### **CHILDREN IN SPECIAL SITUATIONS**

#### *Refugee child*

Article 44 of the Constitution of Montenegro stipulates that a foreign national reasonably fearing from persecution on the grounds of his/her race, language, religion or association with a nation or a group or due to own political beliefs may request asylum in Montenegro. A foreign national shall not be expelled from Montenegro to the place where, due to his race, religion, language or association with a nation he/she is threatened with death sentence, torture, inhuman degradation, persecution or serious violation of rights guaranteed by this Constitution. A foreign national may be expelled from Montenegro solely on the basis of a court decision and in a procedure provided for by the law.

The Law on Asylum sets out the principles, conditions and procedure for granting the asylum, recognition of the status of the refugee and assigning additional or temporary protection, rights and obligation of the asylum-seekers to whom the refugee status had been recognized and granted the additional or temporary protection, so as the reasons for termination and abolition of their status. These individuals are entitled to: residence and free movement, identification document proving the identity, passport for a foreigner for travelling abroad; free primary and secondary education founded by the state; providing accommodation if needed; health care; family reunion; social welfare freedom of religion; free access to the High Commissariat and non-governmental organisations for receiving assistance with the procedure of acquiring the asylum; humanitarian help.

The Directive on Financial Assistance for a person seeking the asylum, to whom is granted the refugee status and additional or temporary protection, prescribes the way of exercising the right to financial assistance and the amount of the monthly subsidy and one-time cash benefit. The financial assistance is set at the same amount as the one for Montenegrin nationals, beneficiaries of the family cash benefit.

#### *The rights of the child in armed conflicts, including the right to physical and psychological recovery and reintegration*

The Law on Defence sets out the working obligation for citizens to participate in the execution of specific activities and tasks that are important for the defence of the country during the state of emergency or war. The working obligation shall have all persons of working age, namely: man from 18 to 65 years old, and women from 18 to 60 years of life, who are not included into the military service.

The manner of organisation and fulfilment of the working obligation is regulated by the Government (Article 8).

The fulfilment of the working obligation can not be imposed to a citizen, without his/her consent, namely: to a parent of the child younger 15 years of age, to a person whose spouse is at the time under the military obligation, to a single parent who has a child younger than seven years of age, two or more children younger than 15 years of age or a child with disability and who, according to the competent health body, requires the home care and assistance; to a women during pregnancy, i.e. maternity – if the child is younger than 15 years; to a person whose spouse is a person with

disability and who, according to the competent health body, requires the home care and assistance; to a person who is incapable for work (Article 9).

### *Children in conflict with the law*

International standards, as a part of agreements and international documents from this area, are implemented in the Criminal Law of Montenegro on Juvenile Perpetrators of Criminal Acts and on Criminal Legal Protection of Minors (for example: Convention on the Rights of the Child and the European Convention on the Protection of Human Rights and Fundamental Freedoms, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, United Nations Guidelines for the Prevention of Juvenile Delinquency, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, United Nations Standard Minimum Rules for Non-custodial Measures, the European rules on community sanctions and measures, and other documents of the Council of Europe, to which our country is a member).

With respect to criminal sanctions, the Law affirms to the maximum possible extent the principle of education rather than punishment, emphasizing that the purpose of criminal sanctions, with respect to juveniles, is through supervision, providing protection and assistance, and through providing general and vocational training to foster the development and empowerment of personal responsibility of juveniles, education and adequate development of his/her personality and to reintegrate him/her in the society.

According to the Criminal Code a child shall be considered a person who has not completed the age of fourteen, a minor shall be considered a person who has completed the age of fourteen, but not the age of eighteen, while an underage person is a person who has not yet reached the age of eighteen (Article 142, paragraph 8, 9 and 10).

The special provisions that are applicable to juvenile criminal offenders shall be applied under special conditions to adults as well, if they are tried for the criminal offence they had committed when they were minors and, exceptionally, if they had committed the offence as young adults (Article 79). The Criminal Code prescribes also the rules for exception of criminal sanction for children, meaning the establishment of a minimum age under which criminal judicial organs can not be competent. According to this, sanctions can not be applied to a juvenile who at the time of the commission of a criminal offence was under the age of fourteen years (a child). Regarding the system of sanctions that can be inflicted to juveniles, it is prescribed the application of educational measures only for junior juvenile and only in exceptional cases a juvenile imprisonment can be applied. A suspended sentence and a judicial admonition may not be imposed on a juvenile. Educational measures, as a sort of criminal sanctions may be pronounced against junior juveniles, while a measure of juvenile imprisonment sentence may be pronounced exceptionally against senior juveniles. The purpose of educational measures and juvenile imprisonment is to ensure that by providing protection and help to juvenile criminal offenders by extending supervision over them, professional training and development of personal responsibility they provide for their education, rehabilitation and proper development. The purpose of a juvenile custody is also to exercise increased influence on juvenile offenders in order to prevent them from committing criminal offences as well as on other juveniles against committing criminal offences.

According to the Criminal Code to a juvenile criminal offender shall be applied the following educational measures:

Disciplinary measures: a reprimand and committal to a reformatory educational centre for juveniles.

Measures of intensive supervision: intensive supervision by parents, adoptive parents or a tutor; intensive supervision by tutelary authority and intensive supervision with daily stay in an appropriate institution for reformatory juvenile education.

Institutional measures: committal to an educational institution; committal to an educational – correctional home as well as to a special institution for medical treatment and professional training.

Educational measures of intensive supervision and institutional measures can last from six months to two years and the court can decide later on its termination in a successive procedure. A juvenile may stay from one to four years in an educational correctional home and in a specialized institution

for medical treatment and rehabilitation for maximum three years. The possibility of reconsideration of educational measures is also envisaged.

When imposing some of educational measures of intensive supervision, the court can determine one or more of the following obligations for a juvenile, if so needed for a successful accomplishment of the purpose of the pronounced measure (Article 9). When ordering the obligations, the court shall particularly inform the juvenile and his/her parents, adoptive parents or a foster parent that in case of failure to meet the obligations thereof the pronounced measure of intensive supervision can be replaced with some other educational measure. Pursuant to the Criminal Code the juvenile imprisonment can not last less than six months or exceed eight years. Exceptionally, for offences prescribed for which as a mildest penalty measure is a prison penalty of ten years, juvenile imprisonment up to ten years may be pronounced, and this penalty shall be pronounced in full years and months.

Senior juveniles serve juvenile imprisonment in specialized educational correctional institutions for juveniles in which they are allowed to stay by the age of twenty three years and if their serving of the penalty is not completed by that time, they are sent to a correctional institution/penitentiary intended for adults who serve their prison penalty. Exceptionally, a person is allowed to stay in an educational correctional institution for juveniles after having completed the age of twenty three years, if indispensable for the continuation of his/her education or professional training, but not after he/she has reached the age of twenty five years. A person on whom is imposed the penalty of juvenile imprisonment may be released on parole by a court of law from serving the penalty of juvenile imprisonment, if he/she served one third of the pronounced sentence, but not less than one year, and if it can be reasonably expected, based on the success achieved in correcting his/her conduct, that such a person shall behave correctly while at large and shall restrain from perpetrating criminal offences in the future.

One or more diversion orders can be pronounced for juvenile criminal offender for criminal offences for which is prescribed a fine or imprisonment of up to five years and they shall be pronounced by the court *ex officio* or upon motion of the competent State Prosecutor. The conditions for diversion orders applications are as follows: the confession of the criminal offence by the juvenile and his/her attitude towards the criminal offence and the victim; the purpose of diversion orders shall be to avoid instituting criminal proceedings against a juvenile or to discontinue the proceedings, i.e. to influence the proper development of the juvenile and strengthening of his/her personal responsibility by the administration of diversion order so that he/she does not commit criminal offences in future.

### *The right of the child to protection against labour exploitation*

Pursuant to the Labour Law the contract of employment may be concluded by a person meeting the general requirements and special requirements envisaged by this Law, secondary legislation and systematization act. General requirements are that a person must have 15 years of age and general health capacity. A disabled person, who has a health capacity to work on adequate jobs, may conclude a contract of employment under the conditions and in the manner determined by this Law, unless otherwise determined by a special law (Article 16).

Contract of employment may be concluded with a person younger than 18 years of age, with a written consent of a parent, adoptive parents or a foster parent, if such a work does not jeopardize his/her health, moral and education, or if such a work is not prohibited by law. A person younger than 18 years of age may conclude the contract of employment only on the basis of findings of the competent health body determining his capacity to perform the activities that the contract of employment is concluded for, and if such activities are not harmful for his/her health (Article 17).

Employee under the age of 18 can not work in a job position with prevailing hard physical labour, works under ground or water, or on activities that can have detrimental and increased risk effect on their health and life (Article 104). Work longer than full time hours or overnight work can not be assigned to an employee younger than 18 years of age. Working hours shorter than full time hours can be determined for the employee referred to in paragraph 1 of this Article by the employer-level collective agreement. On exceptional basis, an employee under 18 years of age can be assigned to work overnight, when it is necessary that the work interrupted by natural disasters is continued, i.e. to prevent damage to the raw materials or other material (Article 106).

The Criminal Code prescribes that a parent, adoptive parent, a custodian or any other person who by gross negligence of his/her duty to take care and bring up a minor he is obliged to take care of, neglects him/her shall be punished by an imprisonment sentence not exceeding three years. More indictable offence is if a parent, adoptive parent, custodian or other person who abuses a minor or forces him/her to excessive labour or labour not suited to his/her age or to mendicancy or for gain leads him into doing other acts detrimental for his/her development (Article 219).

The Law on Public Law and Order prescribes a penalty for a person who induces or forces a minor to mendicancy and he/she shall be punished by imprisonment from 30 to 60 days (Article 27).

### *The right of the child to protection against sexual exploitation and abuse*

Montenegro has ratified the international instruments that regulate the area of protection against exploitation and abuse: Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Convention on the Eradication of Human Trafficking and Exploitation and Prostitution of Others, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

The ratification of Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography implies the obligation for its implementation and harmonization with national legislation. According to this, the criminal legislation was amended and the Law on Family Violence Protection is drafted.

The Criminal Code, in chapter XVIII, prescribes criminal acts against sexual freedom. Article 206 incriminates sexual intercourse or an equal act with a child and prescribes a punishment of imprisonment of one to ten years. Article 211 incriminates the act of displaying pornographic materials: anyone who sells or displays to a child or by public displaying or in some other way makes available text, pictures, audio-visual or other objects of pornographic content or displays it to a pornographic show, shall be punished by a fine or an imprisonment sentence not exceeding six months. In the same way is incriminated the use of a child to produce pictures, audio-visual or other objects of pornographic nature or for a pornographic show.

In terms of protection of children against sexual exploitation other criminal acts from chapter XIX - criminal acts against marriage and family are also important. Article 216, paragraphs 1 and 2 - extramarital community with a minor - sets out that this criminal act is an act performed by a adult person who lives in such a community with a minor person but also the parent, adoptive parent or custodian who enables or induces the minor person to live with a adult person in an extramarital community. A qualified form of the criminal act exists if the act is committed for reasons of material gain, meaning if there is also an element of financial exploitation.

Incest is incriminated as a separate criminal act (Article 223). This criminal act is committed by an adult person who performs a sexual intercourse or an equal act with a minor with whom he/she is related in blood in direct line, or with a minor brother or sister.

The Law on Public Law and Order in the Article 24, paragraph 2, provides for 60 days of imprisonment for a person who ceded to minor premises in which to engage in prostitution.

### *Trafficking, sale and forced abduction*

The Criminal Code incriminates human, but child trafficking especially. Pursuant to the Article 444 anyone who by force or threat, deceit or keeping in delusion, by abuse of authority, trust, relationship of dependency, difficult position of another person or by keeping back identification papers or by giving or receiving money or other benefit for the purpose of obtaining consent of a person having control over another: recruits, transports, transfers, hands over, sells, buys, mediates in sale, hides or keeps another person for exploitation of work, submission to servitude, commission of crimes, prostitution or begging, pornographic use, taking away a body part for transplantation or for use in armed conflicts shall be punished by imprisonment for a term of one to ten years. More serious form of this offence shall be if the offence is committed to a juvenile

person. The Criminal Code sets out two additional offences: trafficking in children for the purpose of adoption (Article 445) and submission to slavery (Article 446).

### *The right of the child to protection against illegal use of narcotics and psychotropic substances*

Pursuant to the Law on the Produce and Process of Narcotics, production and processing of narcotics is allowed for medical, veterinary, educational, laboratory and scientific purposes on a basis of permission issued by a competent body. The Law also sets out the conditions for the production of these substances, the keeping of records and the actions by competent bodies in cases of seized narcotics.

The Criminal Code stipulates two criminal offences: 1) unauthorized production, keeping and releasing for circulation of narcotics 2) enabling the taking of narcotics. This Code incriminates anyone who unlawfully produces, processes, sells or offers for sale, or who for the purpose of selling buys, keeps or transports or mediates in the selling or buying, or in some other way unlawfully releases for circulation the substances or preparations pronounced to be narcotics (Article 300). Anyone who induces another to take narcotics or gives narcotics to another for his/her or someone else's use, or places at someone's disposal premises for taking the narcotics, or in some other way enables another to take narcotics shall also be sentenced. More indictable offence refers to a person who does such things against juveniles (Article 301).

### *Children members of minority groups*

The Constitution guarantees to persons belonging to minority nations and other minority communities the rights and freedoms, which they can exercise individually or collectively with others. Important for child rights are the following: the right to exercise, protect, develop and publicly express national, ethnic, cultural and religious particularities; the right to use their own language and alphabet in private, public and official use; the right to education in their own language and alphabet in public institutions and the right to have included in the curricula the history and culture of the persons belonging to minority nations and other minority communities; the right to establish educational, cultural and religious associations, with the material support of the state; the right to write and use their own name and surname in their own language and alphabet in the official documents; the right to information in their own language; the right to establish councils for the protection and improvement of special rights.

The Ministry of Culture, Sports and Media supports the realisation and promotion of the following programme activities of the minorities: printing magazines and books; translation of the literary and history books; presentation programs of folklore inheritance, tradition and customs; programs of cooperation with similar institutions and authorities in the countries of origin.

The Ministry of Human and Minority Rights, has organised, during past years, manifestations "Days of Minority Culture in Montenegro". These manifestations are good way to present a wide range of diversities of origin, language, history, religion, tradition, so as the overall material and spiritual achievements.

In the new curricula, conducted in the education reform, regarding the mother tongue, knowledge society, history, music and fine arts, to a considerable extent are built and integrated contents that represent the language, creativity, history and culture of minority nations in Montenegro. In the framework of the General Education Council, expert Committee for Education of National and Ethnic Groups is formed and tasked to study new curricula that are essential to preserve the identity of minority nations in Montenegro and returns the opinion to the Council.

For the realization of curriculum in Albanian language, which are being implemented in primary, secondary and higher education, the largest number of subjects is provided with textbooks in Albanian Language. For the subjects, that due to the small circulation, textbooks are not done in the Albanian language, so the relevant Council accepted the recommendation of the Committee for Education of National and Ethnic Groups and approved the use of textbooks from the region (Kosovo, Albania).

Exercising the principles of multiculturalism and ethnic tolerance in Montenegro, the new reformed educational curriculum contains a significant innovation, and it is their openness. These



amendments allow that schools and local communities can suggest and arrange 15% to 20% of the educational program in accordance with their needs and specificities.

Education of other minorities, especially Bosniaks, Muslims and Croats in Montenegro, is an integral part of a unified educational system, and implemented through the concept of common curriculum, because speaking the same language, is the part of a single language system. In addition to the integrated content of the respective regular curriculum, minority communities have an additional opportunity to propose and arrange for about 20% of the total content of curriculum, if those are of importance to their education and may be studied separately in accordance with their needs and closer interests.

Also, at the University of Montenegro, studies for teachers in Albanian language for the need of teachers' training are organized. Studies are established in accordance with the applicable standards of National Framework Qualification in higher education.

Within the scope of its work, the religious communities have the right to establish religious schools and homes for accommodation of its attendants. These schools are not part of the educational system of Montenegro, because they are directed by religious communities which define the curricula and engage educational staff for its realisation. Each religious community uses this right and possibility and organises the religious instruction in their premises.

Montenegro provides a part of the financial resources for exercising the right to information, without discrimination, guaranteed by the Constitution and the Law. In order to achieve these rights, Montenegro directs its financial resources to the programme contents in Albanian and other minority languages. The Law on Radio-Diffusion prescribes that "the broadcasting companies of public radio-diffusion services produce and broadcast programmes which are intended to all segments of the society, without discrimination, taking into special account the particular social groups like children and youth, ethnic minority groups . . . produce and broadcast programmes which express the cultural identity of national and ethnic groups; produce and broadcast programmes in mother tongue of the national and ethnic groups in the regions where they live...".

When it comes to informing of the national minority population in Montenegro through printed media, the greatest number of them is issued in Albanian language. There are also papers in Croatian ("Croatian Messenger"), Roma ("Informative Centre") and Bosnian languages ("Bosnian Newspapers", "The Forum").

The Radio of Montenegro, pursuant to the Law, regularly broadcasts the programmes in Albanian language. Those are exclusively information shows, prepared and realised by the Redaction in Albanian Language. Information of Roma people in Montenegro is realised through programmes of the public radio-diffusion service. The Radio of Montenegro broadcasts 24 transmissions dedicated to Roma people that last 30 minutes, and are bilingual. The transmissions are dedicated to Roma integration in Montenegro and they are prepared by journalists of Roma nationality who have completed the journalist school of the Institute for Media.

### **97. How is domestic violence treated in your legislation and in judicial practice?**

In Montenegro, the Constitution guaranties that family, mother and a child enjoy special protection. Parents shall be obliged to take care of their children, to bring them up and educate them, while the child shall be guaranteed to special protection from psychological, physical, economic and any other exploitation or abuse.

Confirming, more precisely, by ratifying The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child and the European Convention on the Protection of Human Rights and Fundamental Freedoms have become integral part of internal legislation which caused harmonisation of national legislation, inter alia, the issues regarding protection from violence in the family.

In this regard, the activities are undertaken to prepare the Law on Protection from Violence in Family, which will regulate the measures of protection against domestic violence, protection

measures, procedures for determining protection measures and other issues of importance for protection against domestic violence.

Applicable Family Law of Montenegro (Official Gazette of the Republic of Montenegro,01/07), within the part that regulates children rights, left the possibility that the court may, by its decision, separate the child from its parents in case of violence in the family. Also, in the case of domestic violence the court may decide on limiting the rights of the child to maintain personal relationships with the parent it is not living with.

Parents must not subject the child to humiliating actions and penalties that offend human dignity of the child and they are under an obligation to protect the child from such actions of other persons.

Custodial body shall give appropriate forms of assistance and support to parents and take the necessary measures to protect the rights and best interest of the child, on the basis of direct knowledge or notification.

Judicial authorities, other bodies, medical, educational and other institutions, non-governmental organizations and citizens shall notify custodial body as soon as they learn that a parent is unable to exercise parental right.

If justified by the interests of the child's custodial body shall warn the parents about omissions and failures in education and raising of the child and assists them to properly bring up the child, and can refer them to address, alone or with the child, a particular counselling centre, health, social, educational or other appropriate institution.

When parents need permanent assistance and guidance in exercising their parental rights and responsibilities, or when an explicit monitoring the situation and conditions in which the child lives is necessary, custodial body shall determine supervision over the exercising parental rights in respect of children or in respect of each child.

In an extra-judiciary procedure, the court may by its decision restrict the parental right to the parent who unconscientiously exercises the rights or duties towards the child.

The court shall deprive a parent the right to live with a child if he/she neglects to a larger extent the upbringing and education of the child or if there is a danger for properly raising a child due to family circumstances. The procedure for restricting the parental right is initiated by the court by the official duty upon a proposal of the custodial body, other parent or the child. Restriction of parental right is determined up to one year. Prior to expiry, the court shall investigate all circumstances of the case and to the best interest of the child through a new decision return the restricted right to the parents, prolong duration of the pronounced measure or pronounce another measure to protect the child's best interest.

A parent, who abuses the exercising of the parental right or neglects seriously the performance of parental duties, shall be deprived of the parental right.

Abuse of the right is present in particular if a parent: abuses the child in a physical, sexual or emotional manner, exploits the child by forcing it to excessive work or to work that threatens morality, health or education of the child, or the work which is forbidden by law: instigates the child to perpetrate criminal acts, develops bad habits and tendencies and the like.

Grossly neglect of the duty is present in particular if a parent: abandons the child or does not take care at all of the basic living necessities of the child he/she lives with; avoids to support the child or to maintain personal relationships with the child he/she does not live with; if deliberately and in an unjustified manner he/she avoids to create conditions for joint life with the child who is accommodated in social and child protection institution.

The decision on deprivation of parental rights shall be made by the competent court in an extra-judiciary procedure. If the custodial body learns that there is a danger of abuse of parental right or a danger of serious neglect of parental duties, it is under an obligation to take urgent measures to protect the personality, rights and interests of the child.

Neglecting or abusing a minor (Article 219), as well as violence in a family or a family community (Article 220), are treated as criminal acts against marriage and family and prescribed by the

Criminal Code of the Republic of Montenegro (Official Gazette of the Republic of Montenegro 70/03, 47/06 and Official Gazette of Montenegro 40/08).

A parent, adoptive parent, a guardian or any other person who by gross negligence of his/her duty to take care and bring up a minor he/she is obliged to take care of, shall be punished by an imprisonment sentence not exceeding three years.

A parent, adoptive parent, guardian or other person who abuses a minor or forces him/her to excessive labour or labour not suited to his/her age or to mendacity or for gain leads him/her into doing other acts detrimental for his/her development, shall be punished by an imprisonment sentence of three months to five years.

Anyone who by use of violence endangers physical or mental integrity of members of his/her family or family unit shall be sentenced to a fine or imprisonment for a term of up to one year.

If for the commission of this act any weapons, dangerous tools or other means suitable for inflicting heavy bodily injuries or for seriously impairing health are used, the perpetrator shall be sentenced to imprisonment of three months to three years, and if a heavy bodily injury is inflicted or health is seriously impaired or if such acts have been done to a minor, the perpetrator shall be sentenced to imprisonment of one to five years.

In case of a death of a member of a family or a family unit has been caused, the perpetrator shall be sentenced to imprisonment of three to twelve years.

Whoever violates protection measures against domestic violence the court imposed on him/her based on law, shall be sentenced to a fine or imprisonment for a term of up to six months.

### **98. Is there specific legislative protection for the rights of the elderly? Please explain.**

The Constitution (Official Gazette of Montenegro 1/07) as the highest legal act in Montenegro, in the "Economic, social and cultural rights and freedoms," stipulates that the state shall provide financial security of person who is incapacitated to work and has no funds for life (Article 67) and that a child, a pregnant woman, an elderly person and a person with disabilities shall have the right to health care from public revenues, if they do not exercise this right on some other grounds (Article 69).

In the Law on Health Care (Official Gazette of the Republic of Montenegro 39/04), Article 10 provides that the priority health care measures include health care (preventive and curative) of citizens over 65 years of age. The Law on Health Insurance (Official Gazette of the Republic of Montenegro 39/04), Article 17 states that the Government of the Republic of Montenegro shall establish scope prescribed by law and standards of health care in particular taking into account certain categories of persons among whom are persons older than 65 years of age. The same Law also stipulates (Article 61) that individuals over 65 years of age are not liable to personal participation in the cost of health care.

Family Law of Montenegro (Official Gazette of the Republic of Montenegro 1/07) in Article 178 foresees that an adult who has no capacity to take care for him/herself, his/her rights, interests and obligations shall be granted custody.

The Law on Social and Child Welfare (Official Gazette of the Republic of Montenegro.78/05), defines the basic benefits in the field of social welfare regarding elderly.

Rights to social protection that can make an old person are:

- The Family Cash Benefit;
- The Personal Disability Benefit;
- Home Care and Assistance Allowance;
- Placement in an Institution;
- Placement in a Foster Family;
- Healthcare;
- Coverage of Funeral Expenses, and

- The Lump Sum Cash Benefit.

### ***Family Cash Benefit***

The right to the Family Cash Benefit, as the basic right to social welfare, is a form of financial support, and a family or a family member may be entitled to it if he/she is incapacitated for work, or able to work, on condition regulated by this Law in accordance with the income and property. Persons over 65 years of age are considered incapacitated for work. Still, the Law states that every person is under an obligation to create conditions for satisfying life needs by its work, incomes and property, to contribute to preventing, eliminating or reducing social vulnerability, as well as the social vulnerability of its family members, especially children and other members who are not able to take care of themselves. The law also foresees that a person who is incapacitated of work can be supported by the relative, with whom he/she does not live with, but is legally liable to maintain him, in conformity with this Law, with previous verification of the ability of the relative to provide maintenance, if this liability is not determined by the court decision. Entitlement to a cash benefit may be granted to a family owning property, if it concludes a lifelong care agreement with the centre for social work.

### ***Personal Disability Benefit***

Entitlement to a Personal Disability Benefit shall belong to a person who has become incapacitated for independent life and work before reaching the age of 18. This is also a form of financial support.

### ***Home Care and Assistance Allowance***

Home Care and Assistance Allowance is also a form of financial support and entitlement shall belong to:

- the recipient of a cash benefit who is, due to old age or lasting health impairment, in need of permanent home care and assistance in the fulfilment of his/her basic living needs;
- the recipient of a personal disability benefit;
- a person with severe physical, mental or sensory hindrance in need of permanent home care and assistance in the fulfilment of his/her basic living needs.

The person may be awarded a home care and assistance allowance provided he/she has not acquired such benefit on any other grounds.

### ***Placement in an Institution and Placement in Other Family***

Pensioners and other adult person who are not able to live independently in their household or family, and who cannot be provided care in any other manner, due to housing, health, social or family conditions is entitled to be placed in an institution or in another family.

The cost of residence in an institution or in other family shall be born by the resident or relative who is required to support users and other legal or natural person who has assumed the payment of accommodation costs.

### ***Health Care***

Entitlement to Health Care shall be granted to elderly in case he/she is recipient of a cash benefit or of a personal disability benefit, or to a person placed in an institution or in another family, if such person does not exercise this right on any other grounds.

### ***Funeral Costs***

Persons over 65 years of age are entitled for coverage for funeral costs if he/she is recipient of a cash benefit or of a personal disability benefit, or if he/she is placed in an institution or in another family.

### ***Lump Sum Cash Benefit***

Entitlement to a Lump Sum Cash Benefit may be attained by a family or an individual in need of social care due to specific circumstances affecting their housing, financial or health conditions.

In Montenegro, a large number of households in village whose members are engaged in agriculture as their main occupation were not able to achieve the right to a retirement. Ministry of Agriculture, Forestry and Water Management of elderly benefits supports holders of agricultural holdings. An elderly benefit is provided for one spouse, if living in the village and engaged in agriculture, and has no other income. The right to elderly benefits is entitled to men over 65 and women over 60 years of age.

The State may provide other rights of social care in accordance with the material possibilities. A series of secondary legislation, adopted pursuant to this Law, in details regulates conditions and manner governing the exercise of the right.

The system of social protection of elderly persons will continue to be developed in accordance with the Strategy of Development of Social Care of Elderly.

### **99. Does specific legislative protection for the rights of persons with disabilities exist? Are there measures designed to ensure their independence and social and occupational integration? Please explain.**

The Constitution of Montenegro, in Article 68, guarantees special protection of the persons with disabilities (Article 68).

The rights of the persons with disabilities are part of general laws and secondary legislation that treat this area, as well as more specific laws regulating the issue of persons with disabilities, but also, this area is part of the Strategy for Integration of Persons with Disabilities for the period 2008-2016 adopted by the Government of Montenegro in 2007. This document was a result of partnership between governmental institutions, non-governmental sector dealing with the protection of persons with disabilities and international organizations from this area. The Strategy encompasses: health protection, social care and pension disability insurance, education, professional rehabilitation and employment, accessibility, culture, sports and recreation, as an area that relates to the position of organizations of persons with disabilities in civil society. The Strategy recognizes the measures and activities that should be undertaken in scheduled period so that the position of persons with disabilities in Montenegro is in conformity with European standards and standards regulated by the United Nations Convention on the Rights of Persons with Disabilities.

The Strategy envisaged Actions Plans, brought on every 2 years, so in accordance to that, the Government adopted the First Action Plan for 2008-09 that regulates priority activities, integrates the issue of disability in all sectors by using coherent policies and coordinated activities.

Ministry of Labour and Social Welfare has created the Working group tasked to monitor the implementation of action plans of the Strategy for Integration of Persons with Disabilities in Montenegro. Working group is consisted of the officials of relevant ministries, state bodies and representatives of several NGOs dealing with persons with disability. The task of the Working group is to monitors the implementation of activities under the Action plan and Strategy, to create an annual report on implementation of envisaged measures and by it to inform the Government of Montenegro and the wider public.

Overview of basic legislation for protection of persons with disabilities is in continuation:

- The health care in regard to persons with disabilities recognizes:
- Law on Health Care (Official Gazette of the Republic of Montenegro 39/04);
- Law on Health Insurance (Official Gazette of the Republic of Montenegro 39/04);
- Law on Protection and Exercise of the Rights of the Mentally Ill (Official Gazette of the Republic of Montenegro.32/05);

Rulebook on the manner and procedure for exercising the rights on medical supplements and aids (Official Gazette of the Republic of Montenegro.74/06 and Official Gazette of Montenegro 28/08).

According to the Law on Health Care, priority health care measures are health care of war veterans, military invalids, civil war invalids, their family members, and beneficiaries of veterans' allowance, as well as beneficiaries of social protection, in line with specific regulations, and health care of physically and mentally handicapped persons.

According to the Law on Health Insurance, war veterans, military invalids, civil war invalids, their family members, and beneficiaries of veterans' allowance are entitled to health insurance, if they are not otherwise insured.

The Law on Protection and Exercise of the Rights of the Mentally Ill defines the way of providing protection and exercise of the rights of the mentally ill, organization and implementation of protection, as well as provision of conditions for implementation of measures to protect these persons against discrimination.

The Rulebook on the manner and procedure for exercising the rights on medical supplements and aids defines indication for medical and technical aids, standards for materials of which have been made, expiry use periods, as well as conditions for producing of new aids prior the expiry of the period for its use and other issues of importance for exercises of the right to aids.

Social care and retirement disability insurance with regard to the persons with disabilities are recognized through:

- Law on Social and Child Welfare (Official Gazette of the Republic of Montenegro 78/05)),
- Law on Transport Benefits for Persons with Disabilities and for their Escorts (Official Gazette of the Republic of Montenegro 80/08),
- Law on Movement of Blind Person and Accompanied by Guide Dogs (Official Gazette of the Republic of Montenegro.18/08),
- Law on War Veterans and Disability Insurance (Official Gazette of the Republic of Montenegro.69/03 and 21/08),
- Law on Pension and Disability Insurance (Official Gazette of the Republic of Montenegro. 54/03, 39/04, 47/07 and Official Gazette of Montenegro 79/08);
- Law on Ratification of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol (Official Gazette of Montenegro, international treaties 2/09).

According to the Law on Social and Child Welfare, persons with disabilities are entitled to:

- The family cash benefit,
- The personal disability benefit,
- The allowance for home care and assistance,
- Placement in an institution,
- Placement in a foster family,
- The allowance for professional rehabilitation and vocational training,
- Healthcare,
- Coverage of funeral expenses,
- The lump sum cash benefit,
- The newborn allowance,
- The child allowance,
- The maternity leave pay,
- The child care allowance,
- Entitlement to child rest and leisure.

According to the Law on Transport Benefits for Persons with Disabilities and for their Escorts, a person with disabilities is entitled to transport benefit in highway and railway traffic in the territory of Montenegro. The right to transport benefit also has escort for the person with disabilities.

The Law on Movement of Blind Person and Accompanied by Guide Dogs foresees that the blind person with guide dog has a right to use travel means in public transportation and has free access to public places.

According to the Law on War Veterans and Disability Care, war veterans, family members of fallen soldiers, military invalids, civil war invalids, their family members, are entitled to the rights in cases of:

- disability or body impairment while performing military duties and other duties for the purpose of defence and security of the country;
- the death of a person while performing military duties and other duties in war for the purpose of defence and security of the country;
- the death of a person while performing military duties and other duties in peace for the purpose of preserving of sovereignty, territory, independence and constitutional order of Montenegro;
- disability or body impairment to the civilians in war and post-war period due to residual materials;
- the death of the beneficiary.

The Law on Pension and Disability Insurance recognizes the right to disability retirement for employees with considerable or significant physical impairment of minimum 75% due to changes in health condition caused by a work injury, occupational disease, and injury outside of work or illnesses that can not be eliminated by treatment or medical rehabilitation (Article 30).

The Law on Ratification of the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol understands the obligation of realisation of measures in terms of improving the situation of persons with disabilities in accordance with the above Convention.

Field of education, besides being treated in the Strategy for Integration of Persons with Disabilities in Montenegro, is also thoroughly elaborated in the Strategy for Inclusive Education in Montenegro.

Laws and secondary legislation that regulates this field are as follows:

- General Law on Education (Official Gazette of the Republic of Montenegro 64/02, 31/05 and 49/07),
- Law on Pre-school Education (Official Gazette of the Republic of Montenegro.64/02 and 49/07),
- Law on Primary Education (Official Gazette of the Republic of Montenegro 64/02 and 49/07),
- Law on High School (Official Gazette of the Republic of Montenegro.64/02 and 49/07),
- Law on Vocational Education (Official Gazette of the Republic of Montenegro.64/02 and 49/07),
- Law on Education of Children with Special Needs (Official Gazette of the Republic of Montenegro. 80/04),
- Rulebook on the criteria for determining the form and level of impairment, disorder or disturbance of children and youth with special needs and manner of inclusion in educational curricula (Official Gazette of the Republic of Montenegro 23/06).

In the General Law on Education, Articles 2 (paragraphs 6 and 7), 8 and 9 relate to children with special needs. Articles 9, 11, 14, 15, and 18 relate to the children with special needs in the Law on Pre-school Education. Within the Law on Primary Education, Articles 2 (paragraph 7), 9, 11 and 34 refer to the children with special needs. Articles 10 and 35 refer to the pupils with special needs in the Law on Grammar School. In the Law on Vocational Education there are articles 2, 9 and 10 that relate to the pupils with special needs.

All of these laws, in the broadest sense of the word, give space for inclusion and positively are affirming it. The Law on Education of Children with Special Needs especially follows the reform

solutions as well as recommendations and standards of European laws in this field. It recognises the need for inclusive education and presents a good basis for regulations that result from it and focus to the development of inclusive education.

Rulebook on the criteria for determining the form and level of impairment, disorder or disturbance of children and youth with special needs and manner of inclusion in educational curricula, which stems from Article 24 of the Law on Education of Children with Special Needs, regulates the basic criteria for direction into educational curricula.

Professional rehabilitation and employment of the persons with disabilities is regulated by the following laws:

- Law on Professional and Social Rehabilitation and Employment of Persons with Disabilities (Official Gazette of the Republic of Montenegro. 49/08);
- Law on Employment (Official Gazette of the Republic of Montenegro 5/02, 79/04, 29/05, 12/07, 21/08 and Official Gazette of the Republic of Montenegro.49/08).

According to the Law on Professional and Social Rehabilitation and Employment of Persons with Disabilities, these persons exercise the right to professional rehabilitation, job training and employment, in the manner and under conditions prescribed by Law, and in accordance with international conventions Professional rehabilitation, job training and employment are exercised in the open trade market and under special conditions.

The Law on Employment entitles allowance for the duration of temporary incapacity for work, established by regulations on health care and health insurance, while the incapacity lasts, but not after the expiry of these regulations, when the unemployed person refers to the assessment of disability.

Accessibility for persons with disabilities is regulated by following law and secondary legislation:

- Building and Construction Law (Official Gazette of Montenegro.51/08);
- Rulebook on providing accessibility of facilities to the persons with reduced mobility (Official Gazette of Montenegro 10/09).

Building and Construction Law proposes that new public buildings that are built in accordance with the provisions of this law shall provide persons with disabilities with adequate access and use.

The Rulebook on providing accessibility to facilities to the persons with reduced mobility, based on the European standards, determines unimpeded entrance, mobility, stay and work for persons with disabilities in public facilities, commercial and residential purposes.

Regarding the legislation that refers to culture, sports and recreation, it is important to note that the Ministry of Culture, Sports and Media in 2008 passed the Law on Culture, the Law on Cinematography and the Sports Law, which, among others things, created the legal conditions regarding the availability of cultural and sports facilities for people with disabilities.

With the aim of guaranteed right to access to information, Ministry of Culture, Sports and Media, within its competency, regularly implement the obligation of the State according to the Broadcasting Law which provides funds for co-funding the program content of the national public service Radio and Television of Montenegro of importance for informing a person vision and with hearing impairments.

Regarding the position of organizations of persons with disabilities in civil society, in relation to the legislation, it is important to emphasise that the new Decree on More Precise Criteria for Determination of Users and Manner of Distribution of Part of Income from Games of Chance is adopted. According to this Decree, amount of €1,179,965.00 has been granted for the projects related to persons with disabilities in 2008.



**100. Please indicate what steps have been taken to implement the European Social Charter since its ratification by the Montenegro.**

Montenegro renewed membership in the Council of Europe in May 2007 and assumed all rights and obligations arising from the membership, with which, among other commitments, commitment of confirmation of the Protocol amending the European Social Charter is determined.

Ministry of Labour and Social Welfare, as competent in this subject, has taken the adequate steps to coordinates the procedure in order to confirm above instrument.

In this regard, in November 2007 and November of 2008, after reception of Montenegro to the Council of Europe, the Ministry of Health, Labour and Social Welfare under the auspices of the Council of Europe – Secretariat of the European Social Charter, organised a seminar to closer acquaint governmental officials and Montenegrin professionals with the regulations of the Protocol amending the European Social Charter and thus gain insight into the benefits that the citizens of Montenegro will have after the ratification of this instrument.

Also, the same Ministry appointed its official for a member of the Governmental Committee of the European Social Charter of the Council of Europe who participates in the work of the Committee twice a year.

Activities in the process of confirmation continued, final selection of the members is conducted and drafting the Law on Confirmation of this instrument has started; the group for drafting the law, which have been working on the Draft text and submitted it to the opinion of the competent ministries in the Government of Montenegro, is formed. Draft of the Law on Confirmation of the Protocol amending the European Social Charter, the Government has established a 24 September 2009 and sent it to the Parliament of Montenegro on the adoption.

By post-access cooperation program between Montenegro and the Council of Europe and the Action Plan for Co-operation of Montenegro with the Council of Europe, which the Government adopted in January of 2008, the Protocol amending the European Social Charter is an instrument which is scheduled for confirmation in the Parliament of Montenegro, with a deadline 2008-2010, while the Work Program of the Government of Montenegro for 2009 plans to confirm it in the third quarter of this year.

### **Minority rights and the protection of minorities**

**101. Please provide statistics concerning the number of people belonging to ethnic, religious and linguistic minority groups in your country. Please indicate the source of these figures (census or other).**

A basic demographic characteristic of Montenegro is presence of a great mixture of different ethnic and religious communities in a relatively small area. Historical circumstances, such as the migration of population and ongoing wars in the distant past, often with changing boundaries, are the basic cause of the diversity of Montenegro.

During the period 1946-2003, the population censuses have been held for seven times in Montenegro, covering national structure (1948, 1953, 1961, 1971, 1981, 1991 and 2003). Census techniques differed from census to census, gradually are updated, so subsequent censuses have more systematic approach and more accurate data processing.

The last Population Census, households and dwellings, was held in the period from 1-15 November 2003. Unlike the previous censuses that included Montenegrin citizens temporarily working abroad and their family members (regardless of length of stay) as a permanent population, this Census in accordance with international recommendations and the Law on Census, included in permanent population Montenegrin citizens whose stay abroad is shorter than a year, as well as

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foreign citizens in Montenegro who are working or staying as family members in Montenegro more than a year.

Also, it should be noted that the last census was taken specifically into account that, in areas where members of minorities make up a majority or a significant portion of population, enumerators were from the ranks of minorities. Information on national and religious composition of the population in the Census 2003 was collected on the basis of free expression of population. According to the Article 34 of previous Constitution, citizens were guaranteed full freedom of expression on national and religious affiliation. According to the same article, a citizen had the right not to declare on this issue.

### Population by nationality<sup>1</sup>

No.	National belonging	2003	
		Number of nationals	Percentage
1.	Montenegrins	267 669	43.16%
2.	Serbs	198 414	31.99%
3.	Yugoslavians	1 860	0.30%
4.	Albanians	31 163	5.03%
5.	Bosniaks	48 184	7.77%
6.	Egyptians	225	0.04%
7.	Italians	127	0.02%
8.	Macedonians	819	0.13%
9.	Hungarians	362	0.06%
10.	Muslims	24 625	3.97%
11.	Germans	118	0.02%
12.	Roma	2 601	0.42%
13.	Russians	240	0.04%
14.	Slovenians	415	0.07%
15.	Croats	6 811	1.10%
16.	Others	2 180	0.35%
17.	Not declared	26 906	4.34%
18.	Regional conformity	1 258	0.20%
19.	Unknown	6 168	0.99%
<b>TOTAL</b>		<b>620 145</b>	<b>100%</b>

### Number and percentage share of minorities in municipalities<sup>2</sup>

<sup>1</sup> Data of the Statistical Office -MONSTAT

<sup>2</sup> Census of population, households and dwellings 2003; Data-MONSTAT

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No.	Municipality	Bosniaks		Albanians		Muslims		Croats		Roma	
		No.	%	No.	%	No.	%	No.	%	No.	%
1.	Andrijevica	0	0	0	0	8	0.14	2	0.03	0	0
2.	Bar	919	2.30	3 046	7.61	2 575	6.43	259	0.65	56	0.14
3.	Berane	5 662	16.15	36	0.10	2 301	6.56	46	0.13	119	0.34
4.	Bijelo Polje	11 377	22.63	31	0.06	7 936	15.78	45	0.09	133	0.26
5.	Budva	24	0.15	55	0.35	204	1.28	178	1.12	39	0.25
6.	Danilovgrad	1	0.01	7	0.04	58	0.35	46	0.28	5	0.03
7.	Zabljak	0	0	0	0	1	0.02	2	0.05	0	0
8.	Kolasin	1	0.01	1	0.01	32	0.32	11	0.11	0	0
9.	Kotor	16	0.07	76	0.33	106	0.46	1 762	7.68	48	0.21
10.	Mojkovac	9	0.09	2	0.02	14	0.14	4	0.04	0	0
11.	Niksic	148	0.20	28	0.04	695	0.92	132	0.18	335	0.44
12.	Plav	6 809	49.32	2 719	19.70	788	5.71	4	0.03	0	0
13.	Pluzine	0	0	0	0	1	0.02	1	0.02	0	0
14.	Pljevlja	1 865	5.21	8	0.02	2 913	8.14	16	0.04	0	0
15.	Podgorica	2 307	1.36	9 296	5.50	4 399	2.60	709	0.42	1 389	0.82
16.	Rozaje	18 628	82.09	1 008	4.44	1 510	6.65	4	0.02	15	0.07
17.	Tivat	37	0.27	144	1.06	156	1.14	2 663	19.54	20	0.15
18.	Ulcinj	297	1.46	14 638	72.14	681	3.36	77	0.38	115	0.57
19.	Herceg Novi	79	0.24	25	0.08	220	0.67	798	2.42	198	0.60
20.	Cetinje	5	0.03	43	0.23	22	0.12	49	0.27	129	0.70
21.	Savnik	0	0	0	0	5	0.17	3	0.10	0	0

### Population by religion<sup>3</sup>

No.	Religion	Number	Percentage share
1.	Islamic	110 034	17.74%
2.	Judaism's	12	0.002%
3.	Catholic	21 972	3.54%
4.	Orthodox	460 383	74.28%
5.	Protestant	383	0.06%

<sup>3</sup> Census of population, households and dwellings 2003; Data-MONSTAT

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6.	Pro-oriental cults	58	0.009%
7.	Other religions	2 424	0.39%
8.	Not declared	13 867	2.24%
9.	Not a believer	6 003	0.97%
10.	Unknown	5 009	0.81%
<b>TOTAL</b>		<b>620 145</b>	<b>100%</b>

### Population by mother tongue<sup>4</sup>

No.	Mother tongue	Number	Percentage share
1.	Serbian	393 740	63.49%
2.	Montenegrin	136 208	21.96%
3.	Albanian	32 603	5.26%
4.	Bosnian	14 172	2.28%
5.	Bosniak	19 906	3.21%
6.	Hungarian	255	0.04%
7.	Roma	2 602	0.42%
8.	Slovenian	232	0.04%
9.	Croatian	2 791	0.45%
10.	Other languages	3 101	0.50%
11.	Not declared, and unknown	13 902	2.24%
12.	<b>TOTAL</b>	<b>620.145</b>	<b>100%</b>

**102. How and to what extent are the rights of minorities respected and protected? Please give an overview on the constitutional and legislative provisions to this effect as well as on the strategic and policy tools adopted for the implementation.**

### 1. Normative Framework of Protection of Minority Rights

The Constitution of Montenegro, in Article 6 guarantees the protection of human rights and freedoms, as inviolable categories; in Article 7 stipulates the prohibition of infliction of hatred or hostility on any grounds, while the Article 8 prohibits any form of discrimination, as a general precondition for the exercise of all human rights and freedoms. More precisely, Article 8 guarantees the prohibition of any direct or indirect discrimination on any ground, and also stipulates that regulations and introduction of special measures aimed at creating the conditions for the exercise of national, gender, and overall equality and protection of persons who are in unequal position on any grounds, shall not be considered discrimination. Special measures may be applied

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<sup>4</sup> Census of population, households and dwellings 2003; Data-MONSTAT

only until the achievement of the aims for which they were undertaken, which leaves space for the establishment of additional mechanisms for the protection and promotion of minority rights, and integration of minorities to preserve their uniqueness. In addition to national legislation, which guarantees respect for human rights and fundamental freedoms and rights of minorities; Montenegro by the provision of Article 9 of the Constitution, states that the ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall apply directly when they regulate relations differently than the national legislation.

In addition to the basic human rights and freedoms, in order to protect the overall national identity, Montenegrin Constitution and laws provide minorities in Montenegro for special rights. The Constitution, in Articles 79 and 80, guarantees rights and freedoms of minority nations and other minority national communities, which they can exercise individually or collectively with others, and prohibits the assimilation of the persons belonging to minority nations and other minority national communities; and the state is obliged to protect the persons belonging to minority nations and other minority national communities from all forms of forceful assimilation.

The Constitution guarantees special – minority rights, as follows:

- the right to exercise, protect, develop and publicly express national, ethnic, cultural and religious particularities;
- the right to choose, use and publicly post national symbols and to celebrate national holidays;
- the right to use their own language and alphabet in private, public and official use;
- the right to education in their own language and alphabet in public institutions and the right to have included in the curricula the history and culture of the persons belonging to minority nations and other minority national communities;
- the right, in the areas with significant share in the total population, to have the local self-government bodies, state and court bodies carry out the proceedings also in the language of minority nations and other minority national communities;
- the right to establish educational, cultural and religious associations, with the material support of the state;
- the right to write and use their own name and surname in their own language and alphabet in the official documents;
- the right, in the areas with significant share in total population, to have traditional local terms, names of streets and settlements, as well as topographic signs written also in the language of minority nations and other minority national communities;
- the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action;
- the right to proportionate representation in public services, state bodies and local self-government bodies;
- the right to information in their own language;
- the right to establish and maintain contacts with the citizens and associations outside Montenegro, with whom they have common national and ethnic background, cultural and historic heritage, as well as religious beliefs;
- the right to establish councils for the protection and improvement of special rights.

These constitutional guarantees are particularly elaborated by a series of special laws, especially the Law on Minority Rights and Freedoms, which in a closer way organises set of minority rights and mechanisms for protection of these rights. The Law relates to the preservation of national identity of minorities, i.e., protection of minority assimilation as well as enabling the effective participation of minorities in public life. The Law includes following areas of importance for the preservation of identity and providing equal opportunities for minorities:

- with preferential non-discriminatory relations, the rights of expression, storage, development, transferring and public expression of national, linguistic, ethnic, cultural and religious identity, are given;

- the possibility to establish institutions, societies, associations, non-governmental organizations in all areas of social life, as well as financial support of these organizations provided by the State;
- free choice and use of name and surname, and to enter these names in the official documents in their own language and alphabet;
- regulation of the free and official use of languages and alphabet;
- access to information and media and program contents of minorities represented in public services;
- education in their own language and alphabet and the appropriate representation of the content in the curricula and the principles of affirmative action in enrolment policy;
- the use of national symbols and the celebration of important dates and individuals from their traditions and history;
- free association and exercise of free contacts with compatriots outside the borders of Montenegro;
- political participation of minorities in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units;
- proportional representation in public services, state authorities and local self-government units;
- protection mechanisms for interfering in matters of vital interest for the life of minorities, both at state and local level;
- expression of their requests through the possibility of forming minority councils with special authorities;
- the establishment of the Fund for minorities for providing financial assistance to the Government aimed to maintain national particularities;
- protection of the aforementioned rights through national and international legislation.

The Criminal Code provides criminal sanctions for acts which deprive or restrict the rights of minorities, namely:

### Article 158

Anyone who, contrary to the regulations governing the use of language and alphabet of nations or members of national and ethnic groups living in Serbia and Montenegro denies or restricts to citizens the use of their mother tongue or alphabet when exercising their rights or addressing authorities or organizations, shall be sentenced to a fine or imprisonment not exceeding one year.

### Article 159

(1) Anyone who, due to national affiliation or affiliation to an ethnic group, race or confession, or due to absence of such an affiliation or due to differences in political or other beliefs, gender, language, education, social status, social origin, property or other personal status denies or restricts the human rights and the rights of citizen prescribed by the Constitution, laws or other regulations or general enactments or recognized by international treaties or, on the grounds of such differences, grants privileges or exemptions, shall be sentenced to imprisonment not exceeding three years.

(2) Should the act referred to in Paragraph 1 of this Article be committed by a person acting in an official capacity while performing his/her duties, he/she shall be sentenced to three months to five years of imprisonment.

### Article 160

(1) Anyone who prevents other persons to express their national or ethnic affiliation or culture shall be sentenced to a fine or imprisonment not exceeding one year.

(2) Sentenced to the punishment referred to in Paragraph 1 of this Article shall also be every person who coerces other person to declare his/her national or ethnic affiliation.

(3) Should the act referred to in Paragraphs 1 and 2 of this Article be committed by a person acting in an official capacity during performance of his/her duties, that person shall be sentenced to imprisonment not exceeding three years.

### Article 370

(1) Anyone who causes and spreads national, religious or race hatred, divisions or intolerance among people, national minorities or ethnic groups living in Montenegro, shall be punished by imprisonment for a term of six months to five years.

(2) If an act as of Paragraph 1 of this Article is done by coercion, maltreatment, endangering of safety, exposure to mockery of national, ethnic or religious symbols, by damaging other person's goods, by desecration of monuments, memorial-tablets or tombs, the offender shall be punished by imprisonment for a term of one to eight years.

(3) Anyone who commits an act referred to in Paragraphs 1 and 2 of this Article by abusing his/her position or authorities or if as the result of these acts riots, violence or other severe consequences for the joint life of people, national minorities or ethnic groups living in Montenegro occur, shall be punished for an act as of Paragraph 1 of this Article by an imprisonment sentence for a term of one to eight years, and for an act as of Paragraph 2 by imprisonment of two to ten years.

### Article 426

Anyone who with the intention of partially or completely destroying a national, ethnical, racial or religious group issues orders for commission of murder or infliction of heavy bodily injuries or serious harm to physical or mental health of group members, or placement of the group under such living conditions so as to bring about complete or partial extermination of the group, or taking of measures with which to prevent reproduction among group members, or forced displacement of children into another group, or who commits one of the stated crimes with the same intention, shall be liable to imprisonment for a minimum term of five years or a prison sentence of forty years.

### Article 427

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

## **2. Field of Minority Rights Protection**

### **2.1. Education**

Education policy in Montenegro is based on the principles of democracy, respect for civil and human rights and ensuring equal opportunities for all. Imperative for Education System Reform in Montenegro is to achieve quality education for all. In accordance with the current socio - economic changes and the tendency of globalization and the abolition of boundaries, schools should prepare young people for a life in a multicultural Europe and a democratic society.

“The Book of Changes” has been published in Montenegro in 2001, which is the basic document containing the goals and guidelines underlying the reform of the educational system in Montenegro. After that, a set of laws in the field of education and upbringing is adopted, namely:

- General Law on Education,
- Law on Pre-school Education,
- Law on Primary Education,
- Law on Grammar School,
- Law on Vocational Education,
- Law on Adult Education,
- Law on Higher Education,
- Law on Education of Children with Special Needs,

- Law on School Inspection, and
- Law on Scientific and Research Activities.

Law on the Recognition and Evaluation of Educational Documents was adopted by the Parliament of Montenegro on 26 December 2007. This Law shortened the time period of evaluation of educational documents, significantly reduced the amount of evaluation process, reverse the existing barriers in the process of evaluation, while the cooperation with ENIC centres in the region dealing with this issue is established. In Montenegro, within the TEMPUS program, the Centre that exchanges the necessary information in the region is opened. Now, it is very easy to check the curricula of individual faculty profiles and compare them to the existing curricula in Montenegro. This is a great relief for all citizens who want to make evaluation of their educational documents, as well as for minorities.

General Law on Education ensures access and equality of all citizens in the acquisition of education. The locations of the institutions within the territory of Montenegro enable citizens the equal access in acquiring education and upbringing. Regardless of the national affiliation, race, gender, language, religion, and social background and of other personal characteristics, all citizens of Republic shall be equal in the exercising of the right of education.

In addition, the abovementioned Law and other laws in the field of education, provide, among others, the following aims of education and upbringing: development of the awareness, the need and the capabilities for the maintenance and the improvement of human rights, legal state, and natural and social environment, of multiethnic and diversity; development of the awareness on national affiliation, culture, history and tradition; providing primary education to all citizens; ensure respect for national values of history and culture, as well as respect for cultural and other particularities of other nations; development of democratic attitudes, tolerance and cooperation (in and out of school) and respect the rights of others; development of mutual tolerance, respect of diversity, cooperation with others, respect for human rights and fundamental freedoms, and thus development of the skills for living in a democratic society.

Law on Higher Education in Article 7, stipulates that in exercising the right to higher education no discrimination is allowed on any grounds such as gender, race, marital status, colour of skin, language, religion, political or other beliefs, national, ethnic or other origin, belonging to a national community, material status, disability, birth, or on similar grounds, position or circumstances. Article 6 paragraph 2 of the Rulebook on the Content and Form of Diploma and Diploma Supplement, keeping register of students and records of diplomas issued by the University and other higher education institutions, stipulates that, when education is performed in a minority language, i.e. a foreign language, diploma shall be published in that language, as well. Academic staff is guaranteed freedom of thoughts, ideas, test of acquired knowledge, and provides freedom of organization and association and protection of academic staff from discrimination on any ground.

Curricula and history textbooks for primary and secondary schools are significantly innovated and upgraded in the last four years. Most of the objections, previously received from the various relevant structures, have been moved. In the process of creating new curricula and textbooks, continued improving care to minorities is a key contribution to strengthening the civic and multicultural concept of the State of Montenegro.

School Inspection of the Ministry of Education of and Science is responsible for supervising the implementation of the provisions of laws from the field of education, and thus for the eventual violation of the provisions relating to the rights of minorities.

Ministry of Education and Science of Montenegro seeks to establish a new reformed system of education which will enable a larger number of children to better upbringing and education. In this respect, it is especially important to provide teaching in mother tongue and teaching of history and culture, to guarantee equal access and the right to education of every individual, regardless of gender, social and cultural background, religion and national affiliation.

Civic education programs that are being implemented, develop better communication between children and adults, contribute to the understanding and respect for diversity and promote equal rights for all.



Education of minority nations and other minority national communities is an integral part of the overall State education system that takes into account the specificity of national minorities and guarantees them the possibility of education in their mother tongue while preserving their national and cultural identity.

In the new curricula, conducted in the education reform, regarding the mother tongue, knowledge society, history, music and fine arts, to a considerable extent are built and integrated contents that represent the language, creativity, history and culture of minority nations in Montenegro.

In the framework of the General Education Council, expert Committee for Education of National and Ethnic Groups is formed and tasked to study new curricula that are essential to preserve the identity of minority nations in Montenegro and returns the opinion to the Council.

For the realisation of curriculum in Albanian language, which are being implemented in primary, secondary and higher education, the largest number of subjects is provided with textbooks in Albanian Language. For the subjects, that due to the small circulation, textbooks are not done in the Albanian language, so the relevant Council accepted the recommendation of the Committee for Education of National and Ethnic Groups and approved the use of textbooks from the region (Kosovo, Albania).

Exercising the principles of multiculturalism and ethnic tolerance in Montenegro, the new reformed educational curriculum contains a significant innovation, and it is their openness. These amendments allow that schools and local communities can suggest and arrange 15% to 20% of the educational program in accordance with their needs and specificities.

Education of other minorities, especially Bosniaks, Muslims and Croats in Montenegro, is an integral part of a unified educational system, and implemented through the concept of common curriculum, because speaking the same language, is the part of a single language system. In addition to the integrated content of the respective regular curriculum, minority communities have an additional opportunity to propose and arrange for about 20% of the total content of curriculum, if those are of importance to their education and may be studied separately in accordance with their needs and closer interests.

Learning mother tongue and other languages, i.e. reading literary texts of national literature and literature of other nations, develop students' feelings of cultural identity and sense of respect and tolerance towards other nations and their culture. Significant innovations in the education reform are new educational curriculum for the history as a subject for primary and secondary education. These curricula respect the historical facts and all the contents that have elements of national enthusiasm, and are offensive to other people, are removed.

In Montenegro, in accordance with the Constitution and law, schools that teach in the Albanian language are part of a unified school system. Teaching in the native Albanian language in areas were significant share in total population are members of the Albanian national community, is organised by levels:

- pre-school education,
- primary education and
- secondary education.

Also, at the University of Montenegro, studies for teachers in Albanian language for the need of teachers' training are organised. Studies are established in accordance with the applicable standards of National Framework Qualification in higher education.

- As for pre-school institutions – teaching in the Albanian language is organised in the municipalities of Podgorica and Ulcinj;
- As for primary schools, teaching in the Albanian language is organised and carried out in 5 municipalities: Ulcinj, Bar, Podgorica, Plav and Rozaje. During the school year 2005/06, teaching classes were attended by 3,458 pupils or 4.7% of the total population of pupils in the primary education of Montenegro.
- As for secondary education, teaching in the Albanian language is organised in three municipalities: Ulcinj, Podgorica and Plav. This teaching process was attended by 1,062

pupils in the school year 2005/06, or 3.34% of the total pupil population of secondary education in Montenegro.

Article 17 paragraph 1 of the Law on Minority Rights and Freedoms stipulates that minorities and their members have the right to establish educational and training institutions. In school year 2006/07, the first private grammar school "Drita" in the Albanian language was founded and started its operation in Ulcinj. Grammar school "Drita" is licensed by the Ministry of Education and Science and performs publicly valid educational curriculum adopted by the competent General Education Council.

Article 14 of the Law on Minority Rights and Freedoms defines that the class that carry out teaching in minority languages and alphabet can be found for less number of pupils than the number specified for that institution, but the number can not be less than 50% of the number of pupils anticipated with the regulations in the field of education. Principal of public educational institution, which has the need of using a lowered level for opening of the minority linguistic classes, addresses the Ministry of Education and Science which, according to the legal possibilities, approves establishment of the class. Until now, there were such cases that the Ministry of Education and Science approved.

In accordance with Article 114 paragraph 2 of the General Law on Education, in schools that carry out the teaching process in the language of the members of national and ethnical group, the pedagogical records shall be kept both in the language that is in the official use and in the language of the members of national and ethnical group as well.

The provisions of Article 115 paragraph 3 of the General Law on Education, provides that in school, in which the teaching process is carried out in the language of national or ethnical groups, public documents shall be issued both in the language that is in the official use and in the language of the national or ethnical groups.

Croatian minority in Montenegro, which is mainly populated in the Bay of Kotor, received approval from the Ministry of Education and Science to organise additional classes teaching the Croatian language, which is realised. With the financial assistance provided by the "Matica Hrvatska", the teacher of Croatian language has been found, and he/she gives lessons through the course to the pupils from the municipalities of Tivat and Kotor. Primary school in Tivat donated space for this purpose. This course is not a part of formal education.

In 2001, the Government of Montenegro has adopted the Decision on Admission of Students from the Minority Groups who meet the requirements for enrolment, but not in the quota of students for enrolment. Student from the minority groups, who meets the general conditions for entry of desired faculty, but not in the quota of students for admission, addresses to the Ministry of Human and Minority Rights. Ministry, using the mechanism of the aforementioned Decision, refers the letter to the Rector and faculty deans with the names of the students who were addressed. Having consideration for the autonomy of the university, and after examination of options, Dean of the Faculty has exclusive right to additionally, according to this principle, enrol students from the minority groups. Past practice has shown full understanding of the deans.

### **2.2. Culture**

General obligation of the State for the preservation and taking care of cultural heritage in Montenegro has been raised on higher level by the fact that its structure is multiethnic and multi-confessional. In that way, in Montenegro, beside pointing out the positive obligation of the State, the wider social sensitivity towards the need for preservation of cultural heritage and memorial fund of Montenegro, with all its cultural, ethnic and ethnologic diversities as a general values has been encouraged.

Generally speaking, with regard to the cultural identity of minority corpus it can be stated that international standards have been applied and problems are not such expressed due to the fact that the minority cultural heritage is a part of unique cultural heritage of Montenegro. Likewise, it is visible that the public service broadcasts more qualitative contents representing the culture and cultural heritage of minorities.

In line with objective political, social and economic opportunities we are working, more than a decade in Montenegro, on the implementation of international, developing and national mechanisms of minority protection, in particular emphasising civil and multicultural concept of Montenegrin state policy in the area of culture. This is the orientation of previous and the current Government. In addition, the unique orientation of all relevant social subjects is that the process of definition of national cultural policy does not make sense without responsible thinking about minorities and their participation in it.

When it comes to the area of culture and art, Montenegro adopted the Law on Culture (Official Gazette of Montenegro 49/08) that prescribes the principles of achievement of the culture on the basis of freedom of creativity and respect for the right to culture, with equal preservation of all cultural identities and respect for cultural diversities. The same law stipulates the obligation of the State to create conditions for equal development of culture on the whole territory of Montenegro, as a matter of public interest.

While providing material basis for the promotion and development of cultural and artistic creativity the Ministry of Culture, Sports and Media provides financial assistance to the creative potential for minorities and their members, through internal rules and criteria, and in that way encourages the presentation and development of their cultural identity, tradition and cultural heritage.

In this way the Ministry supports the realisation and promotion of the following program activities of minorities:

- issuing of journals and books,
- translation of works from the field of literature and history,
- programs of presentation of folklore heritage, tradition and customs,
- programs of cooperation with similar institutions and countries of origin.

Laws from the area of protection of cultural monuments do not specially treat the issue of minority rights since the cultural heritage of Montenegro is multicultural and diverse itself, and equally treated as a common heritage of all citizens of Montenegro. Thus, the cultural space of Montenegro is characterised in the multi-cultural manner in the widest range, and through the diversity of registered and legally protected cultural monuments the history of this area is being written, and they represent the material proof of multicultural milieu of Montenegro. The cultural monuments in Montenegro are protected in a unique way in Montenegro, through legislative and institutional framework. Very important segment of cultural heritage of Montenegro belongs to the sacral architecture and is consisted of monastery complex, churches, mosques of all national groups. This part of cultural heritage consists of 205 monument units of all three confessions (Orthodox, Catholic, Islamic).

The Government of Montenegro adopted the Decision on Establishment of the Centre for Preservation and Development of Minority Culture. The managing Board has been appointed, the space and material and technical means have been provided, the director has been appointed and this important institution for the preservation and development of the minority culture has started its work at the beginning of 2009. Mandate in the area of culture belongs also to the minority councils, in particular through the establishment of their organisational forms, that encourage theatrical, musical, literary and art programs.

Starting from the main assumption that the inter-culturality and diversity represent the social values that should be cherished and promoted, the Ministry of Human and Minority Rights have organised the manifestation "Days of Minority Culture in Montenegro". This manifestation presents, in a good manner, wide range of diversities of the origin, language, history, confession, tradition, and total material and spiritual achievements. This manifestation consists of art exhibitions, literary evenings, presentation books, organises concerts of folk plays and songs, organisation of round tables etc. So far the manifestation has been organised six times in Podgorica, Tivat, Ulcinj, Rožaje, five times in Bijelo Polje, Tuzi and Kotor, and six times in Tivat, Tuzi, Bar and Plav.

### **2.3. Information**

In Montenegro, the right to information of minority nations and other minority national communities is regulated by the Constitution of Montenegro and laws – Law on Media, Broadcasting Law and Law on Public Broadcasting Services of Montenegro, at the level of standards contained in the international documents on human rights and freedoms.

The Constitution of Montenegro (Official Gazette of Montenegro 1/07) guarantees the right to freedom of expression and freedom of press (Articles 47 and 49), and the right of persons belonging to minority nations and other minority national communities are additionally guaranteed, in the Section 5 – Special minority rights (Article 79), with the right to information in their own language.

The Law on Media (Official Gazette of the Republic of Montenegro 51/02) stipulates that “Montenegro provides for and guarantees the freedom of information at the level of standards contained in international documents on human rights and freedoms” (UN, OSCE, Council of Europe, EU), as well as that “This law shall be interpreted and applied in accordance with the principles of European Convention of Human Rights and Freedoms, with the use of practice of precedent law of the European Court for Human Rights“ (Article 1). In addition, “Montenegro guarantees the right to free foundation and work of media based on the freedom of expression of thoughts, freedom of research, collection, dissemination, publishing and receiving of information, free access to all sources of information, protection of persons personality and dignity, and free flow of information“ (Article 2). The Article 23 of the same Law „prohibits the issuance of information and opinions that encourage discrimination, hatred or violence against persons or group of persons due to their belonging to the certain race, religion, nation, ethnical group, sex or sexual orientation.”

In addition, this Law stipulates that “the state provides for certain amount of funds for the achievement of rights of citizens guaranteed by the Constitution and the right to information, without discrimination. For the purposes of achievement of those rights, the state allocates funds for program contents in Albanian language and languages of other national and ethnic groups“(Article 3).

The Broadcasting Law (Official Gazette of the Republic of Montenegro 51/02) stipulates that “emitters of public broadcasting services create and broadcast programs designed for all segments of the society, without discrimination whatsoever, specially taking into account specific social groups such as children and youth, minority ethnic groups....create and broadcast programs expressing cultural identities of national and ethnic groups, create and broadcast programs in mother tongue of national and ethnic groups on the territory they live in...” (Article 95).

The Law on Public Broadcasting Services of Montenegro (Official Gazette of Montenegro 79/08) stipulates the obligation of RTCG (Public Service of Montenegro) “to, while applying high standards of professional ethic and quality, regardless of any form of discrimination and social diversity, creates and broadcasts program contents that are...dedicated to all segments of a society, specially taking into account ... persons belonging to minorities and other minority national communities;....contribute to the respect and promotion of fundamental human rights and freedoms...” (Article 9). This Law stipulates that the Council of RTCG, within its competences, appoints and acquits the Commission for program content in Albanian language and languages of other persons belonging to minority nations and other minority national communities (Article 22, point 16).

Law on Minority Rights and Freedoms (Official Gazette of the Republic of Montenegro 31/06, 51/06 and 38/07) stipulates the series of obligations of state and other bodies in the implementation of regulations with regard to minority rights and freedoms in different areas. In the field of information it is stipulated that “minorities and members of minorities are provided with the freedom of information at the level of standards contained in international documents on human rights and freedoms. Members of minorities are entitled to the right to free foundation of media and free work based on the freedom of expression of opinions, research, collection, dissemination, publishing and receiving of information, free access to all sources of information, protection of person’s personality and dignity and free flow of information” (Article 12).

Ministry of Culture, Sports and Media, as the administration body that is, among others competent for the information system in Montenegro, dedicates special attention to the issues that are of significance for the achievement and promotion of rights to information of members of minority nations and other minority communities in their own language. Within its competences, the Ministry suggests the measures for adoption and management of policy in the area, in the following manner:

- Budget of Montenegro allocates funds for the creation and broadcast of the program of Public Service Radio of Montenegro and Television of Montenegro, as well as for the program contents in the press, aimed at achieving rights to information in Albanian language and languages of other national and ethnic groups;
- Thematic programs and projects have been co-financed via public tender, aimed at promoting the themes of importance for the minorities and minority national communities in Montenegro;
- Funds have been allocated in the state budget for media presentation of the "Decade of Roma Inclusion 2005-2015".

Montenegro, in line with constitutional provisions and main principles of the Law on Minority Rights and Freedoms, as well as those arising from the internationally undertaken obligations, adopted the Strategy of Minority Policy (2008), as the main planning document that defines the policy of the Government of Montenegro in the area of respect and protection of minority rights. The Strategy defines, inter alia, the measures in the information field which implementation provides timely, fully, objectively and qualitative information of minorities, in particular on issues that are of vital importance for their status. Consequently, besides the participation of representatives of minorities in bodies that adopt program contents in the public service, measures envisage the obligation of the state and local self government in terms of co-financing of radio and TV contents in the minority languages that are of great significance for the development of science, culture and information. Then, the so-financing of program contents dedicated to minorities in line with available funds of the Fund for Minorities, as well as the reemitting of adequate radio and TV programs of public services from neighbouring states, and with the possibility to introduce special channel for minorities in the public service.

### **2.4. The use of language and alphabet**

By ratification of the European Charter on Regional and Minority Languages, Montenegro accepted as minority languages Albanian and Roma language, since other languages (Serbian, Bosnian and Croatian) are cognate, almost identical ones.

The official language in Montenegro is Montenegrin, and languages that are in the official use are Serbian, Bosnian, Croatian and Albanian. The official use of language means the use of that language in administrative and court procedure, while issuing personal documents and keeping official records, at electoral paper and other electoral material, and in the work of representative bodies as well.

In Montenegro there are clear and visible indicators for the implementation of the rights of Albanian national minority to use the language and alphabet. The administrative procedure is conducted in the official language, and the members of Albanian minority are entitled to the right to follow the course of the procedure with assistance of interpreters and, if they wish so, to gain a copy of decision or conclusion in Albanian language, in those municipalities where they make the majority. This relates to the following municipalities: Ulcinj, Podgorica, Plav and City Municipality of Tuzi. Besides, members of Albanian nationality, in administrative procedure, are allowed to submit the petition to the local bodies in charge in their own language, but so far this right has not yet been exercised. The document issuance in local bodies in charge is performed in Albanian language too in above mentioned municipalities if the party requests so.

The use of Albanian language is allowed in city assemblies during the discussion about acts and other documents and in the assembly bodies as well. The draft documents adopted by the City Assembly are published in Albanian language too, while the publishing of general documents is performed in the City Municipality Tuzi, and partially in the municipality Ulcinj.

The provisions of the Criminal Procedure Code more closely define the right of the member of minority to be informed in the language he or she understands on the reasons for arrest and on the nature and reasons of charges pressed against him or her, and to defend in the procedure. Article 7 of the Law defines the use of language and alphabet in criminal procedure. Paragraph 2 of mentioned Article defines that courts in which territory the members of national minorities make the majority or significant part of population officially use their language and alphabet, in line with the law. Article 8 of the Law stipulates that the parties, witnesses and other persons who participate in the procedure, are entitled to the right to use own language, and in the case if the procedure is not conducted in the language of that person the oral translation is provided of what is stated by him or her or other parties, and the documents and another written material of proof as well. In addition, every person participating in the procedure is informed about the right to translation into own language. The minutes contain this information. Within the procedure, and in line with the Article 9 of the Law, foreign person may submit a petition on his or her own language.

The Law on Civil Procedure in the Article 7 defines that the procedure is performed in the language in the official use, which means under the same conditions as in the on Criminal Procedure Code, when it comes to the members of national minorities. On the other hand, the parties and other participants in the procedure who do not understand or do not speak the language which is in the official use are entitled to the right to use their own language, either if they are directly in the court or if they submit petitions to the court. In line with the Article 99 of the Law, the Court is obliged to provide translation, at their request, in the case if procedure is not performed in the language of the party or other participants in the procedure of all petitions and written proofs, and what is said in the hearing as well. The item 2 of the same Article mentions the obligation of legal remedy that the oral procedure before the court is to be followed in own language, with the assistance of interpreters.

Criminal Procedure Code, Law on Civil Procedure and Law on Administrative Dispute do not question the validity of legal documents due to the fact that they are adopted in regional or minority language, but their validity is in line with above mentioned laws, as for other documents. Thus, there is no legal provision that questions the validity of a document only due to the language it's written on. On the contrary, the document will be taken as a proof in the court or administrative procedure regardless of the fact in what language is being written, and its validity may be questionable only for another reason, i.e. those reasons that are taken into account while assessing the validity of the document made in the official language.

Beside constitutional provisions that provide for minorities the right to free use of language and alphabet, the Law on Personal Name, in the Article 2, paragraph 3, stipulates that the members of national and ethnic groups may write a personal name in their own alphabet. In addition, the Law on Minority Rights and Freedoms (Article 10) provides for the members of minorities the right to free choice and use of personal family name and children's names, as well as the right to sign in the birth registers and personal documents in their own language and alphabet. Beside this right given to an individual person, the law provides for the right to the title and sign of title in the language and alphabet of minority and minority organisations, associations, institutions and companies.

The Law on Personal Name, which was adopted on 29 July 2008, in the Article 5, paragraph 2, clearly states that Montenegrin citizen may sign the personal name in birth registers in one of languages in the official use (Serbian, Bosnian, Albanian and Croatian).

The Law on Identity Card has been adopted on 29 November 2007, and in the Article 7 stipulates the following: "the identity card form is printed in Montenegrin and English language and is filled out in Montenegrin language. For the citizens who use Serbian, Bosnian, Albanian and Croatian language the content of identity card form is filled in those languages, except for the name and surname that is filled in the language and alphabet of the one who submits the request, and in the case if he or she requests so".

During submission of necessary documentation for issuing of personal documents, the officer in charge is obliged to warn and ask the person who submits the request in what language he or she wishes the documents to be issued.

The Law on Birth Registers (which was adopted at the same time as the Law on Personal Name) stipulates the record of birth, marriage, death, and other data relating to the personal and family status of Montenegrin citizens that occurred in Montenegro or another state, as well as citizens of other state or stateless persons. The Law prescribes that the records about those who are born, married, or died is kept in Montenegrin language and excerpts and certificates are issued in Montenegrin language. In addition, the Law stipulates that the data in birth records related to the members of minority nations and other minority national communities are registered in the language and alphabet of those minorities in line with the Law. Personal name of the member of minority is signed in the birth register in his or her own language in accordance with the law. Excerpts and certificates from the birth register for the minority members are issued also in the language and alphabet he or she belongs to.

### **2.5. Use of national symbols**

The Law on Use of National Symbols (Official Gazette of the Republic of Montenegro 55/00) guarantees the right and prescribes the conditions for the use and display of national symbols. National symbols are those used by the members of minorities for the expression of their national identity.

This Law provides for the opportunity to display national symbols, beside the state ones, in the local self governments where those members are the majority, during state holidays. Private use of national symbols is free during family and other celebrations.

Protection of the identity of minority communities may be observed at two levels: a) protection of individual rights of members of minorities and their identity characteristic and b) protection of national symbols, toponyms, titles and similar as collective characteristics.

There were no problems in practical implementation of this law, i.e. members of minorities have used this right without constraints, as well as local self government bodies.

### **2.6. Cross border cooperation**

One of the guidelines of the Montenegrin foreign policy in the field of minority rights is the encouragement of the spirit of understanding and tolerance and development of international relations, in accordance with the principles of good neighbourhood relations, friendly relations and cooperation among states. Communication of Montenegro with all states, especially the ones in surroundings, is achieved in the spirit of these provisions. In the time after war in neighbourhood, by the change of political circumstances and the course of the politics after 1997, Montenegro has developed good relations with Croatia and Bosnia and Herzegovina, as well as with all other Yugoslav republics, which are now independent states. In the time being of the State Union Serbia and Montenegro, Montenegro has preserved its own Ministry of Foreign Affairs, and opened its own missions to Croatia and Bosnia and Herzegovina.

By revocation of the statehood, in the development of diplomatic consular network, beside the priorities in the most important addresses (Brussels, Washington, London, Berlin, New York-UN, OSCE etc), Montenegro has opened its diplomatic-consular representatives in Sarajevo, Zagreb, Beograd, Skopje, and Ljubljana.

There is an interest and good will for the cross border cooperation in the hitherto practice, and in future intentions for the foreign policy of Montenegro. All communications between the state bodies and institutions of Montenegro and the surrounding countries point out the importance and mutual interest for cooperation. Montenegro has established the cooperation with neighbouring countries in the recent period and in particular after the revocation of independence, which is reflected in cultural, sports, scientific and economic plan, etc.

Under favour of activities of the Government, local self government and in particular civil society, where the members of minorities take intensive part in, great cross border contacts have been made in all fields. In particular, the awareness on joint efforts in the field of sustainable

development, protection of natural and cultural heritage has been developed (cross border with Albania and Skadar Lake).

Cultural cross border contacts have been provided and the Government encourages them with different measures (book fairs, cultural festivals etc.).

The East West Institute has provided significant assistance for the development of cross border contacts between Montenegro, Croatia and Bosnia and Herzegovina. Their perennial programs connect local authorities, young people, members of minorities, entrepreneurs, universities and media, and great attention has been made towards facing the past event and overcoming of negative heritage from the past.

### **2.7. Economic development**

The even regional development is the one of economic imperatives of Montenegro. Since the adoption of the Strategy for Regional Development of Montenegro<sup>5</sup> the Government has been dedicated towards realisation of projects aimed at equalisation of regional development. This fact is very important from the aspect of protection and promotion of minority rights, taking into account that the great number of minority people and other minority national communities are concentrated in less developed north regions.

The Strategy for Minority Policy has recognised the economic development of regions with increase participation of minority population as the region that should pay greater attention to. Goals mentioned in the above mentioned Strategy from this area are as following:

- Development of planning documents, that encourage the regional development and employment, in particular, in the regions where minority population resides, in particular in the north of Montenegro;
- Stimulation of economic activities, which are in the function of development of less developed regions where minority people mostly reside;
- Establishment of special protection mechanisms of social policy at the regional principle, with special emphasise on the status of vulnerable groups (children, women, elderly, persons with special needs);
- Decentralisation of social policy (social welfare system);
- Priority development of infrastructure (road, energy etc.);
- Encouragement of credit marketing towards the projects of regional and local importance.

## **3. Strategic documents**

### **3.1. Strategy of Minority Policy**

In accordance with comparative legal international standards, this Strategy envisages measures for the implementation of the Law on Minority Rights and Freedoms, and improvement of living conditions of minorities as a whole, that oblige state bodies to implement them in the period of document implementation. In that regard, the Strategy represents the collection of concrete measures and activities in the following decade of legal, political, economic, social, cultural, informational, educational and other characters, as well as the definition of implementers, time

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<sup>5</sup> Government of Montenegro adopted this document in 2005. The concept of Strategy of Regional Development comes from fundamental determination of the Strategy of Development of Montenegro and represents its further elaboration and concretisation in certain parts. It comes out of the fact that significant difference in the development of the regions, above all the north region, arise from the conditions and opportunities of development in longer period of time. Main conceptual approach in the Strategy is that, in the process of entire development of Montenegro, the policy of even development of regions and certain zones, available resources, economic funds and the time of development of infrastructure is being implemented. The Strategy prefers sustainable development, open market economy directed towards participation in the economy of European Union and permanent maintaince of ecologic balance.



framework and financial means, above all the governmental bodies, in the aim of general improvement of the status of minorities and their better integration into the social life. The Strategy creates preconditions for the implementation of the policy of protection and promotion of minority rights in Montenegro, which means the concrete implementation of international standards and constitutional and legal standards related to human and minority rights. In addition, the Strategy means the coordinated, joint and synchronised efforts and activities made by the Government of Montenegro, in financial and other terms, international community and civil sector of Montenegro (in particular non governmental organisations dealing with the protection and promotion of human and minority rights).

### **3.2. Strategy for the Improvement of Status of RAE Population in Montenegro 2008-2012**

The Strategy represents the collection of concrete measures and activities in the following four year period of legal, political, economic, social, urban, communal, educational, cultural, informational, and healthy and other necessary characteristics, their implementers, time frameworks, and financial expenses, in the next four-year period. Besides main goals and intentions wishing to implement this document, the Strategy defines the areas of work, priority tasks, method for realisation, duration, evaluation mechanisms etc. The following priority areas of actions are in place: development of data base on RAE population, resolution of the legal status of RAE population (registration and resolution of personal documents issues), education, preservation of culture and tradition, employment and rights in the field of labour, health and health protection, social and child protection, improvement of conditions for housing, and participation in public and political life as well. Each area of the Strategy places a special emphasise on the gender equality.

## **4. Institutional framework for protection of minorities**

Many important institutions and bodies are dealing with the protection of rights and status of minorities in Montenegro.

**4.1.** As the product of democratic pace and fundamental endeavours contained in the “Agreement on minimum principles for the development of democratic infrastructure in Montenegro” from 1997, the year after, and after early parliamentary elections and establishment of new Government, **the Ministry for Protection of Rights of Members of National and Ethnic Groups** has been established. According to the new organisational structure of the Government of Republic of Montenegro in 2006, this Ministry changed its name into the Ministry for Protection of Human and Minority Rights, in accordance with its new competences to monitor and protect those human rights that are not in the mandate of other state bodies. After the Declaration of the Government of the new session, in accordance with the Regulation on organization of manner of state administration body, this Ministry is operating under the name the **Ministry of Human and Minority Rights**, with its competencies to monitor, observe, and protect minority rights in line with the Constitution of Montenegro and international documents related to this issue, and in line with democratic goals that Montenegro tends to. In line with the determination of the Government of Montenegro, and having regard to the importance of gender equality issue and improvement of the status of Roma in Montenegrin society, the Ministry has formed two special departments: the Department for Gender Equality Issues and the Department for the Improvement and Protection of the Rights of RAE Population.

Having regard to the program orientation of the Ministry of Human and Minority Rights, this Ministry actively works on the realisation of fundamental strategic projections. The base of this strategy is a full integration of minorities in the social life with further preservation and development of their national and cultural speciality, and the improvement of their legal rights and freedoms. This is achieved by constant communication of the Ministry with representatives of minority communities, political subjects, non governmental organisations, institutions and offices, as well as with partnership relations with relevant international organisations and institutions dealing with the protection of human and minority rights issues.

**4.2.** The Parliament of Montenegro has established the permanent working body – **the Committee for Human Rights and Freedoms** which examines the proposals for a law, other legislation and general acts and other issues related to: the freedoms and human rights, with special retrospective to the minority rights, implementation of ratified international acts related to the achievement, protection and improvement of those rights; monitors the implementation of documents, measures and activities for the improvement of national, ethnic and other equality, in particular in the field of education, health, information, social policy, employment, entrepreneurship, decision making and similar; participates in the preparation and development of documents and compliance of legislative in this areas with the European standards; cooperates with relevant working bodies of other parliaments, and non governmental organisations from this field as well.

**4.3.** In addition, the Protector of Human Rights and Freedoms (Ombudsman) works as an independent body. The Ombudsman is in charge for protection of human rights and freedoms guaranteed by the Constitution, the Law, and ratified international treaties on human rights and generally accepted rules of international legislative when violated by the act, activity, or ill treatment of the local self government, public service or other bodies with public competences.

It is the body that provides citizens with the opportunity to address it for the purposes of the fast and effective intervention, in easy way, without special formalities and expenses, but also may proceed on self initiative. Procedure before the Ombudsman is confidential and no one who submits the complaint or participates in the procedure implemented by the Ombudsman shall be recalled on responsibility or to be put in disadvantaged position for those reasons.

The Ombudsman informs the Parliament and the public on its findings, standpoints and opinions, which contributes to the openness and transparency of public administration and other public services towards the Parliament, Government, public and citizens. According to the current legal provisions the Ombudsman has two deputies, one of them is dealing with the protection of minority rights.

**4.4. Minority councils** – Aimed at implementation of the Law on Minority Rights and Freedoms, the Ministry for Protection of Human Rights and Freedoms adopted the Rules on the first elections of minority councils and the Instruction on unique form for the organisations of elections for the council members (Official Gazette of Montenegro 46/07). These rules and instructions define the composition and number of members of minority councils, methods of council election, the method of convocation and work of electoral assembly, methods of election of council members, and give clear instructions in this process as well. These acts create legal assumptions for the election of the first minority councils. Besides, these acts have been published in the official web site of the Ministry, printed out as an annex to the daily press »Pobjeda« and in Albanian language in the weekly press »Koha Javore«, published via public service RTCG, TV IN and local radio and television stations, the meetings with non governmental organisations from all minority communities were held and presented the procedure of establishment of the minority council. In line with the legislation, the electoral assemblies for the election of the following councils were held so far: Croatian Council (21 December 2007), Bosnian Council (15 March 2008), Roma Council (22 March 2008), Muslim Council (29 March 2008), Albanian Council (19 April 2008) and Serbian Council (27 October 2008). The constitutive sessions of the councils were held and councils were registered in the Ministry of Human and Minority Rights. As of August 2008 the work of councils has been financed over this Ministry (each council have received monthly amount of EUR 5 000.00). As for 2009 the allocated funds for the work of councils is EUR 298 800.00.

**4.5** At the proposal of the Government of Montenegro, the Parliament has adopted the Decision on the Establishment of the Fund for Minorities in February 2008 (Official Gazette of Montenegro 13/08). The Fund for Minorities has been established for the purposes of activities of importance for the preservation and development of national or ethnical characteristic of minority nations and other minority national communities, and their members in the area of national, ethnic, cultural, language and religious identity. The Management Board with fifty members has been elected in July 2008, and the Law on the Amendments to the Budget Law for 2008 allocated the funds for the work of Fund in the amount of EUR 422 125.00. In 2009, for the work of Fund for Minorities, the following funds have been allocated EUR 975 704.76.

**4.6.** The culture and protection of cultural heritage is one of the segments for the protection of total national identity. Recognising the importance of intercultural and Montenegrin cultural diversity, the Ministry of Human and Minority Rights have undertaken activities for the work of Centre for Preservation and Development of Minorities Cultures. After the adoption of the amendments to the Decision on Establishment of the **Centre for Preservation and Development of Minorities Cultures** (12 April 2007), the four members Management Board has been appointed, the adequate room for performing duties and necessary material and technical means for the work have been provided, the director has been appointed and this important institution for the preservation and development of minorities culture has started its mission at the beginning of 2009.

**4.7.** A number of very qualified and active non governmental associations and organisations that deal with the protection of minority rights issue and the improvement of the status of minority communities are operating in Montenegro.

### **103. Has the Framework Convention for the Protection of National Minorities and other international instruments been ratified? How are they implemented and monitored?**

After restoration of independence, Montenegro declared to accept all obligations arising from the conventions and agreements of the Council of Europe, by the letter of the Minister of Foreign Affairs of 06 June 2006 that were signed and ratified by the formed State Union Serbia and Montenegro. During the status of Montenegro as an observer, the Committee of Ministers of the Council of Europe, in the pre accession period, acknowledged the membership in conventions and protocols that are open for the access to the states that are not members, as well as the succession status in a number of so called closed conventions, *inter alia*, to the Framework Convention for the Protection of National Minorities.

The Republic of Montenegro has become the full Member State of the Council of Europe on 11 May 2007, and the membership took effect on 6 June 2006 (the date of succession status in the Council of Europe conventions and protocols, whose party member was the State Union Serbia and Montenegro).

Based on the provision from the Article 25 paragraph 1 of the Framework Convention, the state parties are obliged to submit the Secretary General, in the period of one year of their entering into force, full notifications on legislative and other measures undertaken for the purposes of achievement of principles contained in this Convention. Montenegro has submitted its First State Report on the Implementation of this Convention in June 2007. This Report was developed by the Working Group consisting of the representatives of relevant ministries on which the provisions of the Framework Convention refer to, and two representatives of non governmental sector as well.

The Advisory Board of the Framework Convention in Montenegro have submitted the List of items for additional information in relation to the submitted report, and in October 2007, the responses to the additional questions were submitted. The Delegation of the Advisory Board visited Montenegro in the period from 4 till 8 December 2007, in order to receive additional information from the representatives of the Government, NGO sector and other independent sources with regard to the implementation of the Framework Convention. The Advisory Board has adopted the opinion about Montenegro at its meeting held on 28 February 2008.

Among other international instruments in the field of minority rights protection, Montenegro accepted the European Charter on Regional and Minority Languages – 1992 (CoE), International Convention on the Elimination of all forms of Racial Discrimination – 1996 (UN), International Covenant on Economic, Social and Cultural Rights – 1996 (UN), International Covenant on Civil and Political Rights – 1996 (UN). As the member of OSCE, Montenegro is following the recommendations of this organisation in the field of minority rights (Hague recommendations on the right of national minorities to education – 1996, Recommendation from Oslo on the Right of National Minorities to the Use of Own Language – 1998, Recommendation from Lund on the efficient participation of national minorities in the public life – 1999).

The implementation of the Framework Convention for the Protection of National Minorities, European Charter on Regional and/or Minority Languages, International Convention on the Elimination of all forms of Racial Discrimination, OSCE recommendations from Lund, Oslo and Hague etc, is performed through compliance of domestic legislative with international documents and practical implementation of these provisions. The monitoring of implementation of these documents is performed by the Government of Montenegro, through the Ministry of Human and Minority Rights. In addition, having regard to the obligation of submission of periodic reports on the implementation of UN and CoE conventions, the relevant committees create their opinion and recommendations on those reports.

**104. In the context of the implementation of the Constitutional provisions on the protection of national identity of a person belonging to a minority, what measures have been taken to assure participation of minorities in the political and public life, namely the representation of such persons in elected bodies and in the administration (both central and local)? Please provide statistics if available. Do all citizens, including persons belonging to minorities have access to identity documents and how is it guaranteed?**

**1. Participation and representation of the members of minorities in public life of Montenegro** is embedded in the current legislative. The Constitution of Montenegro in Article 79 items 9 and 10 guarantees the right to **authentic representation** in the Parliament of Montenegro and city parliaments, where they make the significant part of population, in line with the principle of affirmative action, as well as the right to **proportional representation** in public services, state bodies and local self governments.

Current legal framework has removed the weaknesses with regard to the constitutional baseline for the resolution of authentic participation and affirmative action in **political representation of minorities**. Considering the fact that the provisions of the current Law on Minority Rights and Freedoms, with regard to the election model are suspended as unconstitutional in relation to the previous Constitution, as one of priority tasks of the new Parliament composition is the work on **new electoral legislative** that will implement constitutional guarantees for the authentic political representation of minorities. The Government of Montenegro, at its session of 5 November 2009, adopted a Draft Law on amendments to the Law on Minority Rights and Freedoms, which defines constitutional guarantee of an authentic representation of minorities in the Parliament of Montenegro and the self-parliament local authorities, by the principle of affirmative action, is to be solved with the new electoral legislation.

The current electoral legislation stipulates that the election of councillors is performed in the municipality as unique electoral unit, and the election of deputies in the Republic as unique electoral unit. In Montenegro, as unique electoral unit, out of total number of deputies (81), five of them is elected in electoral posts (determined by the special decision of the Parliament of Montenegro) where Albanians make the majority.

At the last parliamentary elections held on **29 March 2009**, the joint list of Democratic Party of Socialists, Social Democratic Party, Bosniak's Party and Croatian Civil Initiative, have won 48 mandates, Socialistic Peoples Party 16, New Serbian Democracy 8, Movement for Change 5, and Democratic Union of Albanians, New Democratic Party "Forca", Albanian List and Albanian Coalition have won one mandate each.

The majority of parties in the Parliament of Montenegro are of civil orientation, and there are a number of national political parties. Among deputies of civil parties there are representatives of all minority nations and other minority national communities, and in the political sense they do not express their national belongings.

According to the data of the Ministry of Human and Minority Rights, and on the basis of personal expression of deputies during foundation of the minority councils, the representation of minority nation and other minority national communities in the current composition of the Parliament of Montenegro is as following:

## II Human rights

No.	Nationality of deputies	Number of mandates	Participation in total number of mandates (81)	Participation in the population
1.	Bosniaks– total	11	13.58%	7.77%
	- Social Democratic Party	5		
	- Democratic Party of Socialists	3		
	- Bosnian Party	3		
2.	Albanians – total	6	7.41%	5.03%
	- Democratic Party of Socialists	2		
	- Democratic Union of Albanians	1		
	- FORCA	1		
	- Democratic Coalition of Montenegro	1		
	- Albanian Coalition The Perspective	1		
3.	Muslims - total	1	1.23%	3.97%
	- Democratic Party of Socialists	1		
4.	Croatians - total	1	1.23%	1.10%
	- Croatian Civil Initiative	1		
<b>TOTAL</b>		<b>19</b>	<b>23.46%</b>	<b>17.87%</b>

In the new composition of the Government of Montenegro as of 10 June 2009, out of 21 members of the Government, 3 of them are the representatives of minority nation (14.28%). The Minister of Labour and Social Welfare is Muslim, the Minister of Human and Minority Rights is Albanian, and the Minister without Portfolio is Bosniak.

When it comes to the **proportional representation of minorities in public services, state bodies and local self government**, the Ministry of Human and Minority Rights have tried two times (1999 and 2003) to collect information on the number of employed members of minorities in state bodies, local self government and judiciary. In both cases, the main obstacle to gaining such relevant data was **the fact that it was not necessary for respondents to declare their nationality**. In addition, neither one state nor local body register data of employees on national structure in the mentioned period. In other words, the human resources records, according to the Law on Civil Servants and State Employees, contained the column on national belonging which was not the obligatory one, in line with the previous constitution provision that the citizen is not obliged to express his or her nationality.

**The Strategy of Minority Policy**, which was adopted by the Government of Montenegro in 2008, it is mentioned that “the proportional participation or representation of members of minorities in state bodies to their participation in the total population is based in the current legislative. However, that concept should be amended by the establishment of the record system and its compliance with the standards of protection of personal data, which will provide records to be used only for purposes they are established for. The system of education should be used for the creation of personnel basis for the achievement of this standard, with **equal linkage to the ethnical belonging, expertise and references as the goals of total administration reform**. This is

particularly related to the area in which the concept of education and improvement of civil servants and holders of public functions is provided by the legislation (judiciary, administration and similar).”

The Strategy of Minority Policy is to be implemented in ten years period (2008 – 2018). Regarding the proportional representation in state and local bodies the Strategy envisages one year period for the creation of unique human resources record in state and local bodies. When it comes to the representation in the judiciary, the Strategy relies on the same document in the area of the judiciary reform which prescribes two years period when the record will be made.

These processes must come from the assumption that the adequate participation of minorities while selecting personnel in state bodies, local bodies and judiciary will represent the respect for the guaranteed constitutional principle in legal sense, and in sociological area it forms the base for gaining additional confidence in the work of all Montenegrin institutions by members of minority communities.

**Human Resources Administration**, in line with the Article 118 of the Law on Civil Servants and State Employees (Official Gazette of Montenegro 50/08) keeps the **Central Human Resources Record** on civil servants and state employees which, *inter alia*, contains the personal data (name and surname, nationality and mother language, address and unique birth number and other). In that way, the Law provides for the **obligation** of keeping the human resources record which contains the data on minority aspect of employees. Even though this obligation is stipulated by the Law, the update of this record in state and local bodies is not yet performed.

With relation to available **statistical data** on 16 October 2009 in the Central Human Resources Record, only 14 state bodies have performed the data entry on mother language, **and 34 bodies have performed the data entry on national belonging**. In other words, the total number of civil servants and state employees who declared their national belonging is only 1325, and the total number of them who declared their mother language is only 192. Considering the above mentioned, statistical data have not yet been completed, thus are not still available. The statistics may be relevant only when the Record is updated, which represents the priority within the measures for the implementation of the Strategy of Minority Policy, and the obligation of the Human Resources Administration in the upcoming period.

The Human Resources Administration performs **the tasks of monitoring and implementation of measures** aimed at achieving proportional representation of minorities and other minority national communities in state bodies, thus the candidates, during the process of internal, public advertisement or public competition made by the Human Resources Administration, **may** declare their national belonging in the application.

The participation of minorities in political and public life is additionally improved by provisions of the Law on Minority Rights and Freedoms, which stipulates that the minorities and their members are entitled to **the right to establish institutions, societies, associations and non governmental organisations** in all areas of social life, aimed at preserving and developing the national and ethnic identity. The state is obliged to finance these institutions. In line with its financial opportunities.

Special opportunity given by the Law on Minority Rights and Freedoms is the establishment of **minority councils**, as a form of minority self government, aimed at improving freedoms and rights of minorities. One minority may elect only one council, and the council is composed of the members who wish so, and the members are elected at the electoral assembly. **The council members** may be the deputies from the minority list, members of the Government who are representative from the minority list, city majors in municipalities where the minority makes the majority and other deputies and members of the Government as well as city majors from that minority, presidents of the minority parliamentary parties, as well as the presidents of local councillors clubs of minority parties.

**The main mandate of the councils** is envisaged by the Law: the council represents the minority; submits the proposal to state bodies, local bodies and public service for the improvement and development of the rights of minorities and their representatives; submits the initiative to the President of Montenegro for not declaring the law that violates the rights of minorities and their members; gives opinion to the programs that express the peculiarity of minorities; proposes the

enrolment of certain number of students at the University of Montenegro; makes the initiative for amendments of laws and secondary legislation that regulate the rights of minorities. It is necessary to achieve the cooperation with the minority councils for the purposes of building mutual confidence on the issues discussed by the state bodies and public service and which are related to the rights of minorities.

The Ministry for Protection of Human and Minority Rights has adopted the **Rules** for the first election of councils and **Guideline** on unique form for the council member election. These acts have been published in Official Gazette of the Republic of Montenegro 46/07, at the official web site of the Ministry, printed out as an annex to the daily press »Pobjeda« and in Albanian language in the weekly press »Koha Javore«, published via public service RTCG, TV IN and local radio and television stations, the meetings with non governmental organisations from all minority communities were held and presented the procedure of establishment of the minority council. In line with the legislation, the electoral assemblies for the election of the following councils were held so far: Croatian Council (21 December 2007), Bosniak Council (15 March 2008), Roma Council (22 March 2008), Muslim Council (29 March 2008), Albanian Council (19 April 2008) and Serbian Council (27 October 2008). The Ministry monitored the entire procedure of establishment of councils.

When it comes to the **composition of councils**, the situation is as following:

- Croatian Council – the total number of members is 17; 4 ex-officio, and 13 elected in the electoral assembly;
- Bosniak Council – the total number of members is 35; 16 ex-officio, and 19 elected in the electoral assembly;
- Roma Council - the total number of members is 17; and total 17 elected in the electoral assembly;
- Muslim Council - the total number of members is 25; 2 ex-officio, and 23 elected in the electoral assembly;
- Albanian Council - the total number of members is 35; 23 ex-officio, and 12 elected in the electoral assembly;
- Serbian Council - the total number of members is 35; 5 ex-officio, and 30 elected in the electoral assembly.

The funds for the work of councils are provided by the Budget of Montenegro. Last year, the Ministry of Human and Minority Rights have paid monthly amount of EUR 5,000.00 for the work of each established council. For 2009, the amount for this purpose is EUR 298,800.00.

In practice, the members of minorities use all constitutional and legal opportunities for the free association at the national principle. There were no examples of obstruction, obstacles or prohibitions for the members of minorities to use these rights.

a) Members of **Bosniak minority** are organised over non governmental organisations and political parties. Political organisation of Bosniaks, and all minorities in Montenegro, may differ. Members of this minority tend to participate in both national (Bosniak party and Bosniak block) and civil parties, but mostly in the leading structures.

b) The **Albanian minority** has very developed political pluralism. They are organised in few national political parties: Democratic Union of Albanians, Democratic Coalition in Montenegro, Albanian Alternative, Forca, and Party of Democratic Prosperity. Beside national parties, Albanian voters support also civil parties, mainly the ruling ones Democratic Party of Socialists and Social Democratic Party. In municipalities where Albanians live, they are very much active through the civil society organisations. Certain non governmental organisations from those areas have been recognised at national and wider level because of their seriousness and quality of work.

c) **Muslims** in Montenegro are politically organised through civil parties, as well as through non governmental organisation among which the most prominent is "Muslim Matrix of Montenegro".

d) Members of **Croatian minority** are organised at both levels of political parties and non governmental organisations, mainly in the area of Boka, where the Croatian minority is the most concentrated. In political terms, Croatians are organised over civil parties and over the party "Croatian Civil Initiative", which is the only national party of Croatians.

e) **Roma people** in Montenegro are not organised in national political parties beside certain announcements. Even though they vote for civil parties in the elections, they are not enough involved in the party life of any civil party. Roma NGO sector is extremely developed at the national level where the coalition "Roma Circle" is active.

Legal framework for the establishment and activity of non governmental organisations is very favourable. According to the assessment of international and domestic public **the Law on Non Governmental Organisations** is one of the most liberal in Montenegro. They are provided with the opportunity of establishment of two kinds of non governmental organisations – associations and foundations. It is not possible to establish the entities that stimulate racial, religious or national hatred or intolerance. The Ministry of Justice have refused to make registration of those associations which founding acts contain discriminatory provisions against minorities.

**2. Access to personal documents** – all Montenegrin citizens are equal in the achievement of rights and obligations for obtaining travel documents and personal identity documents. There are no constraints in the provisions of the Law on Travel Document (Official Gazette of Montenegro.21/08 and 25/08) and the Law on Identity Card (Official Gazette of Montenegro 12/07) on the basis of national, religious, racial, sexual or other belonging with regards to the achievement of rights to issuance of personal documents and identity card.

For the purposes of achievement of rights to use of language and alphabet, the Article 15 of the Law on Travel Documents envisages that the name and surname of members of minority people and other minority national community, at their own request, is written in the language and alphabet of the minority he/she belongs to. In addition, at the request of the applicant, the name and surname is written in Cyrillic alphabet.

In addition, for the purposes of achievement of the right to use of language and alphabet, the Article 7 of the Law on Identity Card, stipulates that for the citizens whose official language is Serbian, Bosnian, Albanian or Croatian, the content of the identity card form is written in Montenegrin language and in above mentioned languages, except for the name and surname which is written in the language and alphabet of the applicant, if he/she requests so.

### **105. Provide a description of existing arrangements on education in the language of minority communities and the right to have included in the curricula the history and culture of the persons belonging to such communities.**

The rights of minorities and their representatives related to the education are stipulated by the General Law on Education (Official Gazette of the Republic of Montenegro.64/02, 31/05 and 49/07), as well as the Law on Minority Rights and Freedoms (Official Gazette of the Republic of Montenegro.31/06 and 38/07).

Laws in the area of education guarantee the equality for all citizens in achievement of the right to education, regardless of national belonging, race, sex, language, religion, social origin or other personal characteristic. In the school year 2008/2009, out of 161 elementary schools in Montenegro, the classes have been attended by children in Albanian language in 12 schools. Out of 47 secondary schools in 4 schools children were able to attend classes in Albanian language. The educational process in educational groups is performed in Albanian language in three pre-school institutions. Textbooks for all elementary school grades are printed out in Albanian language, as well as for the first, second and third high school grade. The translation of the textbooks for the fourth high school grade is in progress.

Laws regulating all levels of education prescribe that the class in the language and alphabet of the minority may have less number of pupils hereby up to 50% out of the number of pupils prescribed by the Ministry regulation.

In those schools where the lectures are held in the language of minorities or their members, the pedagogical record is to be printed out and kept in the language that is in the official use and in the



language of minorities. In addition, the public documents are printed out and issued in the language that is in the official use and in the language of minority members as well.

In the public institution where the teaching is performed in the language and alphabet of the minority, beside general conditions for the election of the director, it is prescribed that he or she must have the active knowledge of language and alphabet of that minority, and the language which is in the official use in Montenegro.

The education at all levels is achieved in line with existing curricula, and before adoption of the special segment of existing curricula, with regard to the subject curricula that express the speciality of minorities, the Minority Council makes an opinion to the relevant council. The Ministry of Education and Science may not change the special segment of the existing curricula that has been adopted by the relevant council.

In accordance with recommendations given by the Law on Minority Rights and Freedoms the subject curricula contain the topics from the field of history, art, literature, tradition and minority culture. Curricula in institutions and schools where the teaching is performed in the official language contains the topics from mother language and literature, history, art and culture of minorities, and other contents that encourage mutual tolerance and coexistence.

Within the higher education there is the study program for teachers in Albanian language. For the purposes of full enjoyment of minority rights, the University of Montenegro, on the Minority Council proposal, may enrol certain number of students who are members of minorities every school year, in accordance with the University act.

The minorities and their members are entitled to the right to establish educational institutions. For example, in Ulcinj the private high school "Drita" has been established, and performs the existing educational program.

Educational work in the school institution or special class of the regular schools with the teaching in the minority language is performed by teacher from that minority who have active knowledge of the minority language, or the teachers who are not from that minority but possess the knowledge of language and alphabet of that minority.

**106. Are any "stateless" people living in Montenegro as a result of the dissolution of the SFRY and the State Union of Serbia and Montenegro? Has Montenegro ratified the Convention on the Avoidance of Statelessness in relation to State Succession? Please explain.**

1. The European system of acquisition of citizenship, and hereby the system of the Federal People's Republic of Yugoslavia, the Socialist Federal Republic of Yugoslavia, the Federal Republic of Yugoslavia, recognises the following procedure of the citizenship acquisition:

- by the origin, on the basis of the child's parent citizenship in the moment of a child birth (main procedure of acquisition);
- by the birth on the territory of the child state whose parent are unknown, of unknown citizenship or are stateless persons (this is very rare in the practice);
- by naturalisation of a foreigner, decided upon the Ministry of Interior and Public Administration;
- on the basis of concluded or ratified international agreement and treaty.

The first two ways of the citizenship acquisition mean that the citizenship is acquired in the moment of birth – de jure, without adoption of the decision, because the very registration into the birth record is considered as a registration in the book of citizens, kept by the local bodies, and in all other cases it have to be decided at the request and the decision have to be adopted.

Having regards to the previous existence of the federal and republican citizenship, as well as the fact that one person could have only one republic citizenship, the federal regulations on citizenship contained the collision provisions that resolve the issue of conflict of republican laws on citizenship with regard to the acquisition of the citizenship by the origin.

For example, the Law on Citizenship of the Socialist Federal Republic of Yugoslavia (Official Gazette of the Socialist Federal Republic of Yugoslavia 58/76) provided for the following:

- The republican citizenship of a child shall be determined in accordance with the law of the republic the citizenship of which both parents had at the moment of his or her birth (Article 22 paragraph 1).
- The child whose parents have different republican citizenship at the moment of his/her birth shall acquire the republican citizenship according to the law of the Republic on the territory of which it was born, provided that one parent has that republican citizenship. Parents may decide by agreement that the child should acquire the republican citizenship according to the law of the republic whose citizen is the other parent (Article 22 paragraph 2).
- A child whose parents had different republican citizenship at the moment of his/her birth, and who was born on the territory of the Republic the citizenship of which the parents do not have, shall acquire the republican citizenship according to the law of the Republic on the territory of which it was born unless the parents decide by agreement that the child should acquire its republican citizenship according to the law of the republic the citizenship of which has one of the parents (Article 22 paragraph 3).

The Law on Yugoslav Citizenship (Official Gazette 33/96) in the Chapter V – Resolution of conflicts of republican laws on citizenship (Article 27) contains the similar provisions.

The system of citizenship recording which is acquired by the origin was different in certain periods of time (the republican and federal as well of the Federal People's Republic of Yugoslavia, the Socialist Federal Republic of Yugoslavia, and the Federal Republic of Yugoslavia):

- the first citizens record in the former joint state was established in 1948/49 according to the so called domiciliary status which meant that he or she is the citizen of the republic (hereby the federal republic as well) in which he/she had the residence in the time of population census (from that time until now, the record is kept by the municipal administration bodies),
- later on, the registration in the citizen's record for newly born children, who acquired the citizenship by the origin (according to the citizenship of a parent) was kept in the citizen's record of a municipality in which one parent is registered, and that is by the rule a father of a child,
- as of 1974/1975 the registration in the citizen's record for newly born children was performed in the municipality where the child is born.

For those persons who acquired the citizenship by naturalisation, and hereby decided by the relevant ministries for interior, the registration of the citizenship status was performed according to the residence (in the time of existence of the Federal Republic of Yugoslavia, since January 1997 until February 2003). The decision on the naturalisation in Yugoslav citizenship (and simultaneously in the citizenship of either Republic of Serbia or Republic of Montenegro) was adopted by the Federal Ministry of Interior and Public Administration, and the registration of citizenship was performed in the Book of Yugoslav Citizens that was kept by the former Federal Ministry of Interior, and after its revoking the Ministry of Interior of the Republic of Serbia undertook those tasks.

In accordance with above mentioned, for the time being of any form of joint state, every person, that acquired the federal citizenship in one of legally prescribed provisions, acquired also one republican citizenship, and for those persons who were not registered in the book of citizens due to some mistakes, all previous laws on citizenship, in the transitional provisions, prescribed the opportunity of citizenship stipulation and subsequently registration in the citizens books.

The Law on Montenegrin Citizenship (Official Gazette of Montenegro 13/08), in the transitional provisions, regulates the legal continuity of Montenegrin citizenship which necessarily arises from the state and legal continuity of Montenegro. For that reason there is a solution that every person, who acquired Montenegrin citizenship in accordance with previous regulations, is considered to be a Montenegrin citizen if he/she is registered in the citizen's record of Montenegro (Article 39 of the Law).

If the person who acquired Montenegrin citizenship in accordance with regulations is not registered in the citizen's record of Montenegro, which has been kept by previous regulations, the relevant body shall stipulate the citizenship of that person at his or her request (Article 40 of the Law).

Even though there is no obligation for the implementation of the European Convention in the segment relating to the state succession, there was the need to provide the citizenship acquirement to the persons who, at the date of declaration of independence of Montenegro, on 03 June 2006, had the residence in Montenegro, or had the citizenship of republics of the former Socialist Federal Republic of Yugoslavia. The citizenship is acquired under more favourable conditions than for other foreigners (there is no obligation for 10 years of legal marriage and knowledge of Montenegrin language), but the dismissal from the other state citizenship is requested. The deadline for the submission of requests on this basis as well as the deadline for submission of request for stipulation of Montenegrin citizenship of those persons, who are not registered in the record of Montenegro, is limited to one year from the date of beginning of implementation of this Law (Article 41 paragraph 2 of the Law). The Law entered into force on 05 May 2008.

After completion of mentioned date, the person may acquire the citizenship according to the Article 41, or may stipulate Montenegrin citizenship according to the Article 40, only if he/she submits the request within three years from the date this Law enters into force.

In line with above mentioned, by dissolution of the Socialist Federal Republic of Yugoslavia, there was no case of the loss of current citizenship and creation of statelessness for the persons who legally resided in Montenegro and had one of republican citizenships of the former Socialist Federal Republic of Yugoslavia, regardless of the citizenships they had before Montenegrin independence.

There is a question whether those persons shall apply for the acquisition of Montenegrin citizenship and fulfil conditions for that (one of the conditions is a dismissal from the citizenship of another state) or shall they decide to continue living in Montenegro and regulate further status in accordance with the Law on Foreigners.

2. The Government of Montenegro, at its session of 5 November 2009, has adopted the Draft Proposal on ratification of the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession and forwarded it to the Parliament of Montenegro for its discussion and adoption.

The additional reason is in the fact that the Law on Montenegrin Citizenship has implemented general principles of the European Convention on Citizenship in its provisions, which was the legal framework for adoption of the Convention on the Avoidance of Statelessness in Relation to State Succession.